

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

July 26, 2013

CHANGE NOTICE NO. 5
 to
CONTRACT NO. 071B6200380
 between
THE STATE OF MICHIGAN
 and

NAME & ADDRESS OF CONTRACTOR:	PRIMARY CONTACT	EMAIL
Great Lakes Environmental Center 739 Hastings Street Traverse City, MI 49686	Mick DeGraeve	mick@glec.com
	TELEPHONE	CONTRACTOR #, MAIL CODE
	(231) 941-2230	

STATE CONTACTS	AGENCY	NAME	PHONE	EMAIL
CONTRACT COMPLIANCE INSPECTOR	MDEQ	Christine Aiello	(517) 241-7504	aiello@michigan.gov
BUYER	DTMB	Brandon Samuel	(517) 241-1219	samuelb@michigan.gov

CONTRACT SUMMARY:			
DESCRIPTION: Technical Support for Water Quality Monitoring Program - DEQ			
INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW
September 1, 2006	August 31, 2011		August 31, 2013
PAYMENT TERMS	F.O.B	SHIPPED	SHIPPED FROM
N/A	N/A	N/A	N/A
ALTERNATE PAYMENT OPTIONS:			AVAILABLE TO MiDEAL PARTICIPANTS
<input type="checkbox"/> P-card <input type="checkbox"/> Direct Voucher (DV) <input type="checkbox"/> Other			<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
MINIMUM DELIVERY REQUIREMENTS:			

DESCRIPTION OF CHANGE NOTICE:				
EXTEND CONTRACT EXPIRATION DATE	EXERCISE CONTRACT OPTION YEAR(S)	EXTENSION BEYOND CONTRACT OPTION YEARS	LENGTH OF OPTION/EXTENSION	EXPIRATION DATE AFTER CHANGE
<input type="checkbox"/> No <input checked="" type="checkbox"/> Yes	<input type="checkbox"/>	<input type="checkbox"/>	6 months	Feb. 28, 2014
VALUE/COST OF CHANGE NOTICE:		ESTIMATED REVISED AGGREGATE CONTRACT VALUE:		
\$150,000.00		\$4,730,548.50		

Effective July 23, 2013, this contract is hereby INCREASED by \$150,000.00. Contract is also extended for 6 months with a new contract end date of February 28, 2014. All other terms, conditions, pricing and specifications remain the same. Per vendor and agency agreement and the approval of both DTMB Procurement and the State Administrative Board on July 23, 2013.

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

CHANGE NOTICE NO. 4
 to
CONTRACT NO. 071B6200380
 between
THE STATE OF MICHIGAN
 and

NAME & ADDRESS OF CONTRACTOR:	PRIMARY CONTACT	EMAIL
Great Lakes Environmental Center 739 Hastings Street Traverse City, MI 49686	Mick DeGraeve	mick@glec.com
	TELEPHONE	CONTRACTOR #, MAIL CODE
	(231) 941-2230	

STATE CONTACTS	AGENCY	NAME	PHONE	EMAIL
CONTRACT COMPLIANCE INSPECTOR	MDEQ	Christine Aiello	(517) 241-7504	aiello@michigan.gov
BUYER	DTMB	Brandon Samuel	(517) 241-1219	samuelb@michigan.gov

CONTRACT SUMMARY:			
DESCRIPTION: Technical Support for Water Quality Monitoring Program - DEQ			
INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW
September 1, 2006	August 31, 2011		August 31, 2013
PAYMENT TERMS	F.O.B	SHIPPED	SHIPPED FROM
N/A	N/A	N/A	N/A
ALTERNATE PAYMENT OPTIONS:			AVAILABLE TO MIDEAL PARTICIPANTS
<input type="checkbox"/> P-card <input type="checkbox"/> Direct Voucher (DV) <input type="checkbox"/> Other			<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
MINIMUM DELIVERY REQUIREMENTS:			

DESCRIPTION OF CHANGE NOTICE:				
EXTEND CONTRACT EXPIRATION DATE	EXERCISE CONTRACT OPTION YEAR(S)	EXTENSION BEYOND CONTRACT OPTION YEARS	LENGTH OF OPTION/EXTENSION	EXPIRATION DATE AFTER CHANGE
<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	<input type="checkbox"/>	<input type="checkbox"/>		August 31, 2013
VALUE/COST OF CHANGE NOTICE:		ESTIMATED REVISED AGGREGATE CONTRACT VALUE:		
\$350,000.00		\$4,580,548.50		
Effective April 16, 2013, this contract is hereby INCREASED by \$350,000.00. All other terms, conditions, pricing and specifications remain the same. Per vendor and agency agreement and the approval of both DTMB Procurement and the State Administrative Board on April 16, 2013.				

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

CHANGE NOTICE NO. 3
 to
CONTRACT NO. 071B6200380
 between
THE STATE OF MICHIGAN
 and

NAME & ADDRESS OF CONTRACTOR:	PRIMARY CONTACT	EMAIL
Great Lakes Environmental Center 739 Hastings Street Traverse City, MI 49686	Mick DeGraeve	mick@glec.com
	TELEPHONE	CONTRACTOR #, MAIL CODE
	(231) 941-2230	

STATE CONTACTS	AGENCY	NAME	PHONE	EMAIL
CONTRACT COMPLIANCE INSPECTOR	MDEQ	Christine Aiello	(517) 241-7504	aiello@michigan.gov
BUYER	DTMB	Brandon Samuel	(517) 241-1219	samuelb@michigan.gov

CONTRACT SUMMARY:			
DESCRIPTION: Technical Support for Water Quality Monitoring Program - DEQ			
INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW
September 1, 2006	August 31, 2011		September 30, 2012
PAYMENT TERMS	F.O.B	SHIPPED	SHIPPED FROM
N/A	N/A	N/A	N/A
ALTERNATE PAYMENT OPTIONS:			AVAILABLE TO MiDEAL PARTICIPANTS
<input type="checkbox"/> P-card <input type="checkbox"/> Direct Voucher (DV) <input type="checkbox"/> Other			<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
MINIMUM DELIVERY REQUIREMENTS:			

DESCRIPTION OF CHANGE NOTICE:				
EXTEND CONTRACT EXPIRATION DATE	EXERCISE CONTRACT OPTION YEAR(S)	EXTENSION BEYOND CONTRACT OPTION YEARS	LENGTH OF OPTION/EXTENSION	EXPIRATION DATE AFTER CHANGE
<input type="checkbox"/> No <input checked="" type="checkbox"/> Yes	<input checked="" type="checkbox"/>	<input type="checkbox"/>	11 months	August 31, 2013
VALUE/COST OF CHANGE NOTICE:		ESTIMATED REVISED AGGREGATE CONTRACT VALUE:		
\$230,548.50		\$4,230,548.50		
Effective September 14, 2012, this contract is hereby EXTENDED to August 31, 2013 and INCREASED by \$230,548.50. All other terms, conditions, pricing and specifications remain the same. Per vendor and agency agreement and the approval of both DTMB Procurement and the State Administrative Board on September 13, 2012.				

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

May 19, 2011

CHANGE NOTICE NO. 2
TO
CONTRACT NO. 071B6200380
between
THE STATE OF MICHIGAN
and

NAME & ADDRESS OF VENDOR Great Lakes Environmental Center 739 Hastings Street Traverse City, MI 49686 mick@glec.com	TELEPHONE (231) 941-2230 Mick DeGraeve
	VENDOR NUMBER/MAIL CODE
	BUYER/CA (517) 241-1916 Jim Wilson
Contract Compliance Inspector: Christine Aiello (517) 241-7504 Technical Support for Water Quality Monitoring Program - DEQ	
CONTRACT PERIOD: From: September 1, 2006 To: September 30, 2012	
TERMS N/A	SHIPMENT N/A
F.O.B. N/A	SHIPPED FROM N/A
MINIMUM DELIVERY REQUIREMENTS N/A	

NATURE OF CHANGE(S):

Effective immediately, the State hereby exercises the first of two, one-year options to renew this Contract. The revised Contract end date is September 30, 2012.

Additionally, the DTMB Buyer assigned to this Contract is Jim Wilson (517) 241-1916.

All other terms, conditions, specifications, and pricing/rates remain unchanged.

AUTHORITY/REASON:

Per agency request, Contractor agreement, and DTMB/Purchasing Operations' approval.

ESTIMATED CONTRACT VALUE REMAINS: \$4,000,000.00

**Contract 071B6200380
Change Notice No. 2
Signature Block**

FOR THE CONTRACTOR:

Great Lakes Environmental Center

Firm Name

Authorized Agent Signature

Authorized Agent (Print or Type)

Date

FOR THE STATE:

Signature

Natalie Spaniolo, Acting Director

Name/Title

DTMB-Purchasing Operations

Division

Date

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

January 3, 2008

CHANGE NOTICE NO. 1
TO
CONTRACT NO. 071B6200380
between
THE STATE OF MICHIGAN
and

NAME & ADDRESS OF VENDOR		TELEPHONE (231) 941-2230
Great Lakes Environmental Center 739 Hastings Street Traverse City, MI 49686 mick@glec.com		Mick DeGraeve
		VENDOR NUMBER/MAIL CODE (2) 38-3077785 (002)
		BUYER/CA (517) 373-8622 Malynda Little
Contract Compliance Inspector: Christine Aiello		
Technical Support for Water Quality Monitoring Program - DEQ		
CONTRACT PERIOD:		From: September 1, 2006 To: September 30, 2011
TERMS	N/A	SHIPMENT N/A
F.O.B.	N/A	SHIPPED FROM N/A
MINIMUM DELIVERY REQUIREMENTS N/A		

NATURE OF CHANGE(S):

This Contract is hereby:

- **EXTENDED to September 30, 2011;**
- **Assigned to DMB Buyer, Malynda Little**
- **ASSIGNED to DEQ-Water Bureau Contract Compliance Inspector, Christine Aiello.**

All other terms, conditions, specifications, and pricing/rates remain unchanged.

AUTHORITY/REASON:

- **PER Agency request dated 5/30/07;**
- **DMB/Purchasing Operations approval dated 8/21/07;**
- **State Administrative Board approval dated 12/18/07;**
- **Vendor agreement dated 12/28/07.**

MAXIMUM CONTRACT VALUE REMAINS:

\$4,000,000.00

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

January 3, 2008

**NOTICE
 TO
 CONTRACT NO. 071B6200380
 between
 THE STATE OF MICHIGAN
 and**

NAME & ADDRESS OF VENDOR Great Lakes Environmental Center 739 Hastings Street Traverse City, MI 49686		TELEPHONE (231) 941-2230 Mick DeGraeve
		VENDOR NUMBER/MAIL CODE (2) 38-3077785 (002)
mick@glec.com		BUYER/CA (517) 373-1080 Melissa Castro
Contract Compliance Inspector: Gary Kohlhepp Technical Support for Water Quality Monitoring Program - DEQ		
CONTRACT PERIOD: From: September 1, 2006 To: August 31, 2011		
TERMS N/A	SHIPMENT N/A	
F.O.B. N/A	SHIPPED FROM N/A	
MINIMUM DELIVERY REQUIREMENTS N/A		

Estimated Contract Value Not to Exceed: \$4,000,000.00

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

August 17, 2006

**NOTICE
 TO
 CONTRACT NO. 071B6200380
 between
 THE STATE OF MICHIGAN
 and**

NAME & ADDRESS OF VENDOR Great Lakes Environmental Center 739 Hastings Street Traverse City, MI 49686 mick@glec.com	TELEPHONE (231) 941-2230 Mick DeGraeve
	VENDOR NUMBER/MAIL CODE (2) 38-3077785 (002)
	BUYER/CA (517) 373-1080 Melissa Castro
Contract Compliance Inspector: Gary Kohlhepp Technical Support for Water Quality Monitoring Program - DEQ	
CONTRACT PERIOD: From: September 1, 2006 To: August 31, 2011	
TERMS <p style="text-align: center;">N/A</p>	SHIPMENT <p style="text-align: center;">N/A</p>
F.O.B. <p style="text-align: center;">N/A</p>	SHIPPED FROM <p style="text-align: center;">N/A</p>
MINIMUM DELIVERY REQUIREMENTS <p style="text-align: center;">N/A</p>	

Estimated Contract Value Not to Exceed: \$4,000,000.00



**STATE OF MICHIGAN
Department of Management and Budget
Purchasing Operations**

Technical Support for Water Quality Monitoring Program
for the Department of Environmental Quality

Buyer Name: Melissa Castro, CPPB
Telephone Number: 517-373-1080
E-Mail Address: castrom@michigan.gov



Table of Contents

Article 1 – Statement of Work (SOW) 7

 1.0 Project Identification 7

 1.001 Project Request..... 7

 1.002 Background 7

 1.1 Scope of Work and Deliverables 7

 1.101 In Scope 7

 1.102 Out of Scope..... 7

 1.103 Environment 8

 1.104 Work and Deliverable 8

 1.2 Roles and Responsibilities..... 16

 1.201 Contractor Staff, Roles, and Responsibilities 16

Cathy Whiting, LTI..... 18

 1.202 State Staff, Roles, and Responsibilities 19

 1.203 Other Roles and Responsibilities 19

 1.3 Project Plan..... 19

 1.301 Project Plan Management 19

 1.302 Reports 20

 1.4 Project Management..... 21

 1.401 Issue Management - Reserved 21

 1.402 Risk Management..... 21

 1.403 CHANGE MANAGEMENT 24

 1.5 Acceptance 24

 1.501 Criteria 24

 1.502 FINAL ACCEPTANCE..... 24

 1.6 Compensation and Payment 24

 1.601 Compensation and Payment 24

 1.7 Additional Terms and Conditions Specific to this SOW - Reserved 24

Article 1, Attachment A..... 25

Article 1, Attachment B..... 30

Article 1, Attachment C, D, E & F -- RESERVED 31

Article 2 – General Terms and Conditions 32

 2.010 Contract Structure and Administration 32

 2.011 Definitions 32

 2.012 Attachments and Exhibits 32

 2.013 Statements of Work 32

 2.014 Issuing Office 33

 2.015 Contract Compliance Inspector 33

 2.020 Contract Objectives/Scope/Background 34

 2.21 Background 34

 2.022 Purpose 34

 2.023 Objectives and Scope 34

 2.024 Interpretation 34

 2.025 Form, Function and Utility 34

 2.030 Legal Effect and Term 34

 2.031 Legal Effect..... 35

 2.032 Contract Term..... 35

 2.040 Contractor Personnel 35

 2.041 Contractor Personnel 35

 2.042 Contractor Identification 37

 2.043 Cooperation with Third Parties 37

 2.044 Subcontracting by Contractor..... 37

 2.045 Contractor Responsibility for Personnel 38



2.050 State Standards..... 38

2.051 Existing Technology Standards - Reserved 38

2.052 PM Methodology Standards - Reserved 38

2.053 Adherence to Portal Technology Tools - Reserved 38

2.054 Acceptable Use Policy..... 38

2.060 Deliverables..... 38

2.061 Ordering..... 38

2.062 Software - Reserved..... 38

2.063 Hardware - Reserved 38

2.064 Equipment to be New and Prohibited Products - Reserved..... 38

2.070 Performance 38

2.071 Performance, In General 38

2.072 Time of Performance..... 38

2.073 Liquidated Damages - Reserved..... 39

2.074 Bankruptcy..... 39

2.075 Time is of the Essence - Reserved 39

2.080 Delivery and Acceptance of Deliverables..... 39

2.081 Delivery Responsibilities - Reserved..... 39

2.082 Delivery of Deliverables..... 39

2.083 Testing - Reserved 39

2.084 Approval of Deliverables, In General..... 39

2.085 Process For Approval of Written Deliverables 40

2.086 Process for Approval of Services 41

2.087 Process for Approval of Physical Deliverables..... 41

2.088 Final Acceptance 41

2.090 Financial 41

2.091 Pricing..... 41

2.092 Invoicing and Payment Procedures and Terms 42

2.093 State Funding Obligation..... 42

2.094 Holdback - Reserved..... 42

2.095 Electronic Payment Availability 43

2.100 Contract Management..... 43

2.101 Contract Management Responsibility..... 43

2.102 Problem and Contract Management Procedures..... 43

2.104 System Changes 44

2.105 Reserved 44

2.106 Change Requests..... 44

2.110 Records and Inspections..... 45

2.111 Records and Inspections..... 45

2.112 Errors..... 46

2.120 State Responsibilities 46

2.121 State Performance Obligations 46

2.130 Security..... 46

2.131 Background Checks 46

2.140 Reserved 47

2.150 Confidentiality..... 47

2.151 Freedom of Information 47

2.152 Confidentiality..... 47

2.153 Protection of Confidential Information 47

2.154 Exclusions 47

2.155 No Implied Rights 48

2.156 Remedies 48

2.157 Security Breach Notification 48

2.158 Survival..... 48

2.159 Destruction of Confidential Information 48



2.160 Proprietary Rights..... 48

2.163 Rights in Data 49

2.164 Ownership of Materials..... 49

2.165 Standard Software - Reserved 49

2.166 Pre-existing Materials for Custom Software Deliverables - Reserved 49

2.167 General Skills 49

2.170 Warranties And Representations 49

2.171 Warranties and Representations..... 49

2.175 Standard Warranties - Reserved..... 51

2.176 Consequences For Breach..... 51

2.180 Insurance..... 51

2.181 Liability Insurance..... 51

2.190 Indemnification 53

2.191 Indemnification 53

2.192 Continuation of Indemnification Obligations..... 54

2.193 Indemnification Procedures..... 54

2.200 Limits of Liability and Excusable Failure 55

2.201 Limits of Liability 55

2.202 Excusable Failure..... 55

2.203 Disaster Recovery 56

2.210 Termination/Cancellation by the State 56

2.211 Termination for Cause..... 56

2.212 Termination for Convenience 56

2.213 Non-Appropriation 57

2.214 Criminal Conviction..... 57

2.216 Rights and Obligations Upon Termination 57

2.217 Reservation of Rights 58

2.218 Contractor Transition Responsibilities..... 58

2.219 State Transition Responsibilities 58

2.220 Termination by Contractor..... 59

2.221 Termination by Contractor..... 59

2.230 Stop Work..... 59

2.231 Stop Work Orders..... 59

2.232 Cancellation or Expiration of Stop Work Order 59

2.233 Allowance of Contractor Costs 59

2.240 Reserved 59

2.250 Dispute Resolution 59

2.251 In General..... 59

2.252 Informal Dispute Resolution 60

2.253 Injunctive Relief 60

2.254 Continued Performance 60

2.260 Federal and State Contract Requirements..... 60

2.261 Nondiscrimination 60

2.262 Unfair Labor Practices..... 61

2.263 Workplace Safety and Discriminatory Harassment..... 61

2.270 Litigation 61

2.271 Disclosure of Litigation 61

2.272 Governing Law 62

2.273 Compliance with Laws..... 62

2.274 Jurisdiction..... 62

2.280 Environmental Provision..... 62

2.281 Environmental Provision..... 62



2.290 General 63
2.291 Amendments 63
2.292 Assignment 63
2.293 Entire Contract; Order of Precedence 63
2.294 Headings 63
2.295 Relationship of the Parties (Independent Contractor Relationship) 63
2.296 Notices 64
2.297 Media Releases and Contract Distribution 64
2.298 Reformation and Severability 64
2.299 Consents and Approvals 64
2.300 No Waiver of Default 64
2.301 Survival 65
2.302 Covenant of Good Faith 65
2.303 Permits 65
2.304 Website Incorporation 65
2.305 Taxes 65
2.306 Prevailing Wage - Reserved 65
2.307 Call Center Disclosure 65
2.308 Future Bidding Preclusion 65
2.310 Reserved 66
2.320 Extended Purchasing -- RESERVED 66
2.330 Federal Grant Requirements -- RESERVED 66



Article 1 – Statement of Work (SOW)

1.0 Project Identification

1.001 Project Request

The Department of Environmental Quality (DEQ) requires technical support to assist with the implementation of all aspects of the water quality monitoring program. Specifically, the following objectives will be achieved through this Contract:

- Assistance with the design of water quality monitoring studies;
- Collection of water, sediment, fish and wildlife contaminant, and biological community samples. The Contractor must be knowledgeable in the use of clean techniques for water sample collection, as well as fish, benthic macroinvertebrate, and periphyton identification. Sampling locations may include streams, rivers, inland lakes, wetlands, Saginaw and Grand Traverse Bay, and the Great Lakes connecting channels;
- Provision of staff to work at DEQ office in Lansing as necessary;
- Detailed assessment of stream habitat and geomorphology conditions to evaluate the effectiveness of various programs such as non-point source and the Conservation Reserve Enhancement Program;
- Analysis of water and sediment samples, primarily for nutrients, conventional parameters, bacteria, and metals. Other parameters may be needed on a case-by-case basis;
- Statistical data analysis (especially trends) using parametric and nonparametric methods, and demonstrated ability to conduct toxicological studies. Water quality modeling experience/ability is required;
- Preparation of selected reports and assisting DEQ with reports and presentations, including the production of graphs, tables, and maps as necessary; and,
- Data management support, such as entering data into databases and making data available in a user-friendly Geographic Information Systems (GIS) format.

The Contract is part fixed price, part cost reimbursement-based Contract.

1.002 Background

In November 1998, Michigan voters approved the Clean Michigan Initiative (CMI), which allocated funding for many environmental programs. One priority of this legislation was the implementation of a 1997 Department of Environmental Quality report, entitled “A Strategic Environmental Quality Monitoring Program for Michigan’s Surface Water” (Strategy). This report, which now serves as the basis on the DEQ’s water quality monitoring program, outlined several monitoring activities to address four goals. Specifically, these goals include the identification of waters that are not meeting Michigan Water Quality Standards; measurement of temporal and spatial trends; evaluation of the effectiveness of existing programs; and detection of emerging problems.

Each year since 2000, the State Legislature has appropriated CMI funds for the implementation of the Strategy. To effectively implement such a large and complex program, the DEQ is seeking a Contractor to assist with water quality monitoring, sample analysis, data analysis, and reporting.

1.1 Scope of Work and Deliverables

1.101 In Scope

A broad list of water quality monitoring activities is considered “in-scope”. The collection of water, sediment, fish tissue, and aquatic life samples, as well as the laboratory analysis of these samples for chemical parameters, are within the contract scope of work. Study design, statistical data analysis, and the development of reports as requested by the DEQ are also “in-scope”. Data management, such as the production of GIS data maps, is within the scope of work.

1.102 Out of Scope

Policy-related decisions and conclusions resulting from the data collection and analysis will be made by the DEQ, and is “out-of-scope” of this contract. Contractor reports will summarize the data, and make recommendations/interpretations as requested, but will not include policy statements.



1.103 Environment

The Contractor will provide the required water quality monitoring field equipment, including but not limited to boats, trucks, GPS units, dissolved oxygen/temperature meters, automated sampling equipment, water and sediment samplers, boat and backpack shockers, and nets for biological monitoring. The Contractor must have software compatible with that used by the State of Michigan, primarily Microsoft products (e.g. Word, Excel, Access).

1.104 Work and Deliverable

Contractor shall provide Deliverables/Services and staff, and otherwise do all things necessary for or incidental to the performance of work, as set forth below. The following is a preliminary analysis of the major tasks involved for this project. The Contractor is not, however, constrained from supplementing this listing with additional steps, subtasks, or elements deemed necessary to permit the development of alternative approaches or the application of proprietary analytical techniques. During each year of the contract, the DEQ and the Contractor will determine the number of hours devoted to each task. The number of hours will vary each year based on funding levels and specific work plans. The Contractor will be reimbursed for actual services.

Task 1: Sample Collection/Field Measurements

Collect samples at sites selected by DEQ, including water (clean sampling techniques), sediments (grab and core), fish tissue, wildlife tissue, and biological community. Specialized physical habitat assessments also will be performed as needed, for example to evaluate the effectiveness of the Conservation Reserve Enhancement Program, stream bank stabilization projects, and other best management practices. The Contractor will provide all sampling equipment, and will be reimbursed for the cost of supplies and shipping. Samples generally will be collected according to a schedule developed by DEQ in consultation with the Contractor. Some water samples may be analyzed for *E. coli*, which has a holding time of less than one day and therefore must be delivered to a designated laboratory on the day of collection. Quality assurance/quality control procedures, to be developed by the DEQ and the Contractor, must be followed.

Contractor Response to this Task:

The GLEC Team has successfully carried out the sample collection/field measurements task for MDEQ water quality monitoring projects since 2001. The team is capable of a large variety of sampling and measurements using both standard protocols and specifically designed methods as dictated by particular project work plans. In this response, we present and briefly describe a variety of sample collection and field measurement tasks that have been employed by the GLEC Team under current contract with the MDEQ. These are directly applicable to the tasks outlined in the current ITB.

The collection of water samples for later analyses in the laboratory is a major component of the work involved in water quality monitoring. This activity requires strict adherence to standard protocols for sample collection and handling as specified by written MDEQ procedures. GLEC Team Field staff are trained and experienced in MDEQ Methods: *Water Chemistry Monitoring Project 2006 Master Sampling Checklist* and with procedures outlined in the MDEQ documents entitled, *Water Chemistry Monitoring Project Sample Collection and Handling Procedures for Selected Parameters, revised April 2006*, and *Water Chemistry Monitoring Project QA/QC Guidance Document, revised April 2006*. In many cases, this type of sampling involves filling sample bottles by carefully submerging them in the water body, but it also can mean much more sophisticated methods and tools. As an example, low-level mercury (and other low-level metals) requires the use of "clean techniques" (EPA Method 1631) to avoid sample contamination. Some sampling situations require use of special tools that allow water sampling at a specific depth in the water column. For example a Kemmerer sampler is used to sample the hypolimnion in a lake. Several past MDEQ work assignments have called for the use of a phytoplankton (chlorophyll 'a') sampler that takes an integrated water sample from throughout the photic zone of a lake. This type of sampler has been fabricated according to MDEQ designs and has been extensively used in previous lake sampling projects for MDEQ.

Some sampling requirements call for special field instrumentation. For example, a low-level mercury sampling project assigned by the MDEQ required the use of a peristaltic pump-type sampler with PTFE-tubing for acquiring deep water samples. Another project conducted on an Upper Peninsula stream required use of an ISCO Automatic Sampler deployed to take composite samples over 24-hour periods. In all cases, MDEQ and manufacturer recommended operator procedures were used.



Some water samples require special preservatives. For example, water samples collected for metals analyses are preserved with nitric acid. General chemistry water samples are preserved with sulfuric acid. Water samples collected for analysis of sulfide require preservation with zinc acetate and sodium hydroxide. These chemicals are handled with appropriate safety precautions to protect field personnel and the environment.

Many kinds of water samples have short holding times and require overnight shipping to the MDEQ laboratory. In the field, samples are placed in loose ice and transported back to GLEC, WWA, or LTI offices. Samples are refrigerated overnight (if necessary) and shipped by next-day carrier to the MDEQ laboratory. In cases of very short holding times, samples may be analyzed at GLEC, WWA, or LTI laboratories. E. coli, ortho-phosphorus, chlorophyll-a, biological oxygen demand, and nitrite nitrogen are examples of very short-holding time samples.

MDEQ water quality monitoring projects frequently require use of instruments that determine a water quality measurement in the field. GLEC Team members have these instruments and have used them successfully in the previous MDEQ water quality monitoring contract according to MDEQ protocols and manufacturers instructions. Some examples include

- YSI Model 51B meter (for temperature and dissolved oxygen),
- Myron L Ultrameter™ 6P (for water pH and specific conductance),
- Traceable® thermometer calibrated with a National Institute of Standards and Technology (NIST) Reference Thermometer,
- Flow meters such as Gurley Pigmy and Global Flow Probe (for determining stream discharge according to standard protocols and GLEAS Procedure #77),
- Global positioning system (GPS) units (for determining latitude and longitude of sampling sites and for navigating to predetermined sites),
-
- Onset Computer Corporation Optic Stowaway 32K loggers (for recording temperatures at specified intervals),
- Onset Data Logging Rain Gauge (for measuring rain events),
- Datasonde Hydrolab 3 (for recording DO/temperature at specified intervals).

Often MDEQ water quality monitoring projects require sampling of sediments. Grab samples from lentic habitats involve application of GLEAS Procedure #64 in order to obtain sediment for chemical analysis or toxicity testing. For sampling sediments from lakes, a ponar dredge is often required. This allows sampling of bottom sediments at any water depth.

GLEC, WWA and LTI field staff are also experienced in the collection of sediment core samples. Sediment core samples are collected using either hand held K/B core samplers or from relatively shallow depths using core extensions that allow researchers to collect approximate one foot core samples at depths up to ten feet. Other more specialized core samplers are also available such as the Ogeechee Core Sampler that will allow the collection of a two inch diameter core up to 60 inches in length from shallow depths. Core samples may also be collected at discreet intervals chosen either in the field or laboratory by identifying strata within the core and specifically removing only that section of interest from the core sample.

MDEQ monitoring projects also often require the collection of fish and wildlife tissue samples for analysis. GLEC staff are trained and have extensive experience in caged fish studies, on-site fish exposure studies, electrofishing, seining and netting. GLEC has successfully completed numerous caged fish studies for MDEQ and collected wild fish samples for MDEQ and federal agencies using active and passive sampling techniques.



MDEQ water quality monitoring projects frequently require biological community sampling. This most often includes the collection of benthic macroinvertebrates in wadeable streams using GLEAS Procedure #51. Fish sampling is also conducted by following GLEAS Procedure #51 using equipment appropriate to the size of the stream. On one monitoring project conducted for the MDEQ in 2004, periphyton was sampled using National Water-Quality Assessment Program (NAQWA) qualitative multihabitat sampling methods. Discrete collections of micro- and macroalgae were taken by scraping and brushing submerged substrates in five distinct habitats. Samples were processed and identified following US-EPA Rapid Bioassessment Protocols.

In addition to the habitat sampling described above, GLEC researchers have sampled macrophyte coverage, developed inventories, and provided specialized taxonomy skills to MDEQ and other projects. As an example, GLEC researchers collected water quality and sediment samples, mapped aquatic vegetation and woody debris, and collected periphyton samples as part of a one-year Boyne River monitoring study.

Specialized physical habitat assessments have been required over the course of the existing water quality monitoring contract with MDEQ. Most commonly this includes the habitat scoring component of GLEAS Procedure #51, and measures of stream stage height and stream discharge. On some monitoring projects, highly quantitative survey measurements have been necessary. For example, on some Upper Peninsula stream monitoring projects, the MDEQ requested precise cross-sectional and longitudinal measurements of stream channels in order to determine the outcomes of applied best management practices such as sediment traps or culvert replacement. Longitudinal profiles of the upstream and downstream reaches and the cross-sectional surveys were performed using a Wild T1000 Total Station HP48GX with an SMI Data Collector. The Total Station calculates an elevation from a measured distance (standard deviation = 3mm) and a measured angle (standard deviation = 1.5 seconds) between the gun and the rod for a vertical accuracy greater than 0.05 inch. On some projects, "pebble counts" were conducted consistent with the standard procedure described in Harrelson et al. (1994). This provides a standard method of determining stream bottom habitat composition. On one MDEQ monitoring project in the Chocolay River watershed, White Water Associates scientists developed a protocol for documenting, measuring, and classifying gravel patches in stream reaches as a way of determining the efficacy of sediment traps. Frequently, specialized physical habitat assessments are documented with digital photography to visually archive habitat conditions. In other MDEQ projects, GLEC staff installed and monitored specialized equipment in rivers and streams to measure total sediment load changes due to habitat reconstruction along stream banks.

Not only has the GLEC Team successfully accomplished all of the various field sampling methods described in the current ITB, but we have done so under all extremes of field conditions while remaining safe and maintaining high QA/QC standards. This demands appropriate clothing and footwear for field conditions. Access to field sampling sites in some parts of the state requires four-wheel drive vehicles, all terrain vehicles and vigorous hiking. Orienteering and navigation skills are an essential requirement for efficiency, accuracy, and safety. Other sampling has required specialized equipment such as boats, pontoon boats, canoes, outboard engines, electric trolling motors, and trailers. GLEC, WWA and LTI field staff are all proficient in the use of this equipment.

On many MDEQ water quality monitoring projects carried out by the GLEC Team, a Quality Assurance Project Plan (QAPP) was required to document the specific methodology and QA/QC to be applied to the project. QAPPs are routinely developed and written to support specific field sampling and laboratory analysis activities including chemical specific analysis and/or toxicity testing. The GLEC Team has written numerous QAPPs in support of MDEQ projects.

Task 2: Study design and statistical data analysis/review

Help design monitoring studies as necessary. Perform rigorous statistical analysis on the data resulting from Task 1. Because comparable data will be collected at many locations, the Contractor must determine whether statistically significant differences exist among sites, and can these differences be correlated with other key variables such as population density, land use, impervious area, etc. In addition, because many locations will be sampled every year, evaluations for temporal trends will be required. Other statistical tests also may be necessary. The DEQ, in consultation with the Contractor, will determine the type and format of the output.

**Contractor Response to this Task:**

The GLEC Team will perform rigorous statistical analysis on the data resulting from Task 1, as requested by MDEQ. GLEC will determine whether statistically significant differences exist among sites, and determine if these differences are correlated with other key variables, since comparable data will be collected at many locations. In addition, because many locations will be sampled over time, evaluations for temporal trends will be required. MDEQ in consultation the GLEC Team, will determine the type and format of the output.

The purpose of a sampling program is to obtain information to aid in decision making. A proper monitoring program design is vital in assuring that the best possible decision can be reached and to assure that it can be accurately supported with rigorous statistical data analysis. The GLEC Team will assist MDEQ in the design of monitoring studies, keeping in mind how the data will specifically be used and what type of data reliability is required for the particular situation. The GLEC Team's extensive knowledge of the behavior of aquatic systems will be used to aid in designing the most beneficial sampling plan. The study questions and the data quality objectives will be made clearly understood during the initial study design planning with MDEQ. This understanding will assist in determining the study plan specifics such as the number of sampling locations, number of samples collected, parameters of interest, etc.

Once the data have been collected, the GLEC Team will review and analyze the information. Determinations will be made on data quality based on the data validation process. By considering the statistical features in study design, we will be able to apply the most robust statistical analyses to the collected data. The statistical techniques used to analyze the data can provide improved and cost-effective answers and solutions. Statistical techniques such as statistically significant differences, predictive regression analysis, trend analysis and Monte Carlo analysis will be used to determine the presence or absence of spatial and temporal variability and trends, and to determine correlations to key variables of importance to the data quality objectives. The GLEC Team has supported MDEQ with rigorous statistical analyses on past projects; specifically the Connecting Channels water quality trend monitoring, modeling VFS effectiveness in CREP filter strips, and in the trend analysis of Grand Traverse and Saginaw Bay water quality.

Task 3: Sample Analysis

The majority of water and sediment samples collected for water quality monitoring are sent to the DEQ Environmental Laboratory for parameter analysis. However, sometimes samples have to be analyzed by the Contractor either because of short holding times or lack of capacity at the DEQ laboratory. Therefore, the Contractor will have certification for the analysis of nutrients (e.g. phosphorus, nitrogen), conventional parameters (e.g. total suspended solids, total organic carbon, biological oxygen demand), and metals (including mercury). Additional analytical capability (e.g. volatile organic compounds, PCBs, *E. coli*) would be desirable.

Contractor Response to this Task:

WWA and GLEC laboratories have assisted with water quality analyses for MDEQ projects over the last five years. These tests have been conducted on projects because some analyses have very short holding time requirements (such as biological oxygen demand (BOD) and ortho-phosphorus nitrite nitrogen with a 24 hr holding time, and with a 48 hr holding time, and *E.coli* with a six-hr hold time). Samples that are collected in remote locations in the Upper Peninsula and northern Lower Peninsula take considerable time to get to a shipping location and then it is at least 24 hours before they can be received at the MDEQ laboratory in Lansing. By the time samples are logged in and prepped for analysis, the shipped samples may have expired holding times. When samples can be analyzed at a laboratory closer to the sampling location, these problems do not occur. Both WWA and GLEC have laboratories that can serve in this capacity. The descriptions below give capabilities and qualifications for these laboratories.

White Water Associates, Inc.

The WWA laboratory is certified and audited by MDEQ, Wisconsin Department of Natural Resources, Illinois Environmental Protection Agency, Louisiana Department of Environmental Quality, U.S. Army Corps of Engineers and the National Environmental Laboratory Accreditation Program (NELAP).



WWA annually analyzes thousands of samples of water, soil, and waste for inorganic nutrients, metals, and organic compounds. The laboratory has undergone a rigorous AFCEE (Air Force Center for Environmental Excellence) program for auditing and preparing laboratories for government work. The certifications cover the analysis of nutrients (such as phosphorus, nitrogen compounds, and minerals), conventional parameters (solids, total organic carbon, BOD, COD, sulfates, and chlorides), metals (including the entire EPA target analyte list of 23 metals), and organic compounds (VOCs and semivolatiles such as PNAs and PCBs). WWA lab also holds certification for analysis of water samples for *E. coli*. All methods performed are detailed in WWA specific SOP which are audited annually.

WWA's extensive laboratory quality assurance/quality control (QA/QC) program is designed to deliver data that are accurate, precise, and scientifically defensible. All analyses are performed according to federal and state protocols for sample custody, holding time, method detection limits, methods of analysis, review, and reporting. Federal and state performance evaluation and certification programs validate WWA's excellence. These programs include biannual Water Pollution Studies, annual Drinking Water Studies and annual DMRQA studies with performance evaluation samples. Personnel involved in the QA program include all analysts, the laboratory director, the QA manager and the QA assistant. Computer support staff (Laboratory Information Management System Administrator and data input staff) are involved in that they are critical to operations in this highly computerized environment. Company officers are also involved in that they are kept informed of all QA activities. All analytical and operational activities of the laboratory are documented and audited by internal staff, external staff, clients and certifying agencies. Laboratory documentation backup and security systems insure that the data are preserved and immutable.

WWA laboratory is equipped with Gas Chromatography/ Mass Spectroscopy, Inductively Couple Plasma Emission Spectrophotometer, Graphite Furnace Atomic Absorption Spectrophotometer, and Automatic Flow Systems. These technologies analyze for organics, metals and inorganics. They also have balances, drying ovens, scales, filtration equipment, pH meters, incubators, refrigerators, hoods, and a comprehensive electronic laboratory information management system which support the major pieces of equipment and the analysts.

Great Lakes Environmental Center

The environmental chemistry laboratory is equipped to conduct a wide variety of organic and inorganic chemical analyses of samples from water, tissue, or sediment matrices. The instrumentation equipment includes: Gas Chromatography/Mass Selective Detector, Gas Chromatograph/Electron Capture Detector, High Performance Liquid Chromatograph, Gel Permeation Chromatograph, Fluorometer, Spectrophotometer, and an AutoAnalyzer. GLEC is also equipped to perform enzyme linked immunosorbent assays (ELISA) for specific compounds. The extraction, digestion, clean-up and fractionation of samples for analysis is also performed in the chemistry laboratory, using a variety of specialized equipment. The laboratory participates in annual DMRQA performance evaluation studies that are part of the National Pollution Discharge Elimination System (NPDES) permit program.

The aquatic toxicology laboratories are fully equipped for static and flow-through toxicity evaluations of complex effluents, stormwater, whole sediments, sediment pore-water, sediment elutriates, and single compounds using a variety of vertebrate and invertebrate test species. Static exposures are conducted in environmental chambers, while flow-through exposures are conducted in enclosed continuous flow diluter systems. A separate laboratory is equipped to conduct whole sediment, sediment pore-water, and sediment elutriate toxicity evaluations. Rapid toxicity tests of chemicals or complex effluents can also be performed using a Microtox® toxicity analyzer system. GLEC conducts literally hundreds of acute and short-term chronic toxicity tests each year. An aquatic toxicology performance evaluation is conducted on an annual basis through the national DMRQA program.

Laboratory instrumentation includes recording thermometers, pH meters, dissolved oxygen meters, conductivity meters, and a variety of ion specific probes. Standard compound and dissecting microscopes are available for routine observations. Both water quality and sediment quality laboratories are equipped to perform toxicity identification/reduction evaluations. Oil free air and reverse osmosis (RO) treated water is available throughout the laboratories. Stock cultures of *Ceriodaphnia dubia*, *Daphnia magna*, *Chironomus dilutus* (previously known as *tentans*), *Hyallela azteca*, *Lumbriculus variegatus*, *Mysidopsis bahia*, and fathead minnows are currently maintained for use as test species.



The sediment toxicity assessment capability at GLEC is based upon an integrated approach that assesses sediment quality by combining laboratory in-life exposure of aquatic organisms with chemical monitoring and field based bioassessment techniques. Our sediment toxicity assessment methods follow written SOPs that are based upon the most recent established ASTM and EPA guidelines. We understand that it is necessary to implement rapid and cost effective methods while simultaneously maintaining the integrity of each bioassay by ensuring precision, accuracy, and reproducibility. Our field investigations of benthic community structure complement our laboratory toxicity testing capabilities by allowing us to assess receiving stream impacts by measuring community health. GLEC employs full-time benthic taxonomists to support our field assessments. In addition, our chemistry capabilities complete our integrated approach by providing a sound chemical specific interpretation of sediment quality. Our staff are thoroughly trained in all aspects of sediment toxicity assessment. We also culture all of our test organisms to ensure that each test is initiated with organisms of known health. Our collections from field investigations are verified by replicated collections and second party verification of taxonomic results. Collectively, these capabilities enable GLEC to respond efficiently and quickly to even the most challenging of sediment toxicity assessments.

Task 4: Report preparation

Prepare reports on water quality data to summarize key findings (as determined by the DEQ in cooperation with the Contractor(s), with the raw data included in appendices. These reports should make effective use of graphs and tables to synthesize data and communicate major findings to technical and non-technical audiences. The DEQ also may require some assistance with the preparation of reports for which DEQ is responsible. This assistance primarily will include preparation of tables, graphics, and spreadsheets. The Contractor will make reports and other outputs available to DEQ electronically and hard copy, as necessary. Materials in electronic format must be compatible with DEQ software, primarily Microsoft products (Word, Excel, and Access), and in a format approved by DEQ.

Contractor Response to this Task:

The GLEC Team will prepare reports to summarize key water quality data, with the raw data included in appendices. These reports will make effective use of graphs and tables to synthesize data and to communicate major findings to both technical and non-technical audiences. It is also our understanding that MDEQ may require some assistance with the preparation of reports for which MDEQ will retain responsibility. This assistance primarily will include preparation of tables, graphics, and spreadsheets. GLEC will prepare the reports and other report components, both electronically and in hard copy, as necessary. Materials in electronic format will be generated using Microsoft products (Word, Excel, and Access) in a format approved by MDEQ.

Each technical project undertaken by a GLEC Team member will require some level of a written technical report, ranging from relatively simple data tabulations to complex reports, which may be hundreds of pages in length. Over the past five years, the GLEC Team has provided MDEQ with dozens of such reports in fulfillment of projects. For example, GLEC has prepared reports for MDEQ that summarizes water quality data in a simple table format including:

- Hunt Creek Water Quality Assessment;
- Rifle Creek Water Quality Assessment;
- Collection of Water and Sediment Samples from the Boardman River and Boardman Lake.

GLEC has completed several water quality assessments that require the compilation of seasonal and annual assessments, including:

- Effect of Erosion Control Measures in the Pine River;
- Boyne River Water Quality Assessment;



- Summary and Trend Analysis of Water Quality in Grand Traverse Bay and Saginaw Bay (2001-2005);
- Summary and Trend Analysis of Water Quality in the Great Lakes Connecting Channels (2001-2005);

GLEC has also completed complex technical reports that compile large amounts of MDEQ data, including:

- Conservation Reserve Enhancement Program Annual Water Quality Monitoring Report (2001-2005); and
- Carrow Creek Annual Water Quality Report.

White Water Associates have prepared written technical reports for MDEQ including:

- Baseline Limnological Studies of the East Branch of the Salmon/Trout River in the Vicinity of a Proposed Sulfide Mine;
- Channel Morphology Measurements of the Iron River Along the Apple Blossom Trail Habitat Improvement;
- Channel Morphology Measurements of the Big Garlic River and Little Pup Creek to Monitor Erosion Control Practices;
- Dissolved Oxygen Concentration Study in the Carp River;
- Goose Lake Nutrient Study; and
- Menominee River Mouth/Green Bay Nutrient Study.

LTI has prepared and assisted GLEC with the preparation of complex water quality study reports, including:

- Macatawa River Monitoring Project;
- Dissolved Oxygen, Total Dissolved Solids and Water Chemistry Study of the Grand River;
- Summary and Trend Analysis of Water Quality in the Great lakes Connecting Channels; and
- Compilation and Summary of Lake *E. coli* Data from Eight Lakes in Michigan.
- LTI was also responsible for posting weekly *E. coli* data to the MDEQ website.

All three GLEC Team members produce complex technical written reports that require the summary and tabulation of scientific data for each of their respective government and industrial clients. Additionally, GLEC Team scientists routinely publish significant research findings in peer reviewed scientific journals.

**Task 5: Incorporate data into GIS**

The Contractor will integrate ambient monitoring data into ArcView geographic information system. The system shall allow users to retrieve data by watershed, media, and/or chemical, although the full range of data will be developed gradually over multiple years. A well-designed system will improve data accessibility, assist with presentations, and allow for more effective management decisions.

Contractor Response to this Task:

GLEC will integrate the ambient monitoring data and any other data as specified by MDEQ into a project geographic information system (GIS). The project GIS will facilitate querying, analysis, and reporting of project data using all available database fields (e.g. watershed, media, and/or chemistry). Project spatial data and related files, such as FGDC compliant metadata, will be maintained in geodatabases in the current version of ESRI ArcView[®] (currently v9.1). GLEC will utilize ArcView and other GIS application programs to conduct two-dimensional and three-dimensional spatial analysis, georeferencing of sampling locations, image interpretation, digitizing of natural features, and other GIS tasks as required by MDEQ. GLEC will also employ capabilities in third party image and document-processing programs (e.g. Adobe[®] Photoshop, Illustrator, and Acrobat) to prepare maps, tables, and charts for inclusion in printed and electronic reports. Continuity and investments in project databases and GIS work will be protected through regular back-up routines of project GIS files.



1.2 Roles and Responsibilities

1.201 Contractor Staff, Roles, and Responsibilities

The Contractor must have available staff with a diverse array of expertise in water quality monitoring. Specific staff requirements include expertise in sample collection (chemical, biological, physical), sample analysis, data analysis, data management/geographic information management, and report writing. Key staff in each of these areas should be identified along with relevant experience/qualifications. Contract/financial management expertise also will be required. The Contractor also should identify its primary contact for this contract to provide overall oversight and serve as a central conduit for information.

Contractor Response to this Task:

To meet MDEQ's goals of the *Monitoring Program for Michigan's Surface Waters* and to support the objectives of the anticipated contract requires a highly experienced reservoir of staff with a range of experiences in the areas of water quality monitoring, data analysis, report preparation, and GIS implementation. These individuals and the companies that they represent must also have experience in monitoring in three Michigan geographic areas: 1) the Upper Peninsula, 2) the Northern Lower Peninsula, and 3) the Southern Lower Peninsula. The environmental significance of the State's efforts demands knowledgeable, accurate, and timely investigations performed by competent technical professionals with substantial relevant experience. We have assembled a Team of proven professionals which we are confident will meet and exceed the expectations of the State of Michigan.

The GLEC Team is committed to providing highly qualified and experienced staff to support the State's needs to implement the recommended studies and analyses outlined in the ITB. We recognize that, to successfully support MDEQ, the management and technical staff must have sufficient depth and breadth of personnel to respond concurrently to multiple tasks of diverse technical nature. In addition, the management staff must be experienced in developing and implementing study plans with multiple tasks of various magnitudes and scopes. With these needs specifically in mind, we have assembled a team of environmental scientists, technicians and project administrators with all of the necessary qualifications and experience too consistently and dependably meet the State's needs. This assemblage of staff is linked closely to the tasks outlined in the ITB. The GLEC Team also has the proven administrative staff to support a contract of this magnitude. As prime contractor, GLEC has the financial management staff to support monthly billing, subcontractor management, and financial reporting. GLEC administrative staff also included word processing staff, human resources and communications staff to support all projects and employees. Our staff experience includes all of the elements necessary for the implementation of the work assignments we expect to be issued by MDEQ.

Of course, the key ingredient of any program team is the technical staff, because they are responsible for assuring that the program objectives are achieved; this program is no exception. We recognize that both technical credibility and the professional interactions that will take place between GLEC Team members, MDEQ and other agencies are important issues to be considered for this program. The technical team we have assembled is a reflection of that recognition. Key members of our team include the staff listed below:

- G.M. (Mick) DeGraeve (GLEC President and Senior Technical/Program Advisor)
- Dennis McCauley (GLEC Program Manager)
- Jamie Saxton (GLEC Deputy Program Manager)
- Dean Premo (WWA Senior Technical Advisor)
- Cathy Whiting (LTI Senior Technical Advisor)

These key individuals and the entire team they represent provides a highly competent and experienced reservoir of talent to assist MDEQ in successfully meeting its goals and objectives. We recognize that a mix of fishery biologists, limnologists, wildlife biologists, wetland ecologists, environmental specialists, water and sediment quality scientists and engineers, and support personnel is fundamental to providing the products that meet the needs of (and the quality standards set by) the State; our team provides that demonstrated expertise.



The following sections address the qualifications of the proposed key management and technical personnel who are committed to this program. Tables 1.2a, b, and c summarize the experience of the staff from each firm in relation to the SOW areas. The biographical sketches for each proposed staff member are presented in the Appendix.

G.M. (Mick) DeGraeve
GLEC

Dr. DeGraeve is GLEC's President and will serve as a senior technical and program advisor to the program. Mick has been the Program Manager for the MDEQ contract over the past five years. He has worked with MDEQ scientists on a number of Michigan projects in the past, and acted as an advisor to MDEQ when the Monitoring Program was in the planning stages. He was responsible for establishing GLEC in Traverse City, Michigan and Columbus, Ohio, and he works directly with the GLEC Management Team overseeing the day-to-day activities of GLEC. His day-to-day responsibilities include: supervising aquatic research and problem solving in environmental toxicology and water quality, project management, technical direction, business development, administrative management and client interaction. In addition, he is currently responsible for leading research programs in water quality sampling and analysis, effluent toxicology, effluent toxicity identification/reduction, site-specific water quality and biological assessments, and watershed management and environmental training/education.

He has established aquatic toxicology facilities at five different locations in the United States and Canada. For the past 30 years, he has supervised research programs directed at solving existing problems in water pollution/aquatic toxicology, and has interacted regularly with professionals in other disciplines and with representatives of industry, government, and academia. He specializes in helping to bring groups with diverse environmental needs and interests (such as regulators and the regulated community) together to reach a decision that meets the needs of all affected parties. He has a very good working relationship with MDEQ scientists, which will serve this program well as it is implemented.

Dennis McCauley (Proposed Program Manager)
GLEC

Mr. McCauley has been the Deputy/Assistant Program Manager for the existing MDEQ contract for the past five years and has managed dozens of the MDEQ work assignments. Dennis is proposed as the Program Manager for this contract. Dennis McCauley is an experienced field/laboratory biologist with over 26 years of experience in performing environmental studies and assessments, and seventeen years of experience working specifically with environmental assessments in Michigan. He has earned the respect of his peers by finding practical solutions to complex sampling and logistical challenges, and has a proven track record in both the technical and financial aspects of project and program management. He is currently the Senior Operations Manager at GLEC and is a project manager and senior technical advisor for numerous sediment/water quality assessment and monitoring projects at GLEC.

Mr. McCauley has first-hand experience working on numerous contaminated water and sediment projects throughout the United States in inland lakes and rivers, and on the Great Lakes. He has extensive experience in planning, managing and conducting in-situ field and laboratory studies that: assess the impacts of water and sediment quality on various freshwater organisms; assess the impacts of effluents, single chemicals, sediments, and storm waters on receiving waters; characterize and identify effluent and sediment toxicity; and assess the relationship between bioconcentration and bioaccumulation using single chemical, whole sediment, and complex effluent assays and field assessments. He has a thorough understanding of, and recognition of, the challenges associated with complex assessment efforts, and he is particularly well recognized for his ability to find solutions to logistical/technical problems to allow GLEC to "get the job done." These characteristics make him ideally suited to help MDEQ meet the State's objectives.

***Jamie Saxton (P-3), GLEC Proposed Deputy Program Manager***

Jamie Saxton is a Research Scientist at GLEC and is proposed as the Deputy Program Manager for this contract. Jamie holds an M.S. in Limnology from the Michigan State University and has approximately five years experience working with GLEC and the current MDEQ contract. Over the past five years Jamie has managed several MDEQ and EPA work assignments, and assisted as a task and project leader on numerous others that involved complex field assessments, sample collection, data interpretation and report writing. His responsibilities with the proposed contract will be to assist Mick DeGraeve and Dennis McCauley with the assignment and day to day management of MDEQ work assignments.

***Dean Premo
White Water Associates***

Dean Premo, Ph.D., is President and co-founder of White Water Associates, Inc. He is a senior scientist and has headed many projects for various clients in the past 21 years. Dr. Premo has been the lead Senior Technical Advisor to GLEC for the past five years with the existing MDEQ contract. His masters and doctorate degrees are in zoology and ecology (with a specialty in herpetology). He has been a lead scientist in many of WWA's riparian area projects involving large rivers in Michigan and Wisconsin and relicensing of hydroelectric facilities. In 1999, Dr. Premo developed and authored the adaptive management plan for the Chocolay River Watershed. Dr. Premo has developed and delivered many seminars on ecology and biodiversity topics to diverse audiences. Along with colleague, Dr. Elizabeth Rogers, he prepared and delivered day-long workshops on riparian area management for Wisconsin DNR resource managers. Working under contract with the North American Lake Management Society, he developed and delivered workshops on riparian ecology to waterfront real estate agents in Wisconsin, Michigan, and New Hampshire. Dr. Premo has served as a consultant to the U.S. Environmental Protection Agency Science Advisory Board (Ecological Processes and Effects Committee, and Research Strategies Advisory Committee). In this capacity he has reviewed large-scale programs such as the Great Lakes Water Quality Initiative. He has been a member of the National Research Council (research arm of the National Academy of Sciences) Committee on Inland Aquatic Ecosystems and Committee on U.S. Geological Survey Water Resources Research. During 1994-95, Dr. Premo was the principal project scientist for the Ecosystem Stewardship Program: Great Lakes Tribal Lands, a comparative risk analysis project with Native American communities in Michigan and Wisconsin. In 1998, he headed a team of forest and ecological auditors conducting an independent review of forest management practices for Champion International Corporation. Dr. Premo served as a member of the Science Committee of Michigan's Relative Risk Assessment Project as an expert in biodiversity and landscape ecology. He served on the Project Advisory Committee for National Wildlife Federation's Lake Superior Biodiversity Project and later as a project scientist for the same endeavor. Dr. Premo is on the Dean's Board of Advisors for the College of Natural Science at Michigan State University. He is an adjunct professor in the School of Forestry and Wood Products at Michigan Technological University and a Certified Senior Ecologist (Ecological Society of America).

Cathy Whiting, LTI

Ms. Whiting is a senior project engineer and project manager with 22 years of environmental engineering experience. Ms. Whiting is LTI's Senior Technical Advisor to GLEC for the existing MDEQ contract. She has a Masters degree in Civil Engineering from Wayne State University and has been with LTI for 17 years. Her primary area of specialization is remedial investigations, and she also provides expertise in the area of regulatory compliance.

Ms. Whiting has conducted numerous site investigations for soil and groundwater contamination and surface water investigations with LTI. She has also managed environmental remediation projects under various regulatory frameworks including state leaking underground storage tank (LUST) programs, state hazardous waste programs, RCRA facility closures and corrective actions, CERCLA (Superfund) sites, and voluntary actions.



Ms. Whiting managed and directed a year-long surface water sampling effort on the Kalamazoo River, which included sample collection during low flow periods and event-based, high-flow periods at 12 mainstem locations; installation, maintenance and monitoring of automatic samplers for monitoring tributaries; and two timed-transect studies. Depth-integrated sampling devices were used to collect the samples and flow measurements were also taken during the study. Ms. Whiting was responsible for implementation of the sampling plan, which included resource allocation and planning, as well as management of the budget and schedule.

Ms. Whiting has also managed projects related to water quality evaluations for CSO facilities plans. This has involved oversight and coordination of project activities including data review and display, model selection, data evaluation and analysis, and sampling plan preparation. Ms. Whiting is also a trained wetland delineator and has conducted numerous wetland determinations and delineations.

Ms. Whiting also has over six years of experience in the utility industry at Detroit Edison. She was involved with environmental compliance programs for power plants required by legislation such as the Clean Water Act, Clean Air Act, TSCA and RCRA.

1.202 State Staff, Roles, and Responsibilities

Gary Kohlhepp, Water Bureau – Surface Water Assessment Section, will serve as the DEQ project manager for the contract. Responsibilities include reviewing and approving work plans and monthly invoices, after approval by individual technical contacts (see below); reviewing Contractor reports and other work products along with the technical contacts; and working with the Contractor to identify and resolve any problems. Kohlhepp will serve as the primary contact with the Contractor on all issues, and must approve all proposed project work plans.

Other SWAS staff will serve as technical contacts for individual projects on which they request Contractor assistance. Once the technical contacts identify potential Contractor projects, they will write a draft study plan describing the monitoring activities and work products, and provide it to the DEQ project manager (Kohlhepp). The DEQ project manager will review the study plan to ensure it falls within the contract scope of work, and then forward it to the Contractor for a cost estimate. Once a cost estimate is received, the DEQ project manager and the DEQ technical contact will determine whether to proceed with the project. Once the project is underway, the DEQ technical contact will work with the Contractor on day-to-day technical issues while the DEQ project manager will oversee administrative aspects of the project (work plan amendments if necessary, authorizing exceedance of estimated cost, etc.).

1.203 Other Roles and Responsibilities

Some projects may require the assistance of specialized subcontractors, so the Contractor should have the ability to quickly develop and administer subcontracts as necessary. The DEQ also has a need for the use of in-house Contractor staff to assist with tasks listed above.

1.3 Project Plan

1.301 Project Plan Management

Specific work plans will be developed for individual projects, within the scope of work described above. The DEQ project manager will review individual work plans to ensure they fall within the scope of work. Specific work plans and costs will be regularly reviewed by the DEQ project manager and technical contacts via the monthly progress reports and invoices. The work plans and/or budgets may be modified as necessary as the project progresses. Modification decisions will be made by the DEQ project manager in consultation with the DEQ technical contacts and the Contractor.



1.302 Reports

Progress reports must be submitted along with the monthly invoices. The progress reports should describe the activities that occurred for each project during the month, as well as any problems that arise. Additional Contractor reporting requirements will be defined in the individual project work plans. In some cases, the report may consist only of a table of monitoring locations and dates. Other projects may require a detailed final report including monitoring procedures, statistical data analysis, and conclusions and recommendations. Long-term monitoring projects may require annual reports summarizing activities and results for the previous year. Quality Assurance Project Plans (QAPPs) may be required for larger, more complex projects.

Contractor Response to this Task:

GLEC will submit written summaries of progress each month during the reporting period. These summaries will outline the work accomplished during the reporting period, work to be accomplished in the next reporting period, a description of real or anticipated problems, and a notice of any deviation from agreed-upon Work Plans. Other reports requested for specific work assignments will also be provided according to an established schedule.

The monthly written technical progress reports will be written in a standardized format that will provide a brief but concise description of the work completed during the previous month to support the accompanying invoice.

Specific project reports will follow the format outlined in the Work Plan. We anticipate that these reports will vary in complexity from simple data tables and figures to more complex reports written in a concise scientific format. Each report will be drafted by the work assignment Leader for the work and will undergo a two-tiered internal peer review prior to delivery to MDEQ. The first tier will consist of an initial review by a technical person involved with the project. He/she will edit text, tables and figures, check table and figure contents against field and laboratory data, and compare the report to the approved Work Plan to insure completeness. The second tier of review will always be completed by either the contract Program Manager (Dennis McCauley) or the Deputy Program Manager (Jamie Saxton) at GLEC. This procedure will be followed for all work assignments, including those principally managed by either WWA or LTI.

All reports initially sent to MDEQ will be considered "Draft" reports pending comment and suggestions from MDEQ. Adequate time will be provided for each work assignment or project to insure that the report author and reviewer will have sufficient time. Likewise, sufficient time will be provided to MDEQ for their review so that any comments or suggestions may be incorporated into the final product before the deadline for the report. These procedures are thoroughly outlined and addressed in GLEC's QA/QC policies and will be strictly followed

QA/QC Program Plan

GLEC has defined a Quality Assurance/Quality Control (QA/QC) approach to ensure that all products and deliverables prepared for the contract meet or exceed all MDEQ standards for accuracy, completeness, responsiveness, style, and format. The fundamental methodology underlying all of our QA/QC activities involves: project management oversight; and structured peer review including program, technical, editorial, and external reviews, depending on the nature of the work assignment requirements. We differentiate QC from QA in the following way: QC is the responsibility of the Program Manager and his or her entire staff; it is by this means that we build quality into the document/product while it is being produced. The QC process is an integral part of the workflow of a work assignment, which is monitored and tracked by our management tools, and is designed to provide MDEQ with services, products, documents or other deliverables that are both technically sound and scientifically defensible. QA is the corporate tool that functions independently of the project staff, and provides a means for corporate management to check or audit the quality of products delivered to the client (i.e., MDEQ). QA/QC procedures are directly linked to GLEC staff and subcontractor performance standards. Project deliverables are also reviewed by GLEC managers and supervisors. This assures corporate management that a high quality of products is maintained, and that scientific/technical and editorial standards are being met.



GLEC's commitment to producing high quality deliverables is guided by our in-house Quality Assurance Plan for our laboratory and field efforts and our two-tiered review of all released material. It is GLEC's policy that a QA/QC program be implemented and followed for all laboratory and field studies to ensure generation of measurement data of adequate quality to meet the requirements for individual project objectives and for the overall statement of work. The same QA/QC policy is applied to all data review and report production efforts.

GLEC is ultimately responsible for high quality deliverables/products that meet or exceed MDEQ requirements and expectations. Our dual process of QA/QC also provides management with a tool to evaluate individual personnel performance, as well as evaluate the corporate and subcontractor's performance on the program. The QA program, implemented by the QA Manager, Ms. Robin Silva-Wilkinson, on behalf of the GLEC President, audits the product quality as well as the entire QC procedure. An appropriate QA/QC plan or QAPP will be developed, as needed, on a work assignment-by-work assignment basis in consultation with MDEQ.

1.4 Project Management

1.401 Issue Management - Reserved

1.402 Risk Management

Because of the various tasks required under this contract, the types of risk that may occur on individual projects likely will differ. One risk common to all work tasks is the potential for cost overruns. For each project, a work plan and associated cost estimate will be prepared by the Contractor. There is always the potential for unexpected events to happen in the field or for specific tasks to take longer than anticipated. The Contractor should have a process in place to notify the DEQ project manager whenever a project cost overrun is likely, so that a joint decision can be made to increase the project cost or to take steps to modify the work plan so the estimate is not exceeded.

Another potential risk concerns field sampling. It can be expected that, at times, sampling will be affected by inclement weather, lack of access, or equipment problems. The Contractor should identify steps that it will take to minimize the potential occurrence of these risks.

There is always a risk that sample collection and analysis will yield inaccurate results. The Contractor should identify, in a general sense, the quality assurance/quality control activities that will be employed to minimize the risk of poor data quality.

Contractor Response to this Task:

GLEC has a proven financial management and project cost tracking system. Our cost accounting and tracking systems: allow accurate and timely record-keeping for each task, provide real-time information that can be used by managers and work assignment and project Leaders to ensure that projects remain on track and that resources are efficiently utilized, and facilitate MDEQ audits, if necessary. Our Project Managers' experience with these systems allows them to track progress and address problems before they threaten either the schedule or the budget. It is important to emphasize that these procedures are taken very seriously at GLEC and that importance is also communicated to our subcontractors. These systems will be applied to all work conducted by GLEC and subcontractors.

We believe that the basis for the sound financial management of any project is experienced project and program management, realistic estimates of the level of effort require to complete the project, timely and accurate time (hours) accounting, and open communication between project managers, field and laboratory staff, and the client. In this instance, we anticipate that MDEQ will provide the GLEC Program Manager with a written scope of work for a proposed work assignment. Our procedure for developing the work and plan and budget was previously discussed in the Program Management section (Section 1.3). Of primary importance in this exercise is an accurate and realistic estimation of the level of effort required to complete the work.



Upon receiving a scope of work for an MDEQ project, GLEC will assign an experienced project manager to the task and review and discuss the proposed scope of work internally and with the MDEQ. GLEC will develop an estimate of the hours that we believe will be necessary on a task by task basis, assign P-level labor hours to each task, estimate the Other Direct Costs (ODCs) that we anticipate will be necessary (e.g., travel, equipment rental, etc.) by task, and present that to the MDEQ in a proposed budget with the work plan. Both the work plan and budget will provide sufficient detail so that any ambiguity pertaining to the specific scope of work for each task is minimized. Upon approval, we expect that the level of effort and ODCs outlined in the budget will be adhered to unless there are unexpected events that affect the scope of work or the anticipated level of effort. That responsibility is ultimately the responsibility of GLEC management, but is enforced internally at the project manager level.

Once approved, the budget estimate is passed on to our financial accounting staff where an internal financial accounting system is initiated for the project. At GLEC, this system involves first assigning a unique project number and/or task number to the project, and then initiating an account for that project in our accounting system that tracks the balance and expenditures by staff and by task. ODC and subcontractor costs are similarly tracked by task. Time accounting is completed on a daily basis at GLEC by our staff on standardized time cards. Hours are recorded to the nearest quarter hour each day for those projects worked on that day by each individual staff member. Staff members are required to submit signed originals of their time cards on a weekly basis. The total hours charged to any project number and specific task numbers are entered electronically on a weekly basis into our accounting system. All GLEC time cards are reviewed by a senior GLEC Management Team member prior to approval. Subcontractor costs are received and reviewed on a monthly basis with adequate back-up to verify the costs presented with the invoice. Individual project financial summaries are provided to each project manager with a draft invoice for their projects. GLEC financial administrative staff provide the GLEC Program Manager and Deputy Program Manager a financial summary for all active projects on a monthly basis. It is the responsibility of the individual project manager, with GLEC Program Management oversight, to track the financial performance of each project and compare the financial performance to the technical progress and expected deliverables for the project.

It is conceivable that situations may arise either in the field or laboratory forcing that the work may take much longer than anticipated. In those instances, the project team will immediately contact the GLEC Project Manager. On a case-by-case basis, the GLEC Project Manager will direct the project team to either continue working or to stop work.

If we anticipate that any project budget is approaching a cost over-run, GLEC management takes the following steps:

- The individual project manager will be asked to review the budget and scope of work for each assigned task to determine if the work is within the scope of work for the project;
- The project manager will be asked to provide an estimate to the GLEC Program Manager that outlines the anticipated effort required to complete the task or assignment.
- If there appears to be out of project scope activities, the Project Manager will be asked to list those, and provide a justification for their inclusion with the project;
- The GLEC Program Manager and Project Manager will contact the DEQ Project Manager to discuss the potential over-run and to discuss implementing a corrective action plan, or increasing the LOE and budget for the project;
- Alternatively, the GLEC Program Manager will contact the MDEQ Program Manager to discuss implementing a corrective action plan, or increasing the LOE and budget for the project; and
- Implement a Corrective Action Plan.

Timely Corrective Action Plans

If, in the course of monitoring project or work assignment progress, we identify the potential for variances from objectives approved by MDEQ in each Work Plan, the Project Manager and project team will develop plans for bringing the work back into alignment with the project objectives. These corrective action plans could involve such actions as intensifying the effort on a particular task, identifying a less expensive way to complete an element of work, or changing personnel in the staffing plans. Any significant change in scope, schedule, or budget will be proposed to the MDEQ Program/Contract Manager and/or MDEQ Project Manager for review and approval prior to taking action.



GLEC's policy on all of our government contracts requires working closely with the appropriate staff to identify and manage any performance variances in the interest of MDEQ; we intend to manage this contract in a manner that is consistent with that philosophy.

Field Sampling Uncertainty

At GLEC and with our subcontractors, safety is paramount in all of our field sampling activities. Our field sampling staff and the Project Managers have extensive field sampling experience and recognize when and when not to attempt sampling.

To avoid the risk of not being able to sample due to inclement weather, access or equipment problems, the following steps will be taken.

- The day before field sampling is to begin, the field team leader will review the local weather forecast for the field sampling area to determine the feasibility and safety concerns for sampling. For example, field crews sampling on Grand Traverse Bay and Saginaw Bay will review both the local weather and the marine forecast to determine wave height, wind direction, storm fronts and other potentially severe weather patterns that may inhibit sampling. If a reasonable potential exists that may prohibit or interrupt sampling, the field team leader will consult with either the GLEC Program manager or deputy Program manager and discuss whether or not to reschedule.
- Prior to any field sampling, access (boat ramps, private ownership, or road crossings) will be evaluated by the field team leader who will prepare a brief sampling plan. That plan will consist of reviewing state and county maps and lake maps to determine public access points. Private land access will be evaluated by working with local or district agency staff (in the case of previously sampled areas) or by direct contact with the land owner to gain permission prior to sampling.
- Prior to field sampling, all equipment will be checked by the field team leader to assure that it is functioning properly. All equipment is maintained according to the manufacturers' recommendations. All boats, trailers and outboard engines are routinely serviced and kept in good condition. In the event of a mechanical failure that delays or prohibits sampling, the field team leader will arrange for the repair or replacement of the equipment and reschedule the sampling event with MDEQ. MDEQ will not be billed for field staff time in those instances.

Sample Collection and Analysis Quality Assurance and Quality Control

At GLEC and with our subcontractors, QA/QC procedures are an integral part all of our field sampling and laboratory analysis activities. For field sampling, the field team leader and field team members will be briefed on the work plan and Quality Assurance Project Plan objectives and will be provided written field sampling procedures. With MDEQ, there are often established field sampling procedures that will be followed. For example, for the Bays and Connecting Channel field sample collections, MDEQ's procedures will be followed (i.e., Water Chemistry Monitoring Project 2006 Master Sampling Checklist, Revised January 30, 2006, and Water Chemistry Monitoring Project Sample Collection and Handling Procedures For Selected Parameters, Revised January 2004). Written Standard Operating Procedures (SOPs) are also available for most field sampling activities at GLEC and subcontractors. For samples requiring chemical analysis, QC samples including field blanks, trip blanks and field duplicates will also be collected with the suite of investigative samples. Typically, the frequency and number of QA/QC sample collections will be outlined in the Work Plan or Quality Assurance Project Plan. All field collected samples will be accompanied by complete chain of custody records.

In the laboratory, samples requiring chemical analysis will be logged into the laboratory sample tracking system, compared to the chain of custody record, and assigned a unique sample identification number. Laboratory duplicate analyses and laboratory blank sample analyses will be completed according to good laboratory principles following the project specific QAPPs and work plans. Written SOPs will be followed for the analysis of all samples, and any variances to the procedures will be noted.

Sample analysis results and all field collected data will undergo a 100 percent review by a second analyst prior to data summation and tabulation. Once tabulated, all data will be reviewed using GLEC's two tiered review procedures during the report review process. Any variances or inconsistencies with the data will be clearly outlined in the report and communicated to the MDEQ Project Manager.



1.403 CHANGE MANAGEMENT

The process for changing individual work plans and budgets is described under Section 1.301 above. The DEQ project manager has ultimate responsibility for such changes, in consultation with the DEQ technical contacts and the Contractor.

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

1.5 Acceptance

1.501 Criteria

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

- Adherence to sampling plan and methods identified in project work plans;
- Adherence to quality assurance requirements identified in a QAPP, if applicable;
- Reasonableness of costs; and
- Production of interim and final reports consistent with DEQ guidance for format and content.

1.502 FINAL ACCEPTANCE

The DEQ project manager has final authority to approve/disapprove services and deliverables, and to ensure that work plan and QAPP requirements are followed satisfactorily.

1.6 Compensation and Payment

1.601 Compensation and Payment

This Contract is to be used as needed. The State does not commit to procure any specific amount of services over the life of the Contract. The Contractor will be required to quote for individual projects as requested by DEQ. DEQ retains sole option to move forward with a project after receiving the quote from the Contractor.

For each individual project, the Contractor will itemize costs by labor (# of hours times hourly rates), travel, equipment and supplies, and other categories as appropriate and defined in individual work plans. Project-specific invoices will be submitted monthly. Invoices must be on a project-specific basis, listing monthly costs associated with personnel, travel, equipment, supplies, and subcontractors (if applicable). Receipts for purchases will be included. A narrative progress report must accompany each invoice, describing the relevant tasks accomplished during the month.

See Article 1, Attachment A for hourly rates to be applied per project. The hourly rates quoted in Article 1, Attachment A of this Contract are valid for the first year of the contract. For the subsequent years of the contract, the Contractor may apply a 3.25 percent annual escalation factor to compensate for inflation.

1.7 Additional Terms and Conditions Specific to this SOW – Reserved



Article 1, Attachment A

Pricing

Personnel costs will reflect hourly rates and the mix of expertise levels required to ensure a high quality product. Vendor reserves the

SUMMARY OF GREAT LAKES ENVIRONMENTAL CENTER PROFESSIONAL STAFF FULLY LOADED HOURLY RATES

NAME	PROFESSIONAL LEVEL	FULLY LOADED HOURLY RATE (\$)
G.M. (Mick) DeGraeve	P-4	112
Dennis McCauley	P-4	112
Robin Silva-Wilkinson	P-4	104
Dennis McIntyre	P-4	119
Greg Smith	P-4	111
Doug Endicott	P-4	114
Bill Clement	P-4	100
Pat McCool	P-4	75
Bill McCracken	P-4	122
Jim Grant	P-4	100
Phil Lewis	P-3	47
John Bachman	P-3	76
Tyler Linton	P-3	92
Jamie Saxton	P-3	64
Manolo Pacheco	P-3	76
Michelle Moore	P-3	64
Bill Arnold	P-3	87
Jennifer Hansen	P-3	46
Jamie Zbytowski	P-3	46
Jim Stricko	P-2	67
Chris Turner	P-2	63
Chris Tarr	P-2	59
Mailee Garton	P-2	48
Ben Cook	P-2	46
Angela Millard	P-2	48
Don McNew	P-2	66
Sara Rietz	P-2	37
Erica Schneider	P-1	32
Victoria Bunn	P-1	37
Mike McCauley	P-1	16
Aaron Parker	P-1	16
Bill Moore	P-1	38
Youlia Karaivanova	P-1	34
Craig Davis	P-1	42
Amanda Sage	P-1	38
Betsy Shaefer	P-1	14
Pam Parker	P-1	14
Mark Allington	P-1	18



SUMMARY OF GREAT LAKES ENVIRONMENTAL CENTER PROFESSIONAL STAFF FULLY LOADED HOURLY RATES (Continued)

NAME	PROFESSIO NAL LEVEL	FULLY LOADED HOURLY RATE (\$)
Linda Hays	Administrative	72
Kim Bell	Administrative	67
Jane Wightman	Clerical	56
Melani Filipowski	Clerical	40
Peggy Himes	Clerical	34
Sueanna Rodney	Clerical	35



SUMMARY OF WHITE WATER ASSOCIATES PROFESSIONAL STAFF
FULLY LOADED HOURLY RATES

NAME	PROFESSIONAL LEVEL	FULLY LOADED HOURLY RATE (\$)
Dean Premo	P-4	75
Bette Premo	P-4	75
Robert Huggett	P-4	75
Kent Premo	P-4	75
David Tiller	P-3	50
Rhonda Zini	P-3	50
Carol Azan	P-3	50
Bruce Morstad	P-2	40
Jim Butler	P-2	40
Mike Lewis	P-2	40
Sue Ballo	P-2	40
Nichole Kuzak	P-2	40
Elke Rafferty	P-1	30
Al Niemela	P-1	30
Ryan White	P-1	30
Tom Plummer	P-1	30
Dan Weith	P-1	30
Jill Feldhausen	P-S	35
Sue Weith	P-S	25



**SUMMARY OF LIMNOTECH PROFESSIONAL STAFF
FULLY LOADED HOURLY RATES**

NAME	PROFESSIONAL LEVEL	FULLY LOADED HOURLY RATE (\$)
Cathy Whiting	P-4	104
Joyce Dunkin	P-4	104
Dan Herrema	P-4	104
Bob Betz	P-3	91
Ric McCulloch	P-3	64
Chris Cieciek	P-2	74
Dan Lautenbach	P-2	40
Brian Lord	P-2	74
Chris Behnke	P-2	63
John Peterson	P-2	72
Nick Bogater	P-1	45
Cullen O'Brien	P-1	74
Jason Rutyna	P-1	74
Ed Verhamme	P-1	74
Intern	P1	40
Ruth Blum	Clerical	44



Great Lakes Environmental Center (GLEC)
739 Hastings St.
Traverse City, Michigan 49686

Equipment Usage Charges for Company Owned Equipment
MDEQ Contract No.: 071I6200181 (5.11.06)

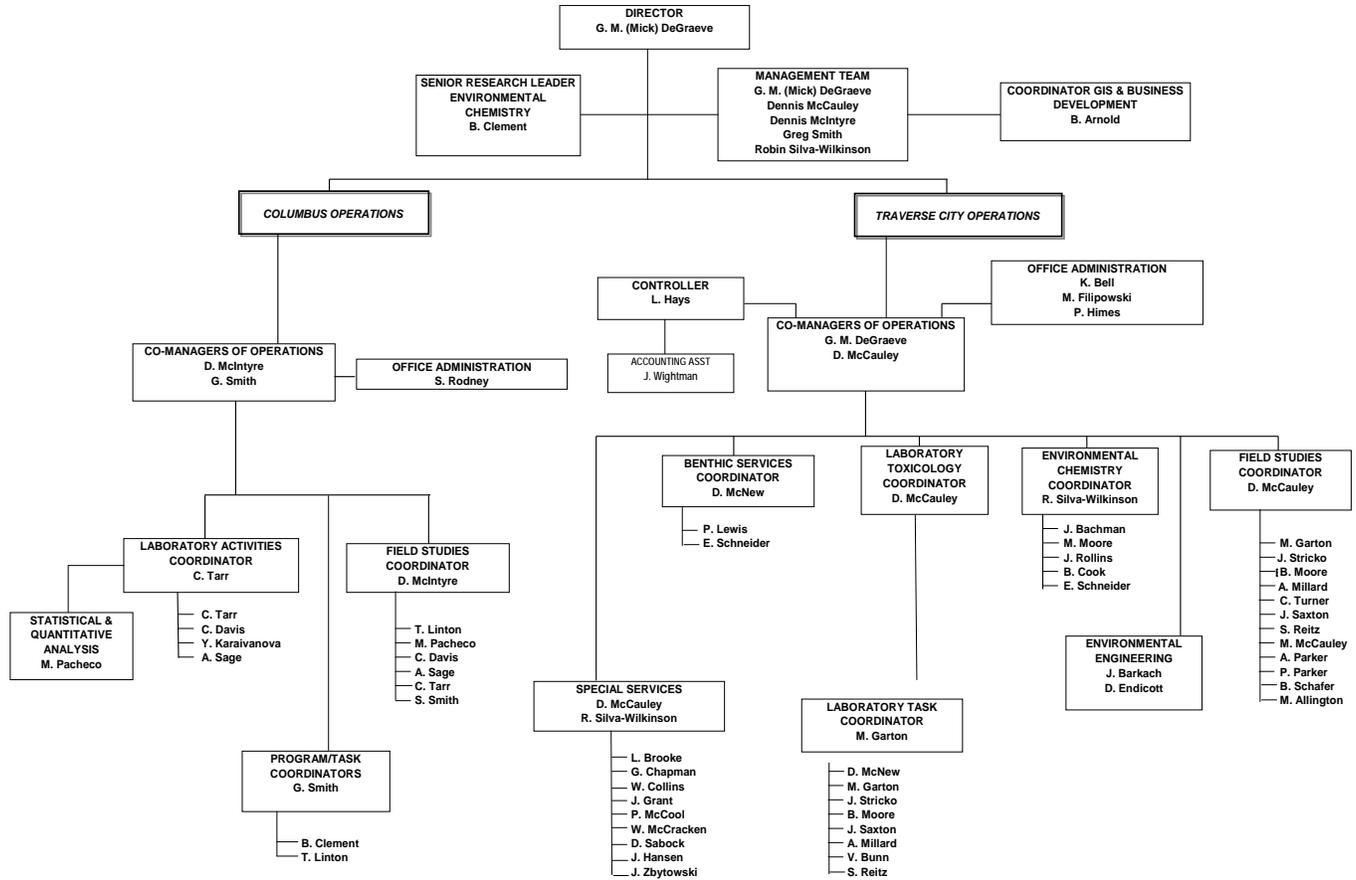
<u>EQUIPMENT DESCRIPTION</u>	<u>Rental Charge (per day)</u>	<u>Comments</u>
Electrofishing Barge and Trailer	\$250	Excludes cost of fuel and oil
Boat, Motor and Trailer	\$75	Excludes cost of fuel and oil
Non-motorized Boat or Canoe	\$30	
Four Wheel Drive All Terrain Vehicle	\$75	Excludes cost of fuel and oil
Back-pack Electrofishing Unit	\$75	Excludes cost of fuel and oil
HYDROLAB (Multi-parameter water quality meter)	\$50	\$25 per day for multiple day/continuous deployments
Dissolved Oxygen Meter	\$15	
Conductivity/pH meter	\$15	
Flow Meter (e.g. Gurley)	\$15	
Peristaltic Pump	\$35	
Survey Instruments	\$120	
Refrigerated Sampler (GLEC)	\$75	
Auto Samplers	\$50	
Vehicle Mileage	\$0.485/mile	FY 2006 RTAP Schedule of Travel Rates (10/05), or as listed and updated by the State of Michigan, Dept. of Management and Budget (www.michigan.gov/dmb)
Specialized Equipment	As quoted in Study Plan	
Hobo temperature recording devices	\$4/day	
Tipping/recording rain gauge	\$7/day	

The daily rental fees for field equipment are for dawn to dark. Furthermore, the equipment will be available when it is needed to meet MDEQ's needs (as opposed to picking up a rental boat at 9am and then starting the work of the day).



Article 1, Attachment B
Organizational Chart, including Key Personnel

ORGANIZATIONAL CHART FOR GREAT LAKES ENVIRONMENTAL CENTER (GLEC)





Article 1, Attachment C, D, E & F -- Reserved
(Not applicable to this Contract)



Article 2 – General Terms and Conditions

2.010 Contract Structure and Administration

2.011 Definitions

Capitalized terms used in this Contract (including its Exhibits) shall have the meanings given below, unless the context requires otherwise:

- (a) “Days” means calendar days unless otherwise specified.
- (b) “24x7x365” means 24 hours a day, seven days a week, and 365 days a year (including the 366th day in a leap year).
- (c) “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. “Additional Service” does not include New Work.
- (d) “Amendment Labor Rates” means the schedule of fully-loaded hourly labor rates attached as **Article 1, Attachment C**.
- (e) “Audit Period” has the meaning given in **Section 2.111**.
- (f) “Business Day,” whether capitalized or not, shall mean any day other than a Saturday, Sunday or State-recognized legal holiday (as identified in the Collective Bargaining Agreement for State employees) from 8:00am EST through 5:00pm EST unless otherwise stated.
- (g) “Incident” means any interruption in Services.
- (h) “Business Critical” means any function identified in any Statement of Work as Business Critical.
- (i) “Deliverable” means physical goods and/or commodities as required or identified by a Statement of Work
- (j) “Key Personnel” means any Personnel designated in **Article 1, Section 1.201 and/or Attachment B**, as Key Personnel.
- (k) “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. “New Work” does not include Additional Service.
- (l) “Services” means any function performed for the benefit of the State.
- (m) “State Location” means any physical location where the State performs work. State Location may include state-owned, leased, or rented space.
- (n) “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.
- (o) “Work in Process” means a Deliverable that has been partially prepared, but has not been presented to the State for Approval.

2.012 Attachments and Exhibits

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

2.013 Statements of Work

- (a) The parties agree that the Services/Deliverables to be rendered by Contractor pursuant to this Contract (and any future amendments of it) will be defined and described in detail in Statements of Work or Purchase Orders (PO) executed under this Contract. Contractor shall not be obliged or authorized to commence any work to implement a Statement of Work until authorized via a PO issued against this Contract, or an amendment to this Contract (see 2.106). Contractor shall perform in accordance with this Contract, including the Statements of Work/Purchase Orders executed under it.
- (b) Unless otherwise agreed by the parties, each Statement of Work (as defined in Article 1) will include, or incorporate by reference to the appropriate Contract Article 1 Attachment containing, the following information:
 - a description of the Services to be performed by Contractor under the Statement of Work;
 - a project schedule (including the commencement and completion dates for all tasks, subtasks (for all projects of sufficient duration and complexity to warrant sub task breakdown), and Deliverables;



- a list of the Deliverables to be provided, if any, including any particular specifications and acceptance criteria for such Deliverables, and the dates on which the Deliverables are scheduled to be completed and delivered to the State;
 - all Deliverable price schedules and other charges associated with the Statement of Work, the overall fixed price for such Statement of Work and any other appropriate pricing and payment terms;
 - a specification of Contractor's and the State's respective performance responsibilities with respect to the performance or completion of all tasks, subtasks and Deliverables;
 - a listing of any Key Personnel of Contractor and/or its Subcontractors for that Statement of Work and any future Statements of Work;
 - any other information or provisions the parties agree to include.
- (c) Reserved.
- (d) The initial Statements of Work, as of the Effective Date, are attached to this Contract.

2.014 Issuing Office

This Contract is issued by the Department of Management and Budget, Purchasing Operations and Department of Environmental Quality (DEQ), (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 the Purchasing Operations for this Contract is:

Melissa Castro, CPPB
Buyer Manager, Purchasing Operations
Department of Management and Budget
Mason Bldg, 2nd Floor
PO Box 30026
Lansing, MI 48909
Email: castrom@michigan.gov
Phone: 517-373-1080

2.015 Contract Compliance Inspector

Upon receipt at PURCHASING OPERATIONS of the properly executed Contract, it is anticipated that the Director of DMB Purchasing Operations, in consultation with (insert the end using agency), will direct that the person named below, or any other person so designated, be authorized 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 such Contract as that authority is retained by the Purchasing Operations.** The Contract Compliance Inspector for this Contract is:

Gary Kohlhepp
Department of Environmental Quality
Constitution Hall, 2nd Floor South
PO Box 30273
Lansing, MI 48909
Kohlheppg@michigan.gov
(517) 335-1289



2.016 Project Manager

The following individual will oversee the project:

Name: Gary Kohlhepp
Department of Environmental Quality
PO Box 30273
Lansing MI, 48909
Kohlheppg@michigan.gov
Phone: (517) 335-1289
Fax: (517) 373-9958
Kohlheppg@michigan.gov

2.020 Contract Objectives/Scope/Background

2.21 Background

Each year since 2000, the State Legislature has appropriated CMI funds for the implementation of the Strategy. To effectively implement such a large and complex program, the DEQ entered into a contract in 2001 with an outside contractor to assist with water quality monitoring, sample analysis, data analysis, and reporting. The current contract expires on September 30, 2006, and therefore the DEQ is requesting proposals for continued assistance with the implementation of its water quality monitoring program.

2.022 Purpose

The purpose of this contract is to provide water quality monitoring services to the DEQ on an as needed basis. Monitoring activities will include water quality sampling (including water, sediment, and biological samples), chemical sample analysis, data analysis, preparation of figures and tables, writing reports, and data management/GIS activities. The contract will be specific to the DEQ – Water Bureau.

2.023 Objectives and Scope

Contract outcomes will be determined by the specific monitoring activities requested by the DEQ. During each year, DEQ will identify specific monitoring activities to be carried out by the vendor. Project-specific work plans and cost estimates will be jointly developed and agreed-upon by DEQ and the vendor. Some projects will only require sample collection and shipment of samples to an appropriate laboratory, as determined by DEQ; others will include sample analysis, data analysis, and/or report production (per tasks listed above). The scope of the contract is identified above (Sections 1.101 and 1.102).

2.024 Interpretation

Sections 2.021 through 2.023 are intended to provide background and context for this Contract and are not intended to expand the scope of the obligations under this Contract or to alter the plain meaning of the terms and conditions of this Contract. However, to the extent the terms and conditions of this Contract are unclear or otherwise ambiguous, such terms and conditions are to be interpreted and construed in light of the provisions of this Section.

2.025 Form, Function and 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.

2.030 Legal Effect and Term



2.031 Legal Effect

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.

2.032 Contract Term

This Contract is for a period of five (5) years from September 1, 2006 through August 31, 2011. All outstanding Purchase Orders shall also expire upon the termination (cancellation for any of the reasons listed in 2.210) of the Contract, unless otherwise extended pursuant to 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.

2.033 Renewal(s)

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 two (2) additional one (1) year periods. Successful completion of negotiations surrounding the terms of the extension will be a pre-requisite for the exercise of any option year.

2.040 Contractor Personnel

2.041 Contractor Personnel

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

(b) Key Personnel

- (i) In discharging its obligations under this Contract, Contractor shall provide the named Key Personnel on the terms indicated. **Exhibit C** provides an organization chart showing the roles of certain Key Personnel, if any.
- (ii) Key Personnel shall be dedicated as defined in **Exhibit C** 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.
- (iii) 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. Additionally, the State's request shall be based on legitimate, good-faith reasons. Proposed alternative for the individual denied, shall be fully qualified for the position.
- (iv) Contractor shall not remove any Key Personnel from their assigned roles or the Contract without the prior written consent of the State. If the Contractor does remove Key Personnel without the prior written consent of the State, it shall be considered an unauthorized removal ("Unauthorized Removal"). It shall not be considered an Unauthorized Removal if Key Personnel must be replaced 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. It shall not be considered an Unauthorized Removal if Key Personnel must be replaced 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 thirty (30) days of shadowing unless parties agree to a different time period.



The Contractor with the State shall 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 rights under **Section 2.210**.

(v) 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 2.210**, 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 shall be \$25,000.00 per individual provided Contractor identifies a replacement approved by the State pursuant to **Section 2.041** and assigns the replacement to the Project to shadow the Key Personnel s/he is replacing for a period of at least 30 days prior to such 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 shall 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 shall not exceed \$50,000.00 per individual.

(c) Re-assignment of non-Key Personnel. Prior to re-deploying to other projects, at the completion of their assigned tasks on the Project, teams of its non-Key Personnel who are performing Services on-site at State facilities or who are otherwise dedicated primarily to the Project, Contractor will give the State at least ten (10) Business Days notice of the proposed re-deployment to give the State an opportunity to object to the re-deployment if the State reasonably believes such team's Contract responsibilities are not likely to be completed and approved by the State prior to the proposed date of re-deployment.

(d) 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 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 personnel for the removed person shall 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 such incident with removed personnel results in delay not reasonable anticipatable under the circumstances and which is attributable to the State, the applicable SLAs for the affected Service will not be counted in **Section 2.076** for a time as agreed to by the parties.

(e) Staffing Levels.

(i) All staff requirements not specified in the applicable Statement of Work or State-approved project plan as State personnel will be supplied by Contractor. This includes secretarial, clerical and Contract administration support staff necessary for Contractor to perform its obligations hereunder.

(ii) Contractor shall provide sufficient personnel resources for the completion of Contract tasks indicated in Contractor's project plan approved by the State. If the level of personnel resources is insufficient to complete any Contractor Contract tasks in accordance with the Contract time schedule as demonstrated by Contractor's failure to meet mutually agreed to time schedules, Contractor shall promptly add additional qualified personnel resources to the performance of the affected tasks, at no additional charge to the State, in an amount sufficient to complete performance of Contractor's tasks in accordance with the Contract time schedule.

(f) Personnel Turnover. The Parties agree that it is in their best interests to keep the turnover rate of employees of Contractor and its Subcontractors who are performing the Services to a reasonable minimum. Accordingly, if the State determines that the turnover rate of such employees is excessive and so notifies Contractor, Contractor will meet with the State to discuss the reasons for the turnover rate and otherwise use commercially reasonable efforts to minimize such turnover rate. If requested to do so by the State, Contractor will submit to the State its proposals for reducing the turnover rate to an acceptable level. In any event, notwithstanding the turnover of personnel, Contractor remains obligated to perform the Services without degradation and in accordance with the State-approved Contract schedule.



(g) 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.

2.042 Contractor Identification

Contractor employees shall 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.

2.043 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, and, as reasonably requested by the State, to provide to the State's agents and other contractors with reasonable access to Contractor's Project personnel, systems and facilities to the extent they relate to activities specifically associated with this Contract and will not interfere or jeopardize the safety or operation of the systems or facilities and provided Contractor receives reasonable prior written notice of such request. The State acknowledges that Contractor's time schedule for the Contract is very specific and agrees not to unnecessarily or unreasonably interfere with, delay or otherwise impeded Contractor's performance under this Contract with such requests for access.

2.044 Subcontracting by Contractor

(a) 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.

(b) 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 SLAs for the affected Work will not be counted in **Section 2.076** for a time agreed upon by the parties.

(c) 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 E** 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.

(d) Except where specifically approved in writing by the State on a case-by-case basis, Contractor shall flow down the obligations in **Sections 2.040, 2.110, 2.150, 2.160, 2.171(c), 2.172(b), 2.180, 2.260, 2.276, 2.297** in all of its agreements with any Subcontractors.



(e) 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.

2.045 Contractor Responsibility for Personnel

Contractor shall be responsible for all acts and omissions of its employees, as well as the acts and omissions of any other personnel furnished by Contractor to perform the Services.

2.050 State Standards

2.051 Existing Technology Standards - Reserved

2.052 PM Methodology Standards - Reserved

2.053 Adherence to Portal Technology Tools - Reserved

2.054 Acceptable Use Policy

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

2.060 Deliverables

2.061 Ordering

Any Services/Deliverables to be furnished under this Contract shall be ordered by issuance of written Purchase Orders/Blanket Purchase Order by the State after approval by the Contract Administrator or his/her designee. All orders are subject to the terms and conditions of this Contract. In the event of conflict between an order and this Contract, the Contract shall take precedence as stated in **Section 2.293**. In no event shall any additional terms and conditions contained on a Purchase Order/Blanket Purchase Order be applicable, unless specifically contained in that Purchase Order/Blanket Purchase Order's accompanying Statement of Work.

2.062 Software - Reserved

2.063 Hardware - Reserved

2.064 Equipment to be New and Prohibited Products - Reserved

2.070 Performance

2.071 Performance, In General

The State engages Contractor to execute the Contract and perform the Services/provide the Deliverables, and Contractor undertakes to execute and complete the Contract in its entirety in accordance with the terms and conditions of this Contract and with the participation of State representatives as specified in this Contract.

2.072 Time of Performance

(a) Contractor shall use commercially reasonable efforts to provide the resources necessary to complete all Services and Deliverables in accordance with 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 2.072(a)**, Contractor shall notify the State in a timely manner upon becoming aware of any circumstances that may reasonably be expected to jeopardize the timely and successful completion of any Deliverables/Services on the scheduled due dates in the latest State-approved delivery schedule and, in such event, shall inform the State of the projected actual delivery date.

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

2.073 Liquidated Damages - Reserved

2.074 Bankruptcy

If Contractor shall file for protection under the bankruptcy laws, or if an involuntary petition shall be filed against Contractor and not removed within 30 days, or if the Contractor becomes insolvent, be adjudicated bankrupt, or if it should make a general assignment for the benefit of creditors, or if a receiver shall be appointed due to its insolvency, and Contractor and/or its affiliates are unable to provide reasonable assurances that Contractor and/or its affiliates can deliver the services provided herein, 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 such Works in Process by whatever appropriate method the State may deem expedient. Contractor will fix appropriate notices or labels on the Work in Process to indicate ownership by the State. To the extent reasonably possible, materials and Work in Process shall be stored separately from other stock and marked conspicuously with labels indicating ownership by the State.

To secure the State's progress payments before the delivery of any services or materials required for the execution of Contractor's obligations hereunder, and any work which Contractor may subcontract in the support of the performance of its obligations hereunder, title shall vest in the State to the extent the State has made progress payments hereunder.

2.075 Time is of the Essence - Reserved

2.076 Service Level Agreements (SLAs) - Reserved

2.080 Delivery and Acceptance of Deliverables

2.081 Delivery Responsibilities - Reserved

2.082 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 shall be completed and delivered for State review and written approval and, where applicable, installed in accordance with the State-approved delivery schedule and any other applicable terms and conditions of the Contract.

2.083 Testing - Reserved

2.084 Approval of Deliverables, In General

(a) All Deliverables (Physical Deliverables and Written Deliverables) and Services require formal written approval by the State, in accordance with the following procedures. Formal approval by the State requires that the Deliverable be confirmed in writing by the State to meet its specifications, which will include the successful completion of Testing as applicable in **Section 2.083**, to be led by the State with the support and assistance of Contractor.



The parties acknowledge that the approval process set forth herein will be facilitated by ongoing consultation between the parties, visibility of interim and intermediate Deliverables and collaboration on key decisions.

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

(c) Prior to 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 in accordance with **Section 2.083(a)**.

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

(e) If, after three (3) opportunities (the original and two repeat efforts), Contractor is unable to correct all deficiencies preventing Final Acceptance of a Deliverable/Service, the State may: (i) demand that Contractor cure the failure and give Contractor additional time to cure the failure at the sole expense of Contractor; or (ii) keep the Contract in force and do, either itself or through other parties, whatever Contractor has failed to do, in which event Contractor shall bear any excess expenditure incurred by the State in so doing beyond the Contract price for such Deliverable/Service and will pay the State an additional sum equal to ten percent (10%) of such excess expenditure to cover the State's general expenses provided the State can furnish proof of such 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 such breach. Notwithstanding the foregoing, the State shall not use, as a basis for exercising its termination rights under this Section, deficiencies discovered in a repeat State Review Period that could reasonably have been discovered during a prior State Review Period.

(f) The State, at any time and in its reasonable discretion, may halt the testing or approval process if such process reveals deficiencies in or problems with a Deliverable/Service in a sufficient quantity or of a sufficient severity as to make the continuation of such process unproductive or unworkable. In such case, the State may stop using the Service or return the applicable Deliverable to Contractor for correction and re-delivery prior to resuming the testing or approval process.

2.085 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 (failing which the State Review Period, by default, shall be five (5) Business Days for Written Deliverables of 100 pages or less and ten (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 prior to its submission to the State. The State agrees to notify Contractor in writing by the end of the State Review Period either stating that the Deliverable is approved in the form delivered by Contractor or describing any deficiencies that must be corrected prior to approval of the Deliverable (or at the State's election, subsequent to approval of the Deliverable). If the State delivers to Contractor a notice of deficiencies, 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.



2.086 Process for Approval of Services

The State Review Period for approval of Services is governed by the applicable Statement of Work (failing which the State Review Period, by default, shall be 30 Business Days for Services). The State agrees to notify Contractor in writing by the end of the State Review Period either stating that the Service is approved in the form delivered by Contractor or describing any deficiencies that must be corrected prior to approval of the Services (or at the State's election, subsequent to approval of the Service). If the State delivers to Contractor a notice of deficiencies, 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. 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.

2.087 Process for Approval of Physical Deliverables

The State Review Period for approval of Physical Deliverables is governed by the applicable Statement of Work (failing which the State Review Period, by default, shall be 30 continuous Business Days for a Physical Deliverable). 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 prior to approval of the Deliverable (or at the State's election, subsequent to approval of the Deliverable). If the State delivers to Contractor a notice of deficiencies, 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.

2.088 Final Acceptance

Unless otherwise stated in the Statement of Work or Purchase Order, "Final Acceptance" of each Deliverable shall occur when each Deliverable/Service has been approved by the State following the State Review Periods identified in **Sections 2.080-2.087**. 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.

2.090 Financial

2.091 Pricing

(a) Fixed Prices for Services/Deliverables

Each Statement of Work/PO 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. To the extent the parties agree that certain specific Services will be provided on a time and materials basis, such Services shall be provided at the Amendment Labor Rates (**Article 1, Attachment C**). 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.

(b) 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, using the rates in **Article 1, Attachment C**, unless specifically identified in an applicable Statement of Work.

(c) 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.



2.092 Invoicing and Payment Procedures and Terms

(a) Invoicing and Payment – In General

(i) 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.

(ii) 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. The charges for Services billed on a time and materials basis shall be determined based on the actual number of hours of Services performed, at the applicable Labor Rates specified in **Article 1, Attachment C**. 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 2.094**.

(iii) 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.

(b) Taxes (See Section 2.305 and Article 3, Section 3.022-3.024 for additional)

The State is exempt from Federal Excise Tax, State and Local Sales Taxes, and Use Tax with respect to the sale to and use by it of tangible personal property. Such taxes shall not be included in Contract prices as long as the State maintains such exemptions. Copies of all tax exemption certificates shall be supplied to Contractor, if requested.

(c) Out-of-Pocket Expenses

Contractor acknowledges that the out-of-pocket expenses that Contractor expects to incur in performing the Services/providing the Deliverables (such as, but not limited to, travel and lodging, document reproduction and shipping, and long distance telephone) are included in Contractor's fixed price for each Statement of Work. Accordingly, Contractor's out-of-pocket expenses are not separately reimbursable by the State unless, on a case-by-case basis for unusual expenses, the State has agreed in advance and in writing to reimburse Contractor for such an expense at the State's current travel reimbursement rates. See http://www.mi.gov/dmb/0,1607,7-150-9141_13132---,00.html for current rates.

(d) 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.

(e) 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.

(f) 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.

2.093 State Funding Obligation

The State's obligation under this Contract is payable only and solely from funds appropriated for the purpose of this Contract. Contractor acknowledges and agrees that all funds for payments after the end of the current fiscal year are subject to the availability of a legislative appropriation for the purpose of this Contract. Events of non-appropriation are addressed further in **Section 2.210** of this Contract.

2.094 Holdback - Reserved



2.095 Electronic Payment Availability

Electronic transfer of funds is available to State contractors. Contractor is required to register with the State electronically at <http://www.cpexpress.state.mi.us>. Public Act 533 of 2004 requires all payments be transitioned over to EFT by October 2005.

2.100 Contract Management

2.101 Contract Management Responsibility

(a) Contractor shall have overall responsibility for managing and successfully performing and completing the Services/Deliverables, subject to the overall direction and supervision of the State and with the participation and support of the State as specified in this Contract. Contractor's duties will include monitoring and reporting the State's performance of its participation and support responsibilities (as well as Contractor's own responsibilities) and providing timely notice to the State in Contractor's reasonable opinion if the State's failure to perform its responsibilities in accordance with **Article 1, Attachment E** (Project Plan) is likely to delay the timely achievement of any Contract tasks.

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

2.102 Problem and Contract Management Procedures

Problem Management and Contract Management procedures will be governed by the Contract and the applicable Statements of Work.

2.103 Reports and Meetings

(a) Reports.

Within 30 days after the Effective Date, the parties shall determine an appropriate set of periodic reports to be issued by Contractor to the State. Such reports may include:

- (i) separately address Contractor's performance in each area of the Services;
- (ii) for each area of the Services, assess the degree to which Contractor has attained or failed to attain the pertinent objectives in that area, including on-time completion and delivery of Deliverables;
- (iii) explain the reasons for any failure to achieve on-time completion and delivery of Deliverables and include a plan for corrective action where appropriate;
- (iv) describe any circumstances that Contractor anticipates will impair or prevent on-time completion and delivery of Deliverables in upcoming reporting periods;
- (v) include plans for corrective action or risk mitigation where appropriate and describe the status of ongoing problem resolution efforts;
- (vi) provide reports setting forth a comparison of actual hours spent by Contractor (including its augmented personnel and Subcontractors) in performing the Project versus hours budgeted by Contractor.
- (vii) set forth a record of the material personnel changes that pertain to the Services and describe planned changes during the upcoming month that may affect the Services.
- (viii) include such documentation and other information may be mutually agreed to verify compliance with, and meeting the objectives of, this Contract.
- (ix) set forth an updated schedule that provides information on the status of upcoming Deliverables, expected dates of delivery (or redelivery) of such Deliverables and estimates on timing for completion of the Project.

(b) Meetings.

Within 30 days after the Effective Date, the parties shall determine an appropriate set of meetings to be held between representatives of the State and Contractor. Contractor shall prepare and circulate an agenda sufficiently in advance of each such meeting to give participants an opportunity to prepare for the meeting. Contractor shall incorporate into such agenda items that the State desires to discuss. At the State's request, Contractor shall prepare and circulate minutes promptly after a meeting.



2.104 System Changes

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

2.105 Reserved

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

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

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

(a) Change Requests

(i) State Requests

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

(ii) Contractor Recommendations

Contractor shall be entitled to propose a Change to the State, on its own initiative, should it be of the opinion that this would benefit the Contract.

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

(iv) By giving Contractor written notice within a reasonable time, the State shall be entitled to accept a Contractor proposal for Change, to reject it or to reach another agreement with Contractor.



Should the parties agree on carrying out a Change, a written Contract Change Notice shall 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").

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

(vi) If the State requests or directs Contractor to perform any activities that Contractor believes constitute a Change, Contractor must notify the State that it believes the requested activities are a Change prior to commencing the performance of the requested activities. If Contractor fails to so notify the State prior to commencing performance of the requested activities, such activities shall be considered to be performed gratuitously by Contractor, and Contractor shall not have any right thereafter to assert any claim for additional compensation or time for the performance of such activities. If Contractor commences performance of gratuitous services outside the scope of this Contract and subsequently elects to stop performing such out-of-scope services, Contractor must, at the request of the State, back out or reverse any changes resulting from such performance that would adversely affect the Contract.

2.107 Management Tools - Reserved

2.110 Records and Inspections

2.111 Records and Inspections

(a) **Inspection of Work Performed.** The State's authorized representatives shall at all reasonable times and with ten (10) days prior written request, have the right to enter Contractor's premises, or any other places, where the Services are being performed, and shall have access, upon reasonable request, to interim drafts of Deliverables or work-in-progress. Upon ten (10) Days prior written notice and at all reasonable times, the State's representatives shall be allowed to inspect, monitor, or otherwise evaluate the work being performed and to the extent that such 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.

(b) **Examination of Records.** Contractor agrees that the State, including its duly authorized representatives, until the expiration of seven (7) years following the creation of the material (collectively, the "Audit Period"), shall, upon 20 days prior written notice, have access to and the right to 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, including the State's procurement rules, regulations and procedures, and actual performance of the Contract for the purpose of conducting an audit, examination, excerpt and/or transcription but the State shall not have access to any information deemed confidential to Contractor to the extent such access would require such 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.

(c) **Retention of Records.** Contractor shall maintain at least until the end of the Audit Period all pertinent financial and accounting records (including time sheets and payroll records, and information pertaining to the Contract and to the Services, equipment, and commodities provided under the Contract) pertaining to the Contract in accordance with generally accepted accounting principles and other procedures specified in this Section. Financial and accounting records shall be made available, upon request, to the State at any time during the Audit Period. If an audit, litigation, or other action involving Contractor's records is initiated before the end of the Audit Period, the records 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.

(d) **Audit Resolution.** If necessary, the Contractor and the State shall 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 such report, unless a shorter response time is specified in such report. The Contractor and the State shall develop, agree upon and monitor an action plan to promptly address and resolve any deficiencies, concerns, and/or recommendations in such audit report.



2.112 Errors

- (a) If the audit demonstrates any errors in the statements provided to the State, then the amount in error shall be reflected as a credit or debit on the next invoice and in subsequent invoices until the amount is paid or refunded in full. However, a credit or debit may not be carried for more than four (4) quarterly statements. If a balance remains after four (4) quarterly statements, then the remaining amount will be due as a payment or refund within 45 days of the last quarterly statement 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 ten percent (10%), then the Contractor shall pay all of the reasonable costs of the audit.

2.120 State Responsibilities

2.121 State Performance Obligations

- (a) **Equipment and Other Resources.** To facilitate Contractor's performance of the Services/Deliverables, the State shall provide to Contractor such equipment and resources as identified in the Statements of Work or other Contract Exhibits as items to be provided by the State.
- (b) **Facilities.** The State shall designate space as long as it is available and as provided in the Statement of Work, to house Contractor's personnel whom the parties agree will perform the Services/Deliverables at State facilities (collectively, the "State Facilities"). Contractor shall have reasonable access to, and unless agreed otherwise by the parties in writing shall observe and comply with all rules and regulations relating to, each of the State Facilities (including hours of operation) used by 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 Contractor's use, or to which Contractor otherwise gains access in the course of performing the Services, for any purpose other than providing the Services to the State.
- (c) **Return.** Contractor shall be responsible for returning 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.
- (d) Except as otherwise provided in **Section 2.220**, the State's failure to perform its responsibilities as set forth in this Contract shall not be deemed to be grounds for termination by Contractor. However, Contractor will not be liable for any default or delay in the performance of its obligations under this Contract to the extent such default or delay is caused by nonperformance of the State's obligations under this Contract, provided Contractor provides the State with reasonable written notice of such nonperformance and Contractor uses commercially reasonable efforts to perform notwithstanding the State's failure to perform. In addition, if the State's nonperformance of its responsibilities under this Contract materially increases the time required for Contractor's performance or Contractor's cost of performance, Contractor shall be entitled to seek an equitable extension via the Change Request process described in **Section 2.106**.

2.130 Security

2.131 Background Checks

The Contractor shall authorize the investigation of its personnel proposed to have access to State facilities and systems on a case by case basis. 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. Such 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/ditservice/0,1607,7-179-25781-73760--,00.html>. 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.



2.140 *Reserved*

2.150 *Confidentiality*

2.151 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").

2.152 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 shall 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 shall mean any information which is retained in confidence by the State (or otherwise required to be held in confidence by the State pursuant to applicable federal, state and local laws and regulations) or which, in the case of tangible materials provided to Contractor by the State pursuant to its performance under this Contract, is marked as confidential, proprietary or with a similar designation by the State. In the case of information of either Contractor or the State "Confidential Information" shall exclude any information (including this Contract) that is publicly available pursuant to the Michigan FOIA.

2.153 Protection 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 in order 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) such disclosure is necessary or otherwise naturally occurs in connection with work that is within such 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 such Confidential Information from unauthorized use or disclosure.

2.154 Exclusions

Notwithstanding the foregoing, the provisions of this Section 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 such information to it without any obligation to restrict its further disclosure; or (v) was independently developed by the receiving party without reference to Confidential Information of the furnishing party. Further, the provisions of this Section will not apply to any particular Confidential Information to the extent the receiving party is required by law to disclose such 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 such disclosure as reasonably requested by the furnishing party.



2.155 No Implied Rights

Nothing contained in this Section shall 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.

2.156 Remedies

Each party acknowledges that, if it breaches (or attempts or threatens to breach) its obligations under this Section, the other party may be irreparably harmed. Accordingly, if a court of competent jurisdiction should find that a party has breached (or attempted or threatened to breach) any such obligations, the non-breaching party shall be entitled to seek an injunction preventing such breach (or attempted or threatened breach).

2.157 Security Breach Notification

In the event of a breach of this Section, Contractor shall take (i) prompt corrective action to cure any such deficiencies and (ii) any action pertaining to such unauthorized disclosure required by applicable federal and state laws and regulations. Contractor and the State will cooperate to mitigate, to the extent practicable, the effects of any breach, intrusion, or unauthorized use or disclosure. Contractor shall 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 ten (10) days of becoming aware of such use or disclosure or such shorter time period as is reasonable under the circumstances.

2.158 Survival

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

2.159 Destruction of Confidential Information

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

2.160 Proprietary Rights

2.161 Ownership

Ownership of Work Product by State. All Deliverables shall be owned by the State and shall be considered works made for hire by the Contractor for the State. The State shall own all United States and international copyrights, trademarks, patents or other proprietary rights in the Deliverables.

Vesting of Rights. With the sole exception of any preexisting licensed works identified in **Exhibit J**, the Contractor shall assign, 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 such Deliverable, by operation of law, may not be considered work made for hire by the Contractor for the State. From time to time upon State's request, the Contractor and/or its personnel shall confirm such assignment by execution and delivery of the assignments, confirmations of assignment, or other written instruments as the State may request. The State shall have the right to obtain and hold in its own name all copyright, trademark, and patent registrations and other evidence of rights that may be available for Deliverables.

**2.162 Source Code Escrow - Reserved****2.163 Rights in Data**

(a) The State will be and remain the owner of all data made available by the State to Contractor or its agents, Subcontractors or representatives pursuant to the Contract. 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 Contractor, nor will any employee of 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, Contractor shall only use personally identifiable information as strictly necessary to provide the Services and shall disclose such information only to its employees who have a strict need to know such information. Contractor shall comply at all times with all laws and regulations applicable to such personally identifiable information.

(b) The State is and shall remain the owner of all State-specific data pursuant to 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 shall only use personally identifiable information as strictly necessary to utilize the Services and shall disclose such information only to its employees who have a strict need to know such information, except as provided by law. The State shall comply at all times with all laws and regulations applicable to such personally identifiable information. Other material developed and provided to the State shall remain the State's sole and exclusive property.

2.164 Ownership of Materials

State and 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.

2.165 Standard Software - Reserved**2.166 Pre-existing Materials for Custom Software Deliverables - Reserved****2.167 General Skills**

Notwithstanding anything to the contrary in this Section, each party, its Subcontractors and their personnel shall be free to use and employ its and their general skills, know-how and expertise, and to use, disclose and employ any generalized ideas, concepts, know-how, methods, techniques or skills gained or learned during the course of performing the Services, so long as it or they acquire and apply the foregoing without disclosure of any confidential or proprietary information of the other party.

2.170 Warranties And Representations**2.171 Warranties and Representations**

The Contractor represents and warrants:

(a) It is capable in all respects of fulfilling and shall fulfill all of its obligations under this Contract. The performance of all obligations under this Contract shall be provided in a timely, professional, and workman-like manner and shall 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 such items in this Contract, Contractor shall 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, shall have, or shall 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 shall notify the State within two (2) days of any such interest that may be incompatible with the interests of the State.

(h) Neither Contractor nor any Affiliates, nor any employee of either has accepted or shall 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 shall 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 such 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 such financial statements, reports, other information. Since the respective dates or periods covered by such 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.

(m) All written information furnished to the State by or behalf of 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 such information not misleading.

(n) 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 such department within the previous five (5) years for the reason that Contractor failed to perform or otherwise breached an obligation of such contract.

2.172 Software Warranties - Reserved

2.173 Equipment Warranty - Reserved

**2.174 Physical Media Warranty - Reserved****2.175 Standard Warranties - Reserved****2.176 Consequences For Breach**

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

2.180 Insurance**2.181 Liability Insurance**

(a) Liability Insurance

The Contractor is required to provide proof of the minimum levels of insurance coverage as indicated below. The purpose of this coverage shall be to 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 such services are performed by the Contractor, or by any subcontractor, or by anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable.

The Contractor waives all rights against the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees and agents for recovery of damages to the extent these damages are covered by the insurance policies the Contractor is required to maintain pursuant to 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 shall 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 shall have an A.M. Best rating of A or better, or as otherwise approved in writing by the State, or if such ratings are no longer available, with a comparable rating from a recognized insurance rating agency. All policies of insurance required in this Contract shall be issued by companies that have been approved to do business in the State.

See http://www.mi.gov/cis/0,1607,7-154-10555_22535---,00.html.

Where specific limits are shown, they are the minimum acceptable limits. If Contractor's policy contains higher limits, the State shall be entitled to coverage to the extent of such higher limits.

Before the Contract is signed by both parties or before the purchase order is issued by the State, the Contractor must furnish to the Director of Purchasing Operations, certificate(s) of insurance verifying insurance coverage ("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) shall 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 ten (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 and be mailed to: Director, Purchasing Operations, Department of Management and Budget, P.O. Box 30026, Lansing, Michigan 48909. Failure to provide evidence of coverage, may, at the State's sole option, result in this Contract's termination.

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
\$500,000 Fire Damage Limit (any one fire)

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

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

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

3. Workers' compensation coverage must be provided in accordance with 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 shall 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 shall 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 such office space, including without limitation, those contents used by Contractor to provide the Services to the State, up to the replacement value thereof, where such office space and its contents are under the care, custody and control of Contractor. Such policy shall 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 shall be endorsed on the policy as a loss payee as its interests appear.



(b) Subcontractors

Except where the State has approved in writing a Contractor subcontract with other insurance provisions, Contractor shall 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) shall 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.

(c) Certificates of Insurance and Other Requirements

Contractor shall furnish to the Purchasing Operations certificate(s) of insurance verifying insurance coverage or providing satisfactory evidence of self-insurance as required in this Section (the "Certificates"). Before the Contract is signed, and not less than 20 days before the insurance expiration date every year thereafter, the Contractor shall 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.

Contractor shall maintain all required insurance coverage throughout the term of the Contract and any extensions thereto and, in the case of claims-made Commercial General Liability policies, shall secure tail coverage for at least three (3) years following the expiration or termination for any reason of this Contract. The minimum limits of coverage specified above are not intended, and shall not be construed, to limit any liability or indemnity of Contractor under this Contract to any indemnified party or other persons. Contractor shall be responsible for all deductibles with regard to such insurance. If 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, at the State's election (but without any obligation to do so) after the State has given Contractor at least 30 days written notice, the State may pay such premium or procure similar insurance coverage from another company or companies; and at the State's election, the State may deduct the entire cost (or part thereof) from any payment due Contractor, or Contractor shall pay the entire cost (or any part thereof) upon demand by the State.

2.190 Indemnification

2.191 Indemnification

(a) General Indemnification

To the extent permitted by law, the Contractor shall 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.

(b) 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.

(c) Employee Indemnification

In any and all 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 shall 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.



(d) Patent/Copyright Infringement Indemnification

To the extent permitted by law, the Contractor shall 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 such 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 such equipment, software, commodity or service, or the use or reproduction of any documentation provided with such 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 shall at the Contractor's sole expense (i) procure for the State the right to continue using the equipment, software, commodity or service or, if such 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 such 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 shall have 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; or (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.

2.192 Continuation of Indemnification Obligations

The Contractor's duty to indemnify pursuant to 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 prior to expiration or cancellation.

2.193 Indemnification Procedures

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

(a) After receipt by the State of notice of the action or proceeding involving a claim in respect of which it will seek indemnification, the State shall promptly notify Contractor of such 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 Contractor shall relieve Contractor of its indemnification obligations except to the extent that Contractor can demonstrate damages attributable to such failure. Within ten (10) days following receipt of written notice from the State relating to any claim, Contractor shall 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 prior to the State receiving Contractor's Notice of Election, the State shall be entitled to defend against the claim, at Contractor's expense, and Contractor will be responsible for any reasonable costs incurred by the State in defending against the claim during such period.

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



In the event the insurer's attorney represents the State pursuant to 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 shall have the right to defend the claim in such 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 shall promptly reimburse the State for all such reasonable costs and expenses.

2.200 Limits of Liability and Excusable Failure

2.201 Limits of Liability

The Contractor's liability for damages to the State shall be limited to two times the value of the Contract. The foregoing limitation of liability shall not apply to claims for infringement of United States patent, copyright, trademarks or trade secrets; to claims for personal injury or damage to property caused by the gross negligence or willful misconduct of the Contractor; to claims covered by other specific provisions of this Contract calling for liquidated damages; or to court costs or attorney's fees awarded by a court in addition to damages after litigation based on this Contract.

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

Neither the Contractor nor the State shall be liable to each other, regardless of the form of action, for consequential, incidental, indirect, or special damages. This limitation of liability shall 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.

2.202 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 such 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 such party; provided the non-performing party and its Subcontractors are without fault in causing such default or delay, and such default or delay could not have been prevented by reasonable precautions and cannot reasonably be circumvented by the non-performing party through the use of alternate sources, workaround plans or other means, including disaster recovery plans.

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

If any of the above-enumerated circumstances substantially prevent, hinder, or delay Contractor's performance of the Services/provision of Deliverables for more than ten (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 shall not be liable for payment for the unperformed Services/ Deliverables not provided under the Contract for so long as the delay in performance shall continue; (b) the State may terminate any portion of the Contract so affected and the charges payable there under shall 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 Contractor, except to the extent that the State shall pay for Services/Deliverables provided through the date of termination.



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.

2.203 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 manmade disaster.

2.210 Termination/Cancellation by the State

The State may terminate this Contract without further liability or penalty to the State, its departments, divisions, agencies, offices, commissions, officers, agents and employees for any of the following reasons:

2.211 Termination for Cause

- (a) In the event that Contractor breaches any of its material duties or obligations under this Contract (including a Chronic Failure to meet any particular SLA as defined in **Section 2.076**), which are either not capable of or subject to being cured, or are not cured within the time period specified in the written notice of breach provided by the State (such time period not to be less than 30 days), or pose a serious and imminent threat to the health and safety of any person, or the imminent loss, damage or destruction of any real or tangible personal property, the State may, having provided written notice of termination to Contractor, terminate this Contract in whole or in part, for cause, as of the date specified in the notice of termination.
- (b) In the event that this Contract is terminated for cause, in addition to any legal remedies otherwise available to the State by law or equity, Contractor shall be responsible for 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 shall not be considered by the parties to be consequential, indirect or incidental damages, and shall not be excluded by any other terms otherwise included in this Contract, provided such costs are not in excess of 50% more than the prices for such Service/Deliverables provided under this Contract.
- (c) In the event 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 shall 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 shall cease on the effective date of the termination.
- (d) In the event this Contract is terminated for cause pursuant to this Section, and it is determined, for any reason, that Contractor was not in breach of contract pursuant to the provisions of this section, that termination for cause shall be deemed to have been a termination for convenience, effective as of the same date, and the rights and obligations of the parties shall be limited to that otherwise provided in this Contract for a termination for convenience.

2.212 Termination for Convenience

The State may terminate this Contract for its convenience, in whole or part, if the State determines that such a termination is in the State's best interest. Reasons for such termination shall 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 prior to the date of termination. If the State chooses to terminate this Contract in part, the charges payable under this Contract shall be equitably adjusted to reflect those Services/Deliverables that are terminated. Services and related provisions of this Contract that are terminated for cause shall cease on the effective date of the termination.

**2.213 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 shall have the right to 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 shall give Contractor at least 30 days advance written notice of termination for non-appropriation or unavailability (or such 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 made available, the State may, upon 30 days written notice to Contractor, reduce the level of the Services or the change the production of Deliverables in such manner and for such 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 such reduction.
- (c) In the event the State terminates this Contract, eliminates certain Deliverables, or reduces the level of Services to be provided by Contractor pursuant to this Section, the State shall 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. For the avoidance of doubt, this Section will not preclude Contractor from reducing or stopping Services/Deliverables and/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.

2.214 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 incident to the application for, or performance of, a State, public or private Contract or subcontract; convicted of a criminal offense, including any of the following: embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, attempting to influence a public employee to breach the ethical conduct standards for State of Michigan employees; convicted under State or federal antitrust statutes; or convicted of any other criminal offense which in the sole discretion of the State reflects upon Contractor's business integrity.

2.215 Approvals Rescinded

The State may terminate this Contract without further liability or penalty in the event any final administrative or judicial decision or adjudication disapproves a previously approved request for purchase of personal services pursuant to Constitution 1963, Article 11, § 5, and Civil Service Rule 7-1. 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 such written notice.

2.216 Rights and Obligations Upon Termination

- (a) If this Contract is terminated by the State for any reason, Contractor shall (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) in the event that the Contractor maintains title in Deliverables that is intended to be transferred to the State at the termination of the Contract, Contractor will 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 shall be provided to the State on an "As-Is" basis except to the extent the amounts paid by the State in respect of such items included compensation to Contractor for the provision of warranty services in respect of such 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) In the event the State terminates this Contract prior to its expiration for its own convenience, the State shall pay Contractor for all charges due for Services provided prior to the date of termination and, if applicable, as a separate item of payment pursuant to 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 pursuant to this Contract shall, at the option of the State, become the State's property, and Contractor shall be entitled to receive equitable fair compensation for such Deliverables. Regardless of the basis for the termination, the State shall not be 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 shall have the right to assume, at its option, any and all 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.

2.217 Reservation of Rights

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

2.218 Contractor Transition Responsibilities

In the event this contract is terminated, for convenience or cause, dissolved, voided, rescinded, nullified, expires or is otherwise 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. In the event of termination or the expiration of this Contract, the Contractor agrees to make all reasonable efforts to effect an orderly transition of services within a reasonable period of time that in no event will exceed 90 days. These efforts shall include, but are not limited to, the following:

(a) Personnel - The Contractor shall work with the State, or a specified third party, to develop a transition plan setting forth the specific tasks and schedule to be accomplished by the parties, to effect an orderly transition. The Contractor shall 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.

(b) Information - 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.

(d) Software. - The Contractor shall reasonably assist the State in the acquisition of any Contractor software required to perform the Services/use the Deliverables under this Contract. This shall 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 shall, 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.

(e) Payment - If the transition results from a termination for any reason, reimbursement shall 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 specified by **Exhibit D**. The Contractor will prepare an accurate accounting from which the State and Contractor may reconcile all outstanding accounts.

2.219 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.



2.220 Termination by Contractor

2.221 Termination by Contractor

If the State materially breaches its obligation to pay Contractor undisputed amounts due and owing under this Contract in accordance with **Section 2.090**, or if the State breaches its other obligations under this Contract to an extent that makes it impossible or commercially impractical for Contractor to perform the Services, and if the State does not cure the breach within the time period specified in a written notice of breach provided to the State by Contractor (such time period not to be less than 30 days), then Contractor may terminate this Contract, in whole or in part based on Statement of Work for cause, as of the date specified in the notice of termination; provided, however, that Contractor must discharge its obligations under **Section 2.250** before any such termination.

2.230 Stop Work

2.231 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 shall be specifically identified as such and shall indicate that it is issued under this **Section 2.230**. Upon receipt of the stop work order, Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of 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 shall either: (a) cancel the stop work order; or (b) terminate the work covered by the stop work order as provided in **Section 2.210**.

2.232 Cancellation or Expiration of Stop Work Order

If a stop work order issued under this **Section 2.230** is canceled or the period of the stop work order or any extension thereof expires, Contractor shall resume work. The parties shall agree upon an equitable adjustment in the delivery schedule, the Contract price, or both, and the Contract shall be modified, in writing, accordingly, if: (a) the stop work order results in an increase in the time required for, or in Contractor's costs properly allocable to, the performance of any part of the Contract; and (b) Contractor asserts its right to an equitable adjustment within 30 calendar days after the end of the period of work stoppage; provided that, if the State decides the facts justify the action, the State may receive and act upon a Contractor proposal submitted at any time before final payment under the Contract. Any adjustment will conform to the requirements of **Section 2.106**.

2.233 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, such termination shall be deemed to be a termination for convenience under **Section 2.212**, and the State shall allow reasonable costs resulting from the stop work order in arriving at the termination settlement. For the avoidance of doubt, the State shall not be liable to Contractor for loss of profits because of a stop work order issued under this **Section 2.230**.

2.240 Reserved

2.250 Dispute Resolution

2.251 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 shall 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 shall submit a letter executed by Contractor's Contract Administrator or his 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 supporting data provided with such an affidavit are current and complete to Contractor's best knowledge and belief.



2.252 Informal Dispute Resolution

(a) All operational disputes between the parties shall be resolved under the Contract Management procedures developed pursuant to **Section 2.100**. If the parties are unable to resolve any disputes after compliance with such processes, the parties shall meet with the Director of Purchasing Operations, DMB, or designee, for the purpose of attempting to resolve such dispute without the need for formal legal proceedings, as follows:

(i) The representatives of Contractor and the State shall meet as often as the parties reasonably deem necessary in order 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 shall 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, shall issue a written opinion regarding the issue(s) in dispute within 30 calendar days. The opinion regarding the dispute shall be considered the State's final action and the exhaustion of administrative remedies.

(b) This **Section 2.250** 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 pursuant to **Section 2.253**.

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

2.253 Injunctive Relief

The only circumstance in which disputes between the State and Contractor will not be subject to the provisions of **Section 2.252** is where a party makes a good faith determination that a breach of the terms of the Contract by the other party is such that the damages to such 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.

2.254 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 shall not be deemed to preclude performance) and without limiting either party's right to terminate the Contract as provided in **Section 2.210** and **2.220**, as the case may be.

2.260 Federal and State Contract Requirements

2.261 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 pursuant to 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.



2.262 Unfair Labor Practices

Pursuant to 1980 PA 278, MCL 423.231, *et seq.*, the State shall not award a Contract or subcontract to an employer whose name appears in the current register of employers failing to correct an unfair labor practice compiled pursuant to section 2 of the Act. This information is compiled by the United States National Labor Relations Board. A Contractor of the State, in relation to the Contract, shall not enter into a contract with a Subcontractor, manufacturer, or supplier whose name appears in this register. Pursuant to section 4 of 1980 PA 278, MCL 423.324, the State may void any Contract if, subsequent to 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.

2.263 Workplace Safety and Discriminatory Harassment

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

2.270 Litigation

2.271 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 thereto, to which Contractor (or, to the extent Contractor is aware, any Subcontractor hereunder) 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 hereunder; or (ii) a claim or written allegation of fraud against Contractor or, to the extent Contractor is aware, any Subcontractor hereunder by a governmental or public entity arising out of their business dealings with governmental or public entities. Any such litigation, investigation, arbitration or other proceeding (collectively, "Proceeding") must be disclosed in a written statement to the Contract Administrator within 30 days of its occurrence. Details of settlements which are prevented from disclosure by the terms of the settlement may be annotated as such. 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. In the event that any such Proceeding disclosed to the State pursuant to 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 hereunder) to continue to perform this Contract in accordance with its terms and conditions, or
- (ii) whether Contractor (or a Subcontractor hereunder) in performing Services for the State is engaged in conduct which is similar in nature to conduct alleged in such Proceeding, which conduct would constitute a breach of this Contract or a violation of Michigan law, regulations or public policy, then Contractor shall be required to provide the State all reasonable assurances requested by the State to demonstrate that:
 - (A) Contractor and/or its Subcontractors hereunder will be able to continue to perform this Contract and any Statements of Work in accordance with its terms and conditions, and
 - (B) Contractor and/or its Subcontractors hereunder have not and will not engage in conduct in performing the Services which is similar in nature to the conduct alleged in such Proceeding.

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

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



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

2.272 Governing Law

The Contract shall in all respects be governed by, and construed in accordance with, 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.

2.273 Compliance with Laws

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

2.274 Jurisdiction

Any dispute arising from the Contract shall be resolved in the State of Michigan. With respect to any claim between the parties, Contractor consents to venue in Ingham County, Michigan, and irrevocably waives any objections it may have to such jurisdiction on the grounds of lack of personal jurisdiction of such court or the laying of venue of such 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.

2.280 Environmental Provision

2.281 Environmental Provision

For the purposes of this Section, "Hazardous Materials" is a generic term used to describe asbestos, ACBMs, PCBs, petroleum products, such construction materials as paint thinners, solvents, gasoline, oil, etc., 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 such 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. This Contract does not cover the handling, removal, or disposal of all Hazardous Materials.

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

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

(c) Once the Hazardous Material has been removed or rendered harmless by the State, the affected Work shall be resumed as directed in writing by the State. Any determination by the Michigan Department of Community Health and/or the Michigan Department of Environmental Quality (whichever is applicable) that the Hazardous Material has either been removed or rendered harmless shall be binding upon the State and Contractor for the purposes of resuming the Work. If any such 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 **Section 2.076** for a time as mutually agreed by the parties.



(d) If the Hazardous Material was brought to the site by the Contractor, or results in whole or in part from any violation by the Contractor of any laws covering the use, handling, storage, disposal of, processing, transport and transfer of Hazardous Material, or from any other act or omission within the control of the Contractor, the Contractor shall bear its proportionate share of the delay and costs involved in cleaning up the site and removing and rendering harmless the Hazardous Material in accordance with Applicable Laws to the condition approved by applicable regulatory agency(ies). If the Contractor fails to take appropriate action pursuant to Applicable Laws and consistent with the State requirements, then the State may take appropriate action.

2.290 General

2.291 Amendments

The Contract may not be modified, amended, extended, or augmented, except by a writing executed by the parties.

2.292 Assignment

(a) Neither party shall have the right to assign the Contract, or to 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 such affiliate is adequately capitalized and can provide adequate assurances that such affiliate can perform the Contract. Any purported assignment in violation of this Section shall be null and void. It is the policy of the State of Michigan to withhold consent from proposed assignments, subcontracts, or novations when such 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. In the event of any such permitted assignment, Contractor shall not be relieved of its responsibility to perform any duty imposed upon it herein, and the requirement under the Contract that all payments shall be made to one entity shall continue.

2.293 Entire Contract; 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 such subject matter and as additional terms and conditions on the purchase order shall apply as limited by **Section 2.061**.

(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 **Sections 2.110 through 2.220** of the Contract, which may be modified or amended only by a formal Contract amendment.

2.294 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.

2.295 Relationship of the Parties (Independent Contractor Relationship)

The relationship between the State and Contractor is that of client and independent Contractor. No agent, employee, or servant of Contractor or any of its Subcontractors shall be or shall 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.

**2.296 Notices**

(a) Any notice given to a party under the Contract shall be deemed effective, if addressed to such 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 (3rd) 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: Melissa Castro
PO Box 30026
530 West Allegan
Lansing, Michigan 48909

Contractor:

Great Lakes Environmental Center
Attn: Mick DeGraeve
739 Hastings Street
Traverse City, MI 49686

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

(b) Binding Commitments

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

2.297 Media Releases and Contract Distribution**(a) Media Releases**

Neither Contractor nor the State will make any news releases, public announcements or public disclosures, nor will they have any conversations with representatives of the news media, pertaining to the Contract, the Services or the Contract without the prior written approval of the other party, and then only in accordance with explicit written instructions provided by that party. In addition, neither Contractor nor the State will use the name, trademarks or other proprietary identifying symbol of the other party or its affiliates without such party's prior written consent. Prior written consent of the Contractor must be obtained from authorized representatives.

(b) Contract Distribution

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

2.298 Reformation and Severability

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

2.299 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, such consent or approval shall be in writing and shall not be unreasonably withheld or delayed.

2.300 No Waiver of Default

The failure of a party to insist upon strict adherence to any term of the Contract shall not be considered a waiver or deprive the party of the right thereafter to insist upon strict adherence to that term, or any other term, of the Contract.

**2.301 Survival**

Any provisions of the Contract that impose continuing obligations on the parties including the parties' respective warranty, indemnity and confidentiality obligations, shall 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.

2.302 Covenant of Good Faith

Each party agrees that, in its dealings with the other party or in connection with the Contract, it shall 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.

2.303 Permits

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

2.304 Website Incorporation

State expressly states that it will not be 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 such content and has expressly agreed to be bound by it in a writing that has been manually signed by an authorized representation of the State.

2.305 Taxes

Vendors are expected to collect and pay all applicable federal, state, and local employment taxes, including the taxes defined in Section 3.022 for all persons involved in the resulting Contract.

The State may refuse to award a contract to any Vendor who has failed to pay any applicable State taxes. The State may refuse to accept Vendor's bid, if Vendor has any outstanding debt with the State. Prior to any award, the State will verify whether Vendor has any outstanding debt with the State.

2.306 Prevailing Wage - Reserved**2.307 Call Center Disclosure**

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

2.308 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 leading edge on the competitive RFP.



2.310 *Reserved*

2.320 *Extended Purchasing -- RESERVED*

2.330 *Federal Grant Requirements -- RESERVED*