

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

June 24, 2009

CHANGE NOTICE NO. 2  
 TO  
 CONTRACT NO. 071B7200276  
 between  
 THE STATE OF MICHIGAN  
 and

NAME & ADDRESS OF VENDOR  <b>White Water Associates, Inc.</b> <b>429 River Lane, Box 27</b> <b>Amasa, MI 49903</b>  Dean.premo@white-water-associates.com	TELEPHONE (906) 822-7889 <b>Dean Premo, Ph.D.</b>
	VENDOR NUMBER/MAIL CODE
	BUYER/CA (517) 373-8622 <b>Malynda Little</b>
Contract Compliance Inspector: Michael Philip (517) 335-0730 philipm@michigan.gov <b>Gypsy Moth Trapping Services – Plant and Pest Management Division – Dept. of Agriculture</b>	
CONTRACT PERIOD: From: <b>May 16, 2007</b> To: <b>April 30, 2010</b>	
TERMS  <b>N/A</b>	SHIPMENT  <b>N/A</b>
F.O.B.  <b>N/A</b>	SHIPPED FROM  <b>N/A</b>
MINIMUM DELIVERY REQUIREMENTS <b>N/A</b>	

**NATURE OF CHANGE(S):**

Effective May 1, 2009, this Contract is hereby:

- (1) **RENEWED** to April 30, 2010, exercising option 02 of 02 options;
- (2) **INCREASED** by \$123,000.00, for the professional setting and recovery of traps to capture Gypsy Moths and Emerald Ash Borers, with an Authorized Contract Value of \$188,430.00.

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

**AUTHORITY/REASON:**

Change is made pursuant to:

- Agency request dated 03/25/2009;
- DMB approval of request dated 03/26/2009;
- Vendor agreement dated 03/26/2009; and,
- State Administrative Board Review and Approval dated 06/16/2009.

REVISED CURRENT AUTHORIZED SPEND LIMIT: **\$188,430.00**

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

April 3, 2008

**CHANGE NOTICE NO. 1**  
**TO**  
**CONTRACT NO. 071B7200276**  
**between**  
**THE STATE OF MICHIGAN**  
**and**

NAME & ADDRESS OF VENDOR  <b>White Water Associates, Inc.</b> <b>429 River Lane, Box 27</b> <b>Amasa, MI 49903</b>  Dean.premo@white-water-associates.com	TELEPHONE (906) 822-7889 <b>Dean Premo, Ph.D.</b>
	VENDOR NUMBER/MAIL CODE
	BUYER/CA (517) 373-8622 <b>Malynda Little</b>
Contract Compliance Inspector: Michael Philip (517) 335-0730 philipm@michigan.gov <b>Gypsy Moth Trapping Services – Plant and Pest Management Division – Dept. of Agriculture</b>	
CONTRACT PERIOD: From: <b>May 16, 2007</b> To: <b>April 30, 2009</b>	
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>	

**NATURE OF CHANGE(S):**

Effective April 1, 2008, this Contract is hereby;

- (1). Extended to April 30, 2009;
- (2). Increased by \$35,150.00 for a Total Contract Value of \$65,430.00

**AUTHORITY/REASON :**

Change is made pursuant to MDA request dated 01/23/2008; DMB approval of request dated 02/21/2008; Vendor agreement dated 03/06/2008; and State Administrative Board Review and Approval dated 04/01/2008.

**REVISED CURRENT AUTHORIZED SPEND LIMIT : \$65,430.00**

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

May 23, 2007

**NOTICE  
 TO  
 CONTRACT NO. 071B7200276  
 between  
 THE STATE OF MICHIGAN  
 and**

NAME & ADDRESS OF VENDOR  <b>White Water Associates, Inc.          429 River Lane, Box 27          Amasa, MI 49903</b>  Dean.premo@white-water-associates.com	TELEPHONE (906) 822-7889 <b>Dean Premo, Ph.D.</b>
	VENDOR NUMBER/MAIL CODE
	BUYER/CA (517) 373-8622 <b>Malynda Little</b>
Contract Compliance Inspector: Michael Philip (517) 335-0730 philipm@michigan.gov <b>Gypsy Moth Trapping Services – Plant and Pest Management Division – Dept. of Agriculture</b>	
CONTRACT PERIOD: From: <b>May 16, 2007</b> To: <b>April 30, 2008</b>	
TERMS <p style="text-align: center;"><b>N/A</b></p>	SHIPMENT <p style="text-align: center;"><b>N/A</b></p>
F.O.B. <p style="text-align: center;"><b>N/A</b></p>	SHIPPED FROM <p style="text-align: center;"><b>N/A</b></p>
MINIMUM DELIVERY REQUIREMENTS <p style="text-align: center;"><b>N/A</b></p>	

The terms and conditions of this Contract are those of Req. #791R7200105, this Contract Agreement and the vendor's quote dated 03/27/2007. In the event of any conflicts between the specifications, terms and conditions indicated by the State and those indicated by the vendor, those of the State take precedence.

**Not to Exceed, Maximum Contract Value: \$30,280.00**

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

**CONTRACT NO. 071B7200276  
 between  
 THE STATE OF MICHIGAN  
 and**

NAME & ADDRESS OF VENDOR  <b>White Water Associates, Inc.</b> <b>429 River Lane, Box 27</b> <b>Amasa, MI 49903</b>  Dean.premo@white-water-associates.com		TELEPHONE (906) 822-7889 <b>Dean Premo, Ph.D.</b> VENDOR NUMBER/MAIL CODE  BUYER/CA (517) 373-8622 <b>Malynda Little</b>
Contract Compliance Inspector: Michael Philip (517) 335-0730 philipm@michigan.gov <b>Gypsy Moth Trapping Services – Plant and Pest Management Division – Dept. of Agriculture</b>		
CONTRACT PERIOD: From: <b>May 16, 2007</b> To: <b>April 30, 2008</b>		
TERMS  <p style="text-align: center;"><b>N/A</b></p>	SHIPMENT  <p style="text-align: center;"><b>N/A</b></p>	
F.O.B.  <p style="text-align: center;"><b>N/A</b></p>	SHIPPED FROM  <p style="text-align: center;"><b>N/A</b></p>	
MINIMUM DELIVERY REQUIREMENTS <p style="text-align: center;"><b>N/A</b></p>		
MISCELLANEOUS INFORMATION:  <p>The terms and conditions of this Contract are those of Req. #791R7200105, this Contract Agreement and the vendor's quote dated 03/27/2007. In the event of any conflicts between the specifications, terms and conditions indicated by the State and those indicated by the vendor, those of the State take precedence.</p> <p><b>Not to Exceed, Maximum Contract Value:                      \$30,280.00</b></p>		

**THIS IS NOT AN ORDER:** This Contract Agreement is awarded on the basis of our inquiry bearing the REQ.No. 791R7200105. Orders for delivery may be issued directly by the Department of Agriculture through the issuance of a Purchase Order Form.

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

<p><b>FOR THE VENDOR:</b></p> <p style="text-align: center;"><b>White Water Associates, Inc.</b>          _____          Firm Name</p> <p style="text-align: center;">_____          Authorized Agent Signature</p> <p style="text-align: center;">_____          Authorized Agent (Print or Type)</p> <p style="text-align: center;">_____          Date</p>	<p><b>FOR THE STATE:</b></p> <p style="text-align: center;">_____          Signature  <b>Melissa Castro, CPPB, Buyer Manager</b>          _____          Name/Title  <b>Services Division, Purchasing Operations</b>          _____          Division</p> <p style="text-align: center;">_____          Date</p>
---	--



**STATE OF MICHIGAN  
Department of Management and Budget  
Purchasing Operations  
for the  
Department of Agriculture - Pest & Plant Pest Management Division**

**Contract # 071B7200276**

**to provide  
Gypsy Moth Trapping Services**

DMB Buyer: Little, Malynda  
Telephone Number: (517) 373-8622  
E-Mail Address: [littlem3@michigan.gov](mailto:littlem3@michigan.gov)



*Table of Contents*

**Article 1 – Statement of Work (SOW) ..... 5**

1.0 Project Identification ..... 5

**1.001 SOLICITATION TYPE ..... 5**

**1.002 PROJECT TITLE AND DESCRIPTION ..... 5**

**1.003 PROJECT CONTROL ..... 5**

**1.004 COMMENCEMENT OF WORK ..... 5**

1.1 Product Quality ..... 5

**1.101 SPECIFICATIONS ..... 5**

**A. BACKGROUND / PROBLEM STATEMENT ..... 5**

**B. OBJECTIVES ..... 6**

**C. TASKS ..... 6**

**1.102 RESEARCH AND DEVELOPMENT- RESERVED ..... 9**

**1.103 QUALITY ASSURANCE PROGRAM ..... 9**

**1.104 WARRANTY FOR PRODUCTS OR SERVICES – RESERVED ..... 10**

1.2 Service Capabilities ..... 10

**1.201 CUSTOMER SERVICE/ORDERING ..... 10**

**1.202 TRAINING – RESERVED ..... 10**

**1.203 SPECIAL PROGRAMS – RESERVED ..... 10**

**1.204 SECURITY – RESERVED ..... 10**

**1.205 REPORTS ..... 10**

1.3 Delivery Capabilities – RESERVED (See§ 1.101, Specifications) ..... 11

1.4 Project Price ..... 11

**1.401 PROPOSAL PRICING ..... 11**

**1.402 QUICK PAYMENT TERMS ..... 11**

**1.403 PRICE TERM ..... 11**

**1.404 ADMINISTRATIVE FEE – RESERVED ..... 11**

**1.405 BILLINGS – RESERVED ..... 11**

**1.406 ACTIVITY COST – RESERVED ..... 11**

1.5 Quantity Term-RESERVED ..... 11

1.6 Other Terms and Conditions ..... 11

**1.601 CHANGE MANAGEMENT ..... 11**

**Article 2 – General Terms and Conditions ..... 12**

2.0 *Introduction* ..... 12

**2.001 GENERAL PURPOSE ..... 12**

**2.002 ISSUING OFFICE AND CONTRACT ADMINISTRATOR ..... 12**

**2.003 NOTICE ..... 12**

**2.004 CONTRACT TERM ..... 12**

**2.005 GOVERNING LAW ..... 12**

**2.006 APPLICABLE STATUTES ..... 13**

**2.007 RELATIONSHIP OF THE PARTIES ..... 13**

**2.008 HEADINGS ..... 13**

**2.009 MERGER ..... 13**

**2.010 SEVERABILITY ..... 13**

**2.011 SURVIVORSHIP ..... 13**

**2.012 NO WAIVER OF DEFAULT ..... 14**

**2.013 PURCHASE ORDERS ..... 14**

2.1 *Vendor/Contractor Obligations* ..... 14

**2.101 ACCOUNTING RECORDS ..... 14**

**2.102 NOTIFICATION OF OWNERSHIP ..... 14**

**2.103 RESERVED ..... 14**

**2.104 RESERVED ..... 14**

**2.105 RESERVED ..... 14**

**2.106 RESERVED ..... 14**

**2.107 RESERVED ..... 14**

**2.108 RESERVED ..... 14**

**2.109 CALL CENTER DISCLOSURE-RESERVED ..... 14**



2.2 *Contract Performance* ..... 15

2.201 **TIME IS OF THE ESSENCE** ..... 15

2.202 **CONTRACT PAYMENT SCHEDULE** ..... 15

2.203 **RESERVED** ..... 15

2.204 **RESERVED** ..... 15

2.205 **ELECTRONIC PAYMENT AVAILABILITY** ..... 15

2.206 **RESERVED** ..... 15

2.3 *Contract Rights and Obligations*..... 15

2.301 **INCURRING COSTS** ..... 15

2.302 **CONTRACTOR RESPONSIBILITIES** ..... 15

2.303 **ASSIGNMENT AND DELEGATION**..... 15

2.304 **TAXES** ..... 16

2.305 **INDEMNIFICATION** ..... 16

2.306 **LIMITATION OF LIABILITY** ..... 18

2.307 **CONTRACT DISTRIBUTION** ..... 18

2.308 **RESERVED** ..... 18

2.309 **ASSIGNMENT OF ANTITRUST CAUSE OF ACTION** ..... 18

2.310 **PURCHASING FROM OTHER STATE AGENCIES-RESERVED**..... 18

2.311 **TRANSITION ASSISTANCE-RESERVED** ..... 18

2.312 **RESERVED** ..... 18

2.313 **RESERVED** ..... 18

2.314 **WEBSITE INCORPORATION-RESERVED** ..... 18

2.4 *Contract Review and Evaluation* ..... 18

2.401 **CONTRACT COMPLIANCE INSPECTOR**..... 18

2.402 **PERFORMANCE REVIEWS** ..... 19

2.403 **AUDIT OF CONTRACT COMPLIANCE/ RECORDS AND INSPECTIONS** ..... 19

2.5 *Quality and Warranties* ..... 19

2.501 **PROHIBITED PRODUCTS-RESERVED**..... 19

2.502 **QUALITY ASSURANCE-RESERVED** ..... 19

2.503 **INSPECTION-RESERVED** ..... 19

2.504 **GENERAL WARRANTIES (goods)-RESERVED**..... 19

2.505 **CONTRACTOR WARRANTIES** ..... 19

2.507 **RESERVED** ..... 20

2.508 **RESERVED** ..... 20

2.601 **BREACH DEFINED**..... 20

2.602 **NOTICE AND THE RIGHT TO CURE**..... 20

2.603 **EXCUSABLE FAILURE** ..... 21

2.7 *Remedies*..... 21

2.701 **CANCELLATION** ..... 21

2.702 **RIGHTS UPON CANCELLATION**..... 22

2.703 **RESERVED** ..... 22

2.704 **RESERVED** ..... 22

2.705 **SUSPENSION OF WORK** ..... 22

2.8 *Changes, Modifications, and Amendments*..... 23

2.801 **APPROVALS**..... 23

2.802 **TIME EXTENTIONS**..... 23

2.803 **MODIFICATION**..... 23

2.804 **AUDIT AND RECORDS UPON MODIFICATION** ..... 23

2.805 **CHANGES** ..... 24



## Article1 – Statement of Work (SOW)

### 1.0 Project Identification

#### 1.001 SOLICITATION TYPE

This document is a contract agreement between:

**White Water Associates, Inc.**

Ecological Consulting & Environmental Lab Srvcs  
429 River Lane – Box 27  
Amasa, Michigan 49903  
Contact: Dean B. Premo, Ph.D.  
Tel: (906) 822-7889  
E-mail: [Dean.premo@white-water-associates.com](mailto:Dean.premo@white-water-associates.com)

and **Michigan Department of Agriculture  
Pest and Plant Pest Management Division**

Post Office Box 30017  
Lansing, MI 48909  
Contact: Michael Philip  
Tel: (517) 335-0730  
E-mail: [philipm@michigan.gov](mailto:philipm@michigan.gov)

for the setting and recovery of gypsy moth traps for the State of Michigan (State) – Department of Agriculture (Agriculture) Pesticide and Plant Pest Management Division, for approximately one (1) year, from about May 01, 2007 through April 30, 2008 ; see § 2.004, *Contract Term*, for more information . This document describes and incorporates the defined requirements, the specifications, and the scope of work, the required time frames during which the service must be delivered, and all contractual terms and conditions.

#### 1.002 PROJECT TITLE AND DESCRIPTION

If any part of the Specific Requirements appears to be unclear, with respect to the overall outcome desired by the State, please notify the Buyer (see Article 2.002) for clarification, in writing, and for consideration of a possible change to the requirements.

#### 1.003 PROJECT CONTROL

- a. Contractor will carry out this project under the direction and control of the Michigan Department of Agriculture (Agriculture).
- b. Although there will be continuous interaction with the Contractor's staff assigned to this project, Agriculture's quality control technician will meet weekly at a minimum, with the Contractor's gypsy moth trapper(s) for the purpose of downloading data, reviewing progress, and providing necessary guidance to the Contractor in solving problems that arise.

#### 1.004 COMMENCEMENT OF WORK

Contractor shall not proceed with performance of the work, including the purchase of necessary materials, until both parties have signed this agreement to show acceptance of its terms. Actual work and service delivery shall commence upon Agriculture's final approval of the Contractor's work plan.

### 1.1 Product Quality

#### 1.101 SPECIFICATIONS

All services to be furnished by Contractor hereunder shall conform to the specifications as follows:

##### A. BACKGROUND / PROBLEM STATEMENT

Since the late 1980's, gypsy moth has generally infested the Lower Peninsula of Michigan. In the early 1990's, the gypsy moth began limited establishment in the eastern end of the U.P. Since that time, this exotic pest has been slowly moving from east to west across the U.P. The gypsy moth *Slow the Spread (STS) Program* is a national effort to monitor gypsy moth movement by trapping the male moths. This information is used to delimit outbreak population expansions in front (west) of the low level population front. These areas represent man made population increases that greatly increase the rate of spread. These delimited areas are then treated to eradicate the isolated population. The result is a reduction in the rate of spread of gypsy moth by 60%.



The STS Program involves setting a grid of traps with the female hormone and a pesticide strip that keep males in the trap until it is collected. Collected traps are opened to count the number of male moths caught.

The trap grid density is 3 km in both the Upper Peninsula and Lower Peninsula of Michigan. (see Appendix A1 and A2) Traps are placed using a hand-held global positioning unit (see Appendix G) (which are provided by the program), used to record, store and dump data to a computer.

## B. OBJECTIVES

### 1. General:

In late spring traps are to be properly constructed, identified, and accurately set. In the fall, traps are to be collected. Male gypsy moths are to be accurately identified and counted and traps are to be properly disposed.

### 2. Specific:

- a. To properly place at least 95% of all traps in each bid unit by June 18<sup>th</sup> in the Lower Peninsula and July 13<sup>th</sup> in the U.P.
- b. To properly collect traps, identify and count male gypsy moths by September 3<sup>rd</sup> in the Lower Peninsula and by October 26<sup>th</sup> in the U.P.
- c. To successfully transfer trap data in both electronic and paper form to the AGRICULTURE Quality Control Technicians each week during set-up and pick-up.
- d. To resolve problem trap situations within one week of their being provided to the trapper.

## C. TASKS

Contractor shall do all things necessary to deliver the services, the major tasks for which are described as follows (note, however, that Contractor is not constrained from supplementing this listing with additional steps, sub tasks, or elements it deems necessary to permit the development of alternative approaches or the application of proprietary analytical techniques, which will be included in its final work plan to be approved by Agriculture):

### 1. SPECIFIC TASK ITEMS:

- a. Attend trapper training during the week of May 21<sup>st</sup>. All equipment, maps and trapping material will be provided at this time. Training will concentrate on an understanding of the STS Program, gypsy moth life cycle and identification, trap construction and placement, and using the global positioning unit for navigation and data collection.
- b. Each individual trapper will spend one day with a quality control technician, which will be done to reinforce the training from the week of May 21<sup>st</sup>.
- c. Traps are to be placed according to locations shown on the quad sheets provided at training. Traps are to be placed inside predetermined target circles (see Appendix D) on public and private lands with both electronic and paper site specific data recorded on each trap placed (see Appendix F).
- d. Traps shall be set in the Lower Peninsula from June 8<sup>th</sup> until June 18<sup>th</sup>. All traps must be set by June 18<sup>th</sup>. Traps shall be set in the Upper Peninsula from May 28<sup>th</sup> until July 13<sup>th</sup>. All traps must be clean and complete. Electronic and paper records are to be kept for each trap set. (See Appendix E).
- e. Placement/Pick-up Timeline:

	<u>Trap Set</u>	<u>Trap Pick-up</u>
U.P.	May 28-July 13	Sept 21-Oct 26
L.P.	June 8-June 18	Aug 24-Sept 3

Trap placement/pickup dates may be modified by AGRICULTURE with contractor approval depending on the gypsy moth phenology.



- f. Once a week during trap placement, each trapper will meet with an AGRICULTURE Quality Control Technician to relate information, solve problems, provide supplies (if needed) and download trap data from the handheld GPS unit.
- g. Trap pick-up begins in the Lower Peninsula on August 24<sup>th</sup> and is completed by September 3<sup>rd</sup>. All traps must be picked up by September 3<sup>rd</sup>. Trap pick-up begins in the Upper Peninsula on September 21<sup>st</sup> and is completed by October 26<sup>th</sup>. Electronic and paper records are to be kept for each trap collected. (see Appendix F). These records must include proper identification and number of gypsy moth males. Collected traps and flagging tape are to be properly disposed of.
- h. Once a week during trap pick-up, each trapper will meet with an AGRICULTURE Quality Control Technician to relate information, solve problems, provide supplies (if needed) and download trap data from the handheld GPS unit.
- i. Any final problems will be solved and equipment turned in to the AGRICULTURE Quality Control Technician during the week of October 26<sup>th</sup>.
- j. Provide personnel and transportation to place, monitor, and pull traps per each bid unit and not exceed a five percent omit rate. Traps are to be placed inside a predetermined target circle on public and private lands with site specific data recorded on each trap.
- k. Provide adequate supervision and direction to employees, agents, and subcontractors.
- l. Accept responsibility for maintaining and distributing trapping supplies and materials in a manner that minimizes loss and waste.
- m. Be responsible for replacement cost of abused or lost AGRICULTURE issued equipment.
- n. Have each trapper and supervisor attend a one day training session provided by AGRICULTURE, at a location to be announced. Transportation and lodging, if necessary, will be provided by Contractor. Each individual trapper will spend one day with a quality control technician during the week of May 21<sup>st</sup>.
- o. Obtain and download trap placement, monitoring, and pull information into portable Global Positioning System (GPS) units at each trap site visit.
- p. Verify positive identification of moths collected in traps.
- q. Meet, as needed, with AGRICULTURE personnel for transference of data and supplies.
- r. Address any property owner complaints as instructed by AGRICULTURE office.
- s. Complete and maintain paper back-up during trap placement. This information is to go on the Northern STS GPS/Trapping Form (Appendix E). There will be one form for each trap set.
- t. Complete and maintain paper back-up during trap pick-up. This information is to go on the Trap Pull Log (Appendix F).
- u. Keep Agriculture informed of trapping program status.
- v. Correct and return all error reports within one week of receiving them.
- v. Mail any necessary data report to Agriculture.
- w. Have telephone available so contractor/trapper can be personally reached by Agriculture within a 24-hour period.
- x. Return all requested calls to Agriculture as soon as possible or by the end of the next Agriculture business day.



## 2. TRAPPING GRID

Base map grids include placement in the L.P. and U.P. in 3 km densities (See Appendix A1 and A2). Although each trap has a point of placement, a circle of acceptable placement has been established. (See Appendix D as an example) For traps in the 3 km grid, the target circle radius is 900 meters.

## 3. TRAP PLACEMENT

- a. Traps shall be set in the Lower Peninsula from June 8<sup>th</sup> until June 18<sup>th</sup>. All traps must be set by June 18<sup>th</sup>. Traps shall be set in the Upper Peninsula from May 28<sup>th</sup> until July 13<sup>th</sup>. All traps must be clean and complete.
- a. Many sites will not be accessible by vehicle and will require hiking to get within the target circle. Sufficient flagging to trap site shall be required as an aid to trap inspection/quality control checks and retrieval.
- c. Traps shall be hung on trees approximately four (4) to five (5) feet off the ground inside the predetermined target circle. If possible, never hang traps on telephone poles, fence posts, or road signs. Avoid hanging traps on trees that will be covered with poison ivy/oak, honey suckle, or other vegetation in the summer months. This will hamper the trap's effectiveness and visibility during the mid-season and final checks. NOTE: Traps can become very difficult to relocate later in the season because of vegetative growth, if sufficient marking ribbon is not used, and specific trap location notes are not kept. It is the trapper's responsibility to ensure that all trap sites are well marked and noted so they can be relocated.
- d. All traps must have the trapper's initials, quad abbreviation, site number, date placed, date inspected, and Agriculture office telephone number written on them with an indelible marker.
- e. Trappers shall be required to stay at each trap site until the necessary number of GPS trap location readings has been obtained. If the GPS unit has been unable to obtain this information from the satellites within five minutes, the trapper must manually enter the trap site information into the unit.
- f. Trappers shall complete and maintain a paper back-up showing quad, site number, date placed and UTM coordinates for each trap placement site.(See Appendix E)
- g. The trapper shall be required to meet the Agriculture inspector once a week during trap placement to download trap placement GPS data into a computer. The Agriculture inspector shall determine meeting location.

## 4. MAP AND TRAP ABBREVIATION AND NUMBERING

All maps are marked with an abbreviated name and have a systematic numbering system recognized by the database. The abbreviated names and trap numbers on the maps must correspond with the traps found in the field.

## 5. TRAP REMOVAL

- a. Trap pick-up begins in the Lower Peninsula on August 24<sup>th</sup> and is completed by September 3<sup>rd</sup>. All traps must be picked up by September 3<sup>rd</sup>. Trap pick-up begins in the Upper Peninsula on September 21<sup>st</sup> and is completed by October 26<sup>th</sup>. Trappers are required to remove traps, staples and flagging from all sites.
- b. It is the responsibility of the contractor/trapper to dispose of the trap, insecticide, and pheromone properly.
- c. Trappers shall be required to stay at each trap site until the necessary numbers of GPS trap location readings have been obtained. If the GPS unit has been unable to obtain this information from the satellites within five minutes, the trapper must manually enter the trap site information into the unit. The trapper shall be required to meet the Agriculture inspector once a week to download trap pull GPS data.
- d. Trappers shall complete and maintain a paper back-up log showing quad, site number, date pulled, trap condition, and moths collected per each trap removal visit. (See Appendix F)



- e. Unless extenuating circumstances beyond the control of the trapper warrant it, any traps found in the field by personnel after completion of trap pull shall have liquidated damages assessed.

**6. TRAP STORAGE AND HANDLING**

- a. Trap and trap parts must be stored in a secure area protected from weather, vandalism, etc. Pheromone must be stored in a freezer until used. Once removed from the freezer, it is effective for about twelve weeks at 85 degrees Fahrenheit or below. Sustained temperatures above 85 degrees Fahrenheit decrease the longevity and effectiveness of the pheromone.
- b. Insecticide strips are not to be removed from the protective packet and placed in the trap until ready for use. Traps with installed pesticide strips must be kept in airtight plastic bags while in the vehicle to prevent occupants breathing insecticide fumes. Insecticide strips must be stored in a cool, protected area prior to use. Used pesticide strip must be disposed of according to label directions.
- c. The insecticide used to kill captured moths in milk carton traps is manufactured as an insecticidal strip called VAPORTAPE II. It is toxic and the trapper must use extreme caution and care when handling. Latex gloves provided by the STS office must be worn during the handling of the pesticide strips. Trappers must not drive a vehicle with traps containing open insecticidal strips. Fumes will accumulate in the vehicle and could cause medical problems as a result of the exposure. Insecticidal strips must be stored in a cool, dark place out of the reach of children.

**7. AGRICULTURE RESPONSIBILITIES**

- a. Furnish USGS topographical maps, compass, one global positioning system (GPS) unit, traps, pheromone, pesticide strips, latex gloves, twist ties, staple guns, staples, permanent markers, flagging, door hangers, first aid kit, trash bags, and clipboard for each trapping unit.
- b. Assume responsibility for any treatments or other activity required upon identifying a gypsy moth population.
- c. Periodically evaluate trap placement and perform quality control checks on at least 10% of the Contractor's traps.
- d. Conduct a one (1) day training session for all trappers and supervisors the week of May 21<sup>st</sup>.

**8. 2007 GYPSY MOTH TRAP CYCLE COMPLETION DATES FOR BID UNITS**

Billing Cycle #	Cycle Period	% Traps Placed/ Data Submitted	% Traps Pulled/ Data Submitted	% Total Work Completed
1	June 8 - June 13	33%	--	17%
2	June 14 - June 18	66%	--	34%
3	May 28 - July 13	100%	--	50%
4	Aug 21 - Sept 30	--	50%	75%
5	Oct 1 - Oct 22	--	50%	100%

The *Percent of Total Work Completed* is the maximum percentage of the total contract that can be invoiced on the dates indicated and it must be equal to the total percentage of traps placed / pulled on the given dates. If the percentage of traps placed/pulled does not equal the percentages indicated, then invoices will be processed only for the portion of work completed at the time of the invoice.

**1.102 RESEARCH AND DEVELOPMENT- RESERVED**

**1.103 QUALITY ASSURANCE PROGRAM**

Contractor shall provide detail regarding its Quality Assurance Program(s), currently in place within its organization and planned for use on this project, for review and final approval by Agriculture, as part of its final work plan.

**1.104 WARRANTY FOR PRODUCTS OR SERVICES – RESERVED**1.2 Service Capabilities**1.201 CUSTOMER SERVICE/ORDERING**

All delivery orders or task orders are subject to the terms and conditions of this Contract. In the event of conflict between a delivery order or task order and this Contract, the Contract shall control.

**1.202 TRAINING – RESERVED****1.203 SPECIAL PROGRAMS – RESERVED****1.204 SECURITY – RESERVED****1.205 REPORTS**

Contractor shall provide various reports related to this project, when requested by the State. Online reporting for State agencies is required, and therefore, Contractor shall submit the following reports both electronically and in writing to Agriculture:

**(1) Work Plan:**

Within five (5) working days from the award of the Contract, the Contractor will submit a Work Plan for final approval to Agriculture's assigned project director (and continue to submit one for each year this Agreement is effective), to include (but not limited to) the following:

- (a) Contractor's Organizational structure;
- (b) Project organizational structure and the specific Staff assigned to this project, as well as the project's reporting chain of command (*note*: Necessary substitutions due to change of employment status and other unforeseen circumstances may only be made with prior approval of the State);
- (c) Contact information for all project supervisors;
- (d) Calendar / schedule of work to be performed, including dates on which reports will be submitted to Agriculture, and time-phased plan in the form of a graphic display;
- (e) Breakdown of the project, describing the sub-projects, activities and tasks, to include a detailed description of service(s), including any additional steps (not emphatically included in this Contract), any and all sub-steps, and elements involved in the final delivery of service, as well as the resources required and allocated for each step; and,
- (f) Detailed description of Contractor's Quality Assurance program to be implemented for each step of this project.

**(2) Weekly Summary**

Pursuant to § 1.101 (1)(C)(1)(e), *Specifications, Problem Statement & Objectives, Tasks*, Contractor will meet weekly with the State's Quality Control Technician for this project, and shall submit, review, and discuss the weekly summaries of progress, as follows:

- (a) Weekly Summary of Progress Report shall include (but is not limited to):
  - The work accomplished during the reporting period, including Quality Assurance;
  - Work to be accomplished during the subsequent reporting period;
  - Any problems or delays, real or anticipated;
  - Any significant deviation from the agreed-upon work plan(s) and prior reporting period's plan; and,
- (b) Trappers will provide a copy of a completed Northern STS GPS/Trapping form or Trap Pull Log (See Appendices E & F) for each trap set or pulled during the previous week. Data for those sites will also be transferred from the handheld GPS unit to the Quality Control Technician's computer.



This time will be used to share information, provide materials or solve problems that may have come up. This meeting will take no longer than one hour and will be conducted within the region the trapper is working.

(3) Other

Custom reports that the Contract Compliance Inspector or the Quality Control Technician may request at any time on an as needed basis.

1.3 Delivery Capabilities – RESERVED (See§ 1.101, Specifications)

1.4 Project Price

**1.401 PROPOSAL PRICING**

Proposal Pricing			
Bid Unit	Number of 3K Traps	Total Number Traps	Price Quotation
1	633	633	\$22,155
2	184	184	\$8,125
<b>Fixed, Firm, Maximum Total not to exceed for services:</b>			<b>\$30,280</b>

**1.402 QUICK PAYMENT TERMS**

The State of Michigan is interested in payment terms that reflect cost savings to the State based on an accelerated payment process. (Bidders shall state the discounted amount it can offer to the State based on prompt-payment, i.e. percent of discount if invoice is paid within 21 days, etc.)

**1.403 PRICE TERM**

Prices quoted are firm for the entire length of the Contract.

**1.404 ADMINISTRATIVE FEE – RESERVED**

**1.405 BILLINGS – RESERVED**

**1.406 ACTIVITY COST – RESERVED**

1.5 Quantity Term-RESERVED

1.6 Other Terms and Conditions

**1.601 CHANGE MANAGEMENT**

If a proposed Contract change is approved by the Contract Compliance Inspector, he/she will make recommendations to the Director of Purchasing Operations regarding ultimate approval/disapproval of change request.

If the Purchasing Operations Director (or authorized designee), agrees with the proposed modification, and all required approvals are obtained (including State Administrative Board), then 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 DMB Purchasing Operations, risk non-payment for the out-of-scope/pricing products and/or services.**



## **Article 2 – General Terms and Conditions**

### **2.0 Introduction**

#### **2.001 GENERAL PURPOSE**

This Contract is for the setting and recovery of gypsy moth traps for the Gypsy Moth Slow the Spread Program for the State of Michigan. Exact quantities to be purchased are unknown, however the Contractor will be required to furnish all such materials and services as may be ordered during the Contract period. Quantities specified if any, are estimates based on prior purchases, and the State is not obligated to purchase in these or any other quantities. Orders for delivery will be issued directly to the Contractor by various State Agencies on the Purchase Order Contract Release Form. Bids are due and will be publicly identified at the time noted on ITB Form.

#### **2.002 ISSUING OFFICE AND CONTRACT ADMINISTRATOR**

The Contract is issued by State of Michigan, Department of Management and Budget, hereinafter known as Purchasing Operations, for the State of Michigan, hereinafter known as the State. Where actions are a combination of those of Purchasing Operations and the State agencies, the authority will be known as the State.

Purchasing Operations is the sole point of contact in the State with regard to all procurement and contractual matters relating to the commodities and/or services described herein. Purchasing Operations is the only office authorized to negotiate, change, modify, amend, alter, and clarify, etc., the specifications, terms, and conditions of the Contract. Purchasing Operations will remain the SOLE POINT OF CONTACT throughout the procurement process.

**Contractor proceeds at its own risk if it takes negotiation, changes, modification, alterations, amendments, clarification, etc., of the specifications, terms, or conditions of the contract from any individual or office other than Purchasing Operations and the listed Contract Administrator**

All communications covering this procurement must be addressed to Contract Administrator indicated below:

Department of Management and Budget  
Purchasing Operations  
Attn: Malynda Little  
2nd Floor, Mason Building  
P O Box 30026  
Lansing, Michigan 48909  
(517) 373-7374

#### **2.003 NOTICE**

Any notice given to a party under this Contract must be written and 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.

#### **2.004 CONTRACT TERM**

The term of this Contract will be for one contract-year and commence with the issuance of a Contract. Service delivery will be approximately May 01, 2007 through April 30, 2008 for each year this contract may be effective, as shall be directed and approved by the Michigan Department of Agriculture.

This Contract includes two (2) options to extend the agreement by one (1) year. Determination to exercise the option is retained exclusively by the State, and its consideration shall be based on its annual review of service need, prior service delivery by contractor and contractor performance, and funding availability and approval.

#### **2.005 GOVERNING LAW**

The Contract shall in all respects be governed by, and construed in accordance with, the laws of the State of Michigan. By signing this agreement, vendor consents to personal jurisdiction in the state of Michigan. Any dispute arising herein shall be resolved in the State of Michigan.



## 2.006 APPLICABLE STATUTES

The following statutes, rules, and laws are applicable to the performance of this contract; some statutes are reflected in the clauses of this contract. This list is NOT exhaustive.

MI Uniform Commercial Code (MIUCC) MCL 440. (All sections unless otherwise altered by agreement)  
 MI OSHA MCL §§ 408.1001 – 408.1094  
 Freedom of Information Act (FIOA) MCL §§ 15.231, et seq.  
 Natural Resources and Environmental Protection Act MCL §§ 324.101, et seq.  
 MI Consumer Protection Act MCL §§ 445.901 – 445.922  
 Laws relating to wages, payments of wages, and fringe benefits on state projects MCL §§ 408.551 – 408.558, 408.471 – 408.490, 1965 PA 390.  
 Department of Civil Service Rules and regulations  
 Elliot Larsen Civil Rights Act MCL §§ 37.2201, et seq.  
 Persons with disabilities Civil Rights Act MCL §§ 37.1101, et seq.  
 MCL §§ 423.321, et seq.  
 MCL § 18.1264 (law regarding debarment)  
 Davis-Bacon Act (DBA) 40 USCU §§ 276(a), et seq.  
 Contract Work Hours and Safety Standards Act (CWHSSA) 40 USCS § 327, et seq.  
 Business Opportunity Act for Persons with Disabilities MCL §§ 450.791 – 450.795  
 Rules and regulations of the Environmental Protection Agency  
 Internal Revenue Code  
 Rules and regulations of the Equal Employment Opportunity Commission (EEOC)  
 The Civil Rights Act of 1964, USCS Chapter 42  
 Title VII, 42 USCS §§ 2000e et seq.  
 The Americans with Disabilities Act (ADA), 42 USCS §§ 12101 et seq.  
 The Age Discrimination in Employment Act of 1967 (ADEA), 29 USCS §§ 621, 623 et seq.  
 The Old Workers Benefit and Protection Act of 1990 (OWBPA), 29 USCS §§ 626, et seq.  
 The Family Medical Leave Act of 1993 (FMLA), 29 USC §§ 651 et seq.  
 The Fair Labor Standards Act (FLSA), 29 USC §§ 201 et seq.  
 Pollution Prevention Act of 1990 (PPA) 42 U.S.C. §13106  
 Sherman Act, 15 U.S.C.S. § 1 et seq.  
 Robinson-Patman Act, 15 U.S.C.S. § 13 et. seq.  
 Clayton Act, 15 U.S.C.S. § 14 et seq.

## 2.007 RELATIONSHIP OF THE PARTIES

The relationship between the State and the Contractor is that of client and independent Contractor. No agent, employee, or servant of the 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. The Contractor will be solely and entirely responsible for its acts and the acts of its agents, employees, servants and subcontractors during the performance of this Contract.

## 2.008 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 this Contract.

## 2.009 MERGER

This document constitutes the complete, final, and exclusive agreement between the parties. All other prior writings and negotiations are ineffective.

## 2.010 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.

## 2.011 SURVIVORSHIP

Any provisions of the Contract that impose continuing obligations on the parties including, but not limited to the Contractor's indemnity and other obligations shall survive the expiration or cancellation of the Contract for any reason.

**2.012 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.

**2.013 PURCHASE ORDERS**

Orders for delivery of commodities and/or services may be issued directly by the State Departments through the issuance of a Purchase Order Form referencing this Contract (Blanket Purchase Order) agreement and the terms and conditions contained herein. Contractor is asked to reference the Purchase Order Number on all invoices for payment.

*2.1 Vendor/Contractor Obligations***2.101 ACCOUNTING RECORDS**

The Contractor and all subcontractors shall maintain all pertinent financial and accounting records and evidence pertaining to the Contract in accordance with generally accepted principles of accounting and other procedures specified by the State of Michigan. Financial and accounting records shall be made available, upon request, to the State of Michigan, its designees, or the Michigan Auditor General at any time during the Contract period and any extension thereof, and for three years from expiration date and final payment on the Contract or extension thereof.

**2.102 NOTIFICATION OF OWNERSHIP**

The Contractor shall make the following notifications in writing:

1. When the Contractor becomes aware that a change in its ownership or officers has occurred, or is certain to occur, that could result in changes in the valuation of its capitalized assets in the accounting records, the Contractor shall notify Purchasing Operations within 30 days.
2. (a) The 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.  
(b) The Contractor shall:
  1. Maintain current, accurate, and complete inventory records of assets and their costs;
  2. Provide Purchasing Operations or designated representative ready access to the records upon request;
  3. Ensure that all individual and grouped assets, their capitalized values, accumulated depreciation or amortization, and remaining useful lives are identified accurately before and after each of the Contractor's ownership or officer changes; and
  4. Retain and continue to maintain depreciation and amortization schedules based on the asset records maintained before each Contractor ownership or officer change.

**2.103 RESERVED****2.104 RESERVED****2.105 RESERVED****2.106 RESERVED****2.107 RESERVED****2.108 RESERVED****2.109 CALL CENTER DISCLOSURE-RESERVED**



## 2.2 Contract Performance

### **2.201 TIME IS OF THE ESSENCE**

Contractor/Vendor is on notice that time is of the essence in the performance of this contract. Late performance will be considered a material breach of this contract, giving the State a right to invoke all remedies available to it under this contract.

### **2.202 CONTRACT PAYMENT SCHEDULE**

All invoices shall reflect actual services delivered.

### **2.203 RESERVED**

### **2.204 RESERVED**

### **2.205 ELECTRONIC PAYMENT AVAILABILITY**

Electronic transfer of funds is available to State contractors. Vendor is required register with the State of Michigan Office of Financial Management so the State can make payments related to this Contract electronically at [www.cpexpress.state.mi.us](http://www.cpexpress.state.mi.us).

### **2.206 RESERVED**

## 2.3 Contract Rights and Obligations

### **2.301 INCURRING COSTS**

The State of Michigan is not liable for any cost incurred by the Contractor prior to signing of the Contract. The State fiscal year is October 1st through September 30th. The Contractor(s) should realize that payments in any given fiscal year are contingent upon enactment of legislative appropriations. Total liability of the State is limited to terms and conditions of the Contract.

### **2.302 CONTRACTOR RESPONSIBILITIES**

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

### **2.303 ASSIGNMENT AND DELEGATION**

The Contractor shall not have the right to assign this Contract, to assign its rights under this contract, 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 State. Any purported assignment in violation of this Section shall be null and void. Further, the Contractor may not assign the right to receive money due under the Contract without the prior written consent of the Director of Purchasing Operations.

The Contractor shall not delegate any duties or obligations under the Contract to a subcontractor other than a subcontractor named and approved in the bid unless the Director of Purchasing Operations has given written consent to the delegation.

**Bidder must obtain the approval of the Director of Purchasing Operations before using a place of performance that is different from the address that bidder provided in the bid.**



## 2.304 TAXES

Sales Tax: For purchases made directly by the State of Michigan, the State is exempt from State and Local Sales Tax. Prices shall not include such taxes. Exemption Certificates for State Sales Tax will be furnished upon request.

Federal Excise Tax: The State of Michigan may be exempt for Federal Excise Tax, or such taxes may be reimbursable, if articles purchased under this Contract are used for the State's exclusive use. Certificates exclusive use for the purposes of substantiating a tax-free or tax-reimbursable sale will be sent to the Contractor upon request. If a sale is tax exempt or tax reimbursable under the Internal Revenue Code, prices shall not include the Federal Excise Tax. The State's Tax Exempt Certification is available for vendor viewing upon request to the Contract Administrator.

## 2.305 INDEMNIFICATION

### General Indemnification

To the fullest extent permitted by law, the Contractor shall indemnify, defend and hold harmless the State, its departments, divisions, agencies, sections, commissions, officers, employees and agents, from and against all losses, liabilities, penalties, fines, damages and claims (including taxes), and all related costs and expenses (including reasonable attorneys' fees and disbursements and costs of investigation, litigation, settlement, judgments, interest and penalties), arising from or in connection with any of the following:

1. Any claim, demand, action, citation or legal proceeding against the State, its employees and agents arising out of or resulting from (1) the product provided or (2) performance of the work, duties, responsibilities, actions or omissions of the Contractor or any of its subcontractors under this Contract.
2. Any claim, demand, action, citation or legal proceeding against the State, its employees and agents arising out of or resulting from a breach by the Contractor of any representation or warranty made by the Contractor in the Contract;
3. Any claim, demand, action, citation or legal proceeding against the State, its employees and agents arising out of or related to occurrences that the Contractor is required to insure against as provided for in this Contract;
4. Any claim, demand, action, citation or legal proceeding against the State, its employees and agents arising out of or resulting from the death or bodily injury of any person, or the damage, loss or destruction of any real or tangible personal property, in connection with the performance of services by the Contractor, by any of its subcontractors, by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable; provided, however, that this indemnification obligation shall not apply to the extent, if any, that such death, bodily injury or property damage is caused solely by the negligence or reckless or intentional wrongful conduct of the State;
5. Any claim, demand, action, citation or legal proceeding against the State, its employees and agents which results from an act or omission of the Contractor or any of its subcontractors in its or their capacity as an employer of a person.

### Patent/Copyright Infringement Indemnification

To the fullest extent permitted by law, the Contractor shall indemnify, defend and hold harmless the State, its employees and agents from and against all losses, liabilities, damages (including taxes), and all related costs and expenses (including reasonable attorneys' fees and disbursements 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 or foreign patent, copyright, trade secret or other proprietary right of any person or entity, which right is enforceable under the laws of the United States. In addition, should the equipment, software, commodity, or service, or the operation thereof, become or in the 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 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.



### 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.

### Indemnification Obligation Not Limited

In any and all claims against the State of Michigan, or any of its agents or employees, 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 benefits acts, or other employee benefits acts. This indemnification clause is intended to be comprehensive. Any overlap in sub clauses, 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 sub clause.

### Continuation of Indemnification Obligation

The duty to indemnify will continue in full force and affect not withstanding the expiration or early termination of the Contract with respect to any claims based on facts or conditions, which occurred prior to termination.

### 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 so notify Contractor shall relieve Contractor of its indemnification obligations except to the extent that Contractor can demonstrate damages attributable to such failure. Within 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 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.



### 2.306 LIMITATION OF LIABILITY

Except as set forth herein, neither the Contractor nor the State shall be liable to the other party for indirect or consequential damages, even if such party has been advised of the possibility of such damages. Such limitation as to indirect or consequential damages 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; to Contractor's indemnification obligations (2.305); 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.

### 2.307 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.

### 2.308 RESERVED

### 2.309 ASSIGNMENT OF ANTITRUST CAUSE OF ACTION

For and in consideration of the opportunity to submit a quotation and other good and valuable consideration, the bidder hereby assigns, sells and transfers to the State of Michigan all rights, title and interest in and to all causes of action it may have under the antitrust laws of the United States or this State for price fixing, which causes of action have accrued prior to the date of payment and which relate solely to the particular goods, commodities, or services purchased or procured by this State pursuant to this transaction.

### 2.310 PURCHASING FROM OTHER STATE AGENCIES-RESERVED

### 2.311 TRANSITION ASSISTANCE-RESERVED

### 2.312 RESERVED

### 2.313 RESERVED

### 2.314 WEBSITE INCORPORATION-RESERVED

## 2.4 Contract Review and Evaluation

### 2.401 CONTRACT COMPLIANCE INSPECTOR

Upon receipt at Purchasing Operations of the properly executed Contract Agreement(s), the person named below will be allowed to oversee the Contract performance on a day-to-day basis during the term of the Contract. However, overseeing the Contract implies **no authority to negotiate, change, modify, clarify, amend, or otherwise alter the terms, conditions, and specifications of such Contract(s). That authority is retained by Purchasing Operations.** The Contract Compliance Inspector for this project is:

**Mike Philip**  
Michigan Department of Agriculture  
Pesticide & Plant Pest Management Division  
P O Box 30017  
Lansing, MI 48909  
philipm@michigan.gov  
(517) 335-0730

**2.402 PERFORMANCE REVIEWS**

The State may review with the Contractor their performance under the Contract. Performance reviews shall be conducted quarterly, semi-annually or annually depending on Contractor's past performance with the State. Performance reviews shall include, but not limited to, quality of products/services being delivered and provided, timeliness of delivery, percentage of completion of orders, the amount of back orders, status of such orders, accuracy of billings, customer service, completion and submission of required paperwork, the number of substitutions and the reasons for substitutions, and other requirements of the Contract.

Upon a finding of poor performance, which has been documented by Purchasing Operations, the Contractor shall be given an opportunity to respond and take corrective action. If corrective action is not taken in a reasonable amount of time as determined by Purchasing Operations, the Contract may be canceled for default. Delivery by the Contractor of unsafe and/or adulterated or off-condition products to any State agency is considered a material breach of Contract subject to the cancellation provisions contained herein.

**2.403 AUDIT OF CONTRACT COMPLIANCE/ RECORDS AND INSPECTIONS**

The Contractor agrees that the State may, upon 24-hour notice, perform an audit at Contractor's location(s) to determine if the Contractor is complying with the requirements of the Contract. The Contractor agrees to cooperate with the State during the audit and produce all records and documentation that verifies compliance with the Contract requirements.

*2.5 Quality and Warranties***2.501 PROHIBITED PRODUCTS-RESERVED****2.502 QUALITY ASSURANCE-RESERVED****2.503 INSPECTION-RESERVED****2.504 GENERAL WARRANTIES (goods)-RESERVED****2.505 CONTRACTOR WARRANTIES**

The Contract will contain customary representations and warranties by the Contractor, including, without limitation, the following:

1. The Contractor will use its best efforts to use efficiently any resources or services necessary to provide the products that are separately chargeable to the State;
2. The Contractor will provide the products in a manner that does not infringe the proprietary rights of any third party;
3. The Contractor will provide the products in a manner that complies with all applicable laws and regulations;
4. The Contractor has duly authorized the execution, delivery and performance of the Contract;
5. The Contractor is capable in all respects of fulfilling and shall fulfill all of its obligations under this contract.
6. The contract appendices, attachments, and exhibits identify all equipment and software services necessary for the deliverable(s) to perform and operate in compliance with the contract's requirements.
7. The contract signatory has the power and authority, including any necessary corporate authorizations, necessary to enter this contract, on behalf of Contractor.
8. The Contractor is qualified and registered to transact business in all locations where required.



9. 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.
10. All financial statements, reports, and other information furnished by Contractor to the State as part of its response to ITB 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 changes in the business, properties, financial condition, or results of operations of Contractor. 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.
11. 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.
12. All financial statements, reports, and other information furnished by Contractor to the State as part of its response to the ITB 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 changes in the business, properties, financial condition, or results of operations of Contractor. All written information furnished to the State by or behalf of Contractor in connection with this Contract, including its bid, it true, accurate, and complete, and contains no untrue statement of material fact or omits any material fact necessary to make such information not misleading.

**2.506 RESERVED**

**2.507 RESERVED**

**2.508 RESERVED**

**2.509 RESERVED**

## 2.6 Breach of Contract

### **2.601 BREACH DEFINED**

Failure to comply with articles, sections, or subsections of this agreement, or making any false statement in this agreement will be considered a material breach of this agreement giving the state authority to invoke any and all remedies available to it under this agreement.

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

### **2.602 NOTICE AND THE RIGHT TO CURE**

In the event of a curable breach by the Contractor, the State shall provide the Contractor written notice of the breach and a time period to cure said breach described in the notice. This section requiring notice and an opportunity to cure shall not be applicable in the event of successive or repeated breaches of the same nature or if the State determines in its sole discretion that the breach poses a serious and imminent threat to the health or safety of any person or the imminent loss, damage or destruction of any real or tangible personal property.



## 2.603 EXCUSABLE FAILURE

1. Neither party shall be liable for any default or delay in the performance of its obligations under the Contract if and to the extent such default or delay is caused, directly or indirectly, by: fire, flood, earthquake, elements of nature or acts of God; riots, civil disorders, rebellions or revolutions in any country; the failure of the other party to perform its material responsibilities under the Contract (either itself or through another Contractor); 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 sub-Contractors 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 best efforts to recommence performance or observance whenever and to whatever extent possible without delay provided such party promptly notifies the other party in writing of the inception of the excusable failure occurrence, and also of its abatement or cessation.

2. If any of the above enumerated circumstances substantially prevent, hinder, or delay performance of the services necessary for the performance of the State's functions for more than 14 consecutive 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 from an alternate source, and the State shall not be liable for payments for the unperformed services under the Contract for so long as the delay in performance shall continue; (b) the State may cancel any portions of the Contract so affected and the charges payable hereunder shall be equitably adjusted to reflect those services canceled; or (c) the Contract will be canceled without liability of the State to the Contractor as of the date specified by the State in a written notice of cancellation to the Contractor. The Contractor will not have the right to any additional payments from the State as a result of any excusable failure occurrence or to payments for services not rendered as a result of the excusable failure condition. Defaults or delays in performance by the Contractor which are caused by acts or omissions of its sub-Contractors will not relieve the Contractor of its obligations under the Contract except to the extent that a sub-Contractor is itself subject to any excusable failure condition described above and the Contractor cannot reasonably circumvent the effect of the sub-Contractor's default or delay in performance through the use of alternate sources, workaround plans or other means.

## 2.7 Remedies

### 2.701 CANCELLATION

The State may cancel 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:

1. Material Breach by the Contractor. In the event that the Contractor breaches any of its material duties or obligations under the Contract, 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, 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 cancellation to the Contractor, cancel this Contract in whole or in part, for cause, as of the date specified in the notice of cancellation.

In the event that this Contract is cancelled for cause, in addition to any legal remedies otherwise available to the State by law or equity, the Contractor shall be responsible for all costs incurred by the State in canceling the Contract, including but not limited to, State administrative costs, attorneys fees and court costs, and any additional costs the State may incur to procure the services required by this Contract from other sources. All excess re-procurement costs and damages shall not be considered by the parties to be consequential, indirect or incidental, and shall not be excluded by any other terms otherwise included in the Contract.

In the event the State chooses to partially cancel this Contract for cause charges payable under this Contract will be equitably adjusted to reflect those services that are cancelled.



In the event this Contract is cancelled for cause pursuant to this section, and it is therefore determined, for any reason, that the Contractor was not in breach of Contract pursuant to the provisions of this section, that cancellation for cause shall be deemed to have been a cancellation for convenience, effective as of the same date, and the rights and obligations of the parties shall be limited to that otherwise provided in the Contract for a cancellation for convenience.

2. Cancellation for Convenience by the State. The State may cancel this Contract for its convenience, in whole or part, if the State determines that such a cancellation is in the State's best interest. Reasons for such cancellation shall be left to the sole discretion of the State and may include, but not 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 Contract services no longer practical or feasible, and (c) unacceptable prices for additional services requested by the State. The State may cancel the Contract for its convenience, in whole or in part, by giving the Contractor written notice 30 days prior to the date of cancellation. If the State chooses to cancel this Contract in part, the charges payable under this Contract shall be equitably adjusted to reflect those services that are cancelled.

3. Non-Appropriation. In the event that funds to enable the State to effect continued payment under this Contract are not appropriated or otherwise made available. The 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 project. If funds are not appropriated or otherwise made available, the State shall have the right to cancel this Contract at the end of the last period for which funds have been appropriated or otherwise made available by giving written notice of cancellation to the Contractor. The State shall give the Contractor written notice of such non-appropriation or unavailability within 30 days after it receives notice of such non-appropriation or unavailability.

4. Criminal Conviction. In the event the Contractor, an officer of the Contractor, or an owner of a 25% or greater share of the Contractor, is convicted of a criminal offense incident to the application for or performance of a State, public or private Contract or sub-Contract; or convicted of a criminal offense including but not limited to 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 the Contractor's business integrity.

5. 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, section 5, and Civil Service Rule 7. 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.

## **2.702 RIGHTS UPON CANCELLATION**

Termination Assistance. If this Contract (or any Statement of Work issued under it) is terminated for any reason prior to completion, Contractor agrees to provide for up to six (6) months after the termination all reasonable termination assistance requested by the State to facilitate the orderly transfer of such Services to the State or its designees in a manner designed to minimize interruption and adverse effect. Such termination assistance will be deemed by the parties to be governed by the terms and conditions of this Contract (notwithstanding its termination) other than any terms or conditions that do not reasonably apply to such termination assistance. Such termination assistance shall be at no additional charge to the State if the termination is for Contractor's Default pursuant to Section 2.602; otherwise the State shall compensate Contractor for such termination assistance on a time and materials basis in accordance with the Amendment Labor Rates identified within this Contract agreement.

## **2.703 RESERVED**

## **2.704 RESERVED**

## **2.705 SUSPENSION OF WORK**

The Contract Administrator may order the Contractor, in writing, to suspend, delay, or interrupt all or any part of the work of this Contract for the period of time that the Contract Administrator determines appropriate for the convenience of the State.



If the performance of all or any part of the work is, for an unreasonable period of time, suspended, delayed, or interrupted (1) by an act of the Contract Administrator in the administration of this Contract, or (2) by the Contract Administrator's failure to act within the time specified in this Contract (or within a reasonable time if not specified), an adjustment shall be made for any increase in the cost of performance of this Contract (excluding profit) necessarily caused by the unreasonable suspension, delay, or interruption, and the Contract modified in writing accordingly. However, no adjustment shall be made under this clause for any suspension, delay, or interruption to the extent that performance would have been so suspended, delayed, or interrupted by any other cause, including the fault or negligence of the Contractor, or for which an equitable adjustment is provided for or excluded under any other term or condition of this Contract.

A claim under this clause shall not be allowed:

- (1) For any costs incurred more than 20 days before the Contractor shall have notified the Contract Administrator in writing of the act or failure to act involved (but this requirement shall not apply as to a claim resulting from a suspension order); and
- (2) Unless the claim, in an amount stated, is asserted in writing as soon as practicable after the termination of the suspension, delay, or interruption, but not later than the date of final payment under the Contract.

## 2.8 Changes, Modifications, and Amendments

### 2.801 APPROVALS

The Contract may not be modified, amended, extended, or augmented except by a writing executed by the parties hereto, and any breach or default by a party shall not be waived or released other than in writing signed by the other party.

### 2.802 TIME EXTENTIONS

Time extensions for Contract changes will depend upon the extent, if any, by which the changes cause delay in the completion of the various elements of performance as described in the statement of work. The change order granting the time extension may provide that the Contract completion date will be extended only for those specific elements related to the changed work and that the remaining Contract completion dates for all other portions of the work will not be altered. The change order also may provide an equitable readjustment of liquidated damages under the new completion schedule.

### 2.803 MODIFICATION

Purchasing Operations reserves the right to modify this Contract at any time during the Contract term. Such modification may include changing the locations to be serviced, additional locations to be serviced, method or manner of performance of the work, number of days service is to be performed, addition or deletion of tasks to be performed, addition or deletion of items, and/or any other modifications deemed necessary. Any changes in pricing proposed by the Contractor resulting from the proposed changes are subject to acceptance by the State. Changes may be increases or decreases. **IN THE EVENT PRICES ARE NOT ACCEPTABLE TO THE STATE, THE CONTRACT SHALL BE SUBJECT TO COMPETITIVE BIDDING BASED UPON THE NEW SPECIFICATION.**

**The State reserves the right to add an item(s) that is not described on the item listing and is available from the Contract vendor.** The item(s) may be included on the Contract, only if prior written approval has been granted by Purchasing Operations.

### 2.804 AUDIT AND RECORDS UPON MODIFICATION

**DEFINITION:** records includes books, documents, accounting procedures and practices, and other data, regardless of whether such items are in written form, electronic form, or in any other form

Contractor shall be required to submit cost or pricing data with the pricing of any modification of this contract to the Contract Administrator in Purchasing Operations. Data may include accounting records, payroll records, employee time sheets, and other information the state deems necessary to perform a fair evaluation of the modification proposal. Contract Administrator or authorized representative of the state shall have the right to examine and audit all of the contractor's records, including computations and projections, related to:



1. The proposal for modification;
2. The discussions conducted on the proposal, including those related to negotiation;
3. Pricing of the modification; or
4. Performance of the modification.

Contractor shall make available at its office at all reasonable times the materials described in the paragraphs above.

If this contract is completely or partially terminated, the records relating to the work terminated shall be made available for 3 years after any resulting final termination settlement.

The State of Michigan, upon request, shall have access to any and all records pertaining to State accounts compiled during the term of the Contract.

## 2.805 CHANGES

(a) The Contract Administrator may, at any time, without notice to the sureties, if any, by written order designated or indicated to be a change order, make changes in the work within the general scope of the contract, including changes:

- (1) In the specifications (including drawings and designs);
- (2) In the method or manner of performance of the work;
- (3) In the State-furnished facilities, equipment, materials, services, or site; or
- (4) Directing acceleration in the performance of the work.

(b) Any other written or oral order (which, as used in this paragraph (b), includes direction, instruction, interpretation, or determination) from the Contract Administrator that causes a change shall be treated as a change order under this clause; Provided, that the Contractor gives the Contract Administrator written notice stating:

- (1) The date, circumstances, and source of the order; and
- (2) That the Contractor regards the order as a change order.

(c) Except as provided in this clause, no order, statement, or conduct of the Contract Administrator shall be treated as a change under this clause or entitle the Contractor to an equitable adjustment.

## 2.806 LIABILITY INSURANCE

### A. 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 coverage provided relative to this Contract/Purchase Order is PRIMARY and NON-CONTRIBUTING to any comparable liability insurance (including self-insurances) carried by the State.

The insurance 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. Companies that have been approved to do business in the State shall issue all policies of insurance required in this Contract.

See [www.michigan.gov/cis](http://www.michigan.gov/cis)



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 both parties sign the Contract or before the purchase order is issued by the State, the Contractor must furnish to the Director of DMB, 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 coverage afforded under the policies WILL NOT BE CANCELLED, MATERIALLY CHANGED, OR NOT RENEWED without 30 days prior written notice, except for 10 days for non-payment of premium, having been given to the Director of DMB. The notice must include the Contract or Purchase Order number affected and be mailed to: Director, 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 a self-insurer provides the applicable coverage, proof must be provided of approved self-insured authority by the jurisdiction of domicile. For employees working outside of the state of qualification, Contractor must provide appropriate certificates of insurance proving mandated coverage levels for the jurisdictions where the employees' activities occur.

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

The Contractor also agrees to provide evidence that insurance policies contain a waiver of subrogation by the insurance company. This provision 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 Office of DMB 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 insured, but only to the extent of liabilities assumed by Contractor as set forth in Indemnification Section of this Contract, 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.