

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

December 8, 2011

CHANGE NOTICE NO. 2
TO
CONTRACT NO. 071B8200064
between
THE STATE OF MICHIGAN
and

NAME & ADDRESS OF CONTRACTOR Christian Oil Company 2589 30TH Street Allegan, MI 49010 ahartman@christianoilcompany.com	TELEPHONE (269) 673-2218 Aaron Hartman
	VENDOR NUMBER / MAIL CODE
	BUYER / CA (517) 241-1916 Jim Wilson
Contract Compliance Inspector: Tom Godbold (517) 241-1545 Pre-Qualification - Gas and Oil Well Plugging, Drilling, Re-drilling and Site Restoration Office of Geological Survey (OGS) – Department of Environmental Quality (DEQ)	
CONTRACT PERIOD: From: January 1, 2008 To: December 31, 2012	
TERMS <p style="text-align: center;">See Below</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 immediately, this Contract is hereby EXTENDED to December 31, 2012. Please note the buyer changed to Jim Wilson.

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

AUTHORITY/REASON:

Per agency request, Contractor agreement, and DTMB Procurement approval.

ESTIMATED CONTRACT VALUE REMAINS: \$6,000,000.00

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

February 4, 2008

**CHANGE NOTICE NO. 1
 TO
 CONTRACT NO. 071B8200064
 between
 THE STATE OF MICHIGAN
 and**

NAME & ADDRESS OF CONTRACTOR Christian Oil Company 2589 30TH Street Allegan, MI 49010 christianoil@allegan.net	TELEPHONE (269) 673-2218 Aaron Hartman VENDOR NUMBER / MAIL CODE BUYER / CA (517) 373-8622 Malynda Little
Contract Compliance Inspector: Tom Godbold (517) 241-1545 Pre-Qualification - Gas and Oil Well Plugging, Drilling, Re-drilling and Site Restoration Office of Geological Survey (OGS) – Department of Environmental Quality (DEQ)	
CONTRACT PERIOD: From: January 1, 2008 To: December 31, 2011	
TERMS <p style="text-align: center;">See Below</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 immediately, the Contractor’s electronic address is hereby **CHANGED** to:

christianoil@allegan.net

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

AUTHORITY/REASON:

Per DMB/Purchasing Operations.

ESTIMATED CONTRACT VALUE REMAINS: \$6,000,000.00

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

January 23, 2008

**NOTICE
 TO
 CONTRACT NO. 071B8200064
 between
 THE STATE OF MICHIGAN
 and**

NAME & ADDRESS OF VENDOR Christian Oil Company 2589 30TH Street Allegan, MI 49010 <div style="text-align: right;">christianoil1@allegan.net</div>	TELEPHONE (269) 673-2218 Aaron Hartman <hr/> VENDOR NUMBER / MAIL CODE <hr/> BUYER / CA (517) 373-8622 Malynda Little
Contract Compliance Inspector: Tom Godbold (517) 241-1545 <p style="text-align: center;">Pre-Qualification - Gas and Oil Well Plugging, Drilling, Re-drilling and Site Restoration Office of Geological Survey (OGS) – Department of Environmental Quality (DEQ)</p>	
CONTRACT PERIOD: From: January 1, 2008 To: December 31, 2011	
TERMS <p style="text-align: center;">See Below</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>	

This document is a Contract which PRE-QUALIFIES vendor to provide services for *Plugging, Drilling, Re-drilling, and Site Restoration of Oil and Gas Wells in Michigan*. The terms and conditions of this Contract are those of DEQ Requisition # 761R7200535, Invitation-To-Bid # 071I8200001, the vendor's response dated 09/27/2007, and this Contract Agreement, and any subsequent, competitive request-for-quotation (RFQ) issued by the DEQ. In the event of any conflicts between the specifications and terms and conditions as indicated by the State, and those indicated by the vendor, those of the State shall take precedence. Orders for delivery of service will be issued directly by the DEQ via its RFQ process and project-assignment-award / purchase order.

Maximum, Not-To-Exceed Contract Value: \$6,000,000.00

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

**CONTRACT NO. 071B8200064
 between
 THE STATE OF MICHIGAN
 and**

NAME & ADDRESS OF VENDOR <p style="text-align: center;">Christian Oil Company 2589 30TH Street Allegan, MI 49010</p> <p style="text-align: right;">christianoil1@allegan.net</p>	TELEPHONE (269) 673-2218 Aaron Hartman <hr/> VENDOR NUMBER / MAIL CODE <hr/> BUYER / CA (517) 373-8622 Malynda Little
Contract Compliance Inspector: Tom Godbold (517) 241-1545 <p style="text-align: center;">Pre-Qualification - Gas and Oil Well Plugging, Drilling, Re-drilling and Site Restoration Office of Geological Survey (OGS) – Department of Environmental Quality (DEQ)</p>	
CONTRACT PERIOD: From: January 1, 2008 To: December 31, 2011	
TERMS <p style="text-align: center;">See Below</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>	
MISCELLANEOUS INFORMATION: <p>This document is a Contract which PRE-QUALIFIES vendor to provide services for <i>Plugging, Drilling, Re-drilling, and Site Restoration of Oil and Gas Wells in Michigan.</i> The terms and conditions of this Contract are those of DEQ Requisition # 761R7200535, Invitation-To-Bid # 071I8200001, the vendor's response dated 09/27/2007, and this Contract Agreement, and any subsequent, competitive request-for-quotation (RFQ) issued by the DEQ. In the event of any conflicts between the specifications and terms and conditions as indicated by the State, and those indicated by the vendor, those of the State shall take precedence. Orders for delivery of service will be issued directly by the DEQ via its RFQ process and project-assignment-award / purchase order.</p> <p style="text-align: center;">Maximum, Not-To-Exceed Contract Value: \$6,000,000.00</p>	

FOR THE VENDOR:

Christian Oil Company

 Firm Name

 Authorized Agent Signature

 Authorized Agent (Print or Type)

 Date

FOR THE STATE:

 Signature
Kristi L. B. Thompson, Division Director

 Name/Title
Services Division, Purchasing Operations

 Division

 Date



STATE OF MICHIGAN

**Department of Management and Budget's
Purchasing Operations**

for the

Department of Environmental Quality's Office of Geological Survey

CONTRACT # 071B8200064

PRE-QUALIFICATION

**for the Plugging, Drilling, Re-drilling, and Site Restoration of
Oil and Gas Well Services in Michigan**

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



Table of Contents

Article 1 – Statement of Work (SOW) 7

1.0 Project Identification 7

 1.001 PROJECT REQUEST 7

 1.002 BACKGROUND 7

1.1 Scope of Work and Deliverables 8

 1.101 IN SCOPE 8

 1.102 OUT OF SCOPE 8

 1.103 ENVIRONMENT 8

 1.104 WORK AND DELIVERABLE 9

1.2 Roles and Responsibilities 13

 1.201 CONTRACTOR STAFF, ROLES, AND RESPONSIBILITIES 13

 1.202 STATE STAFF, ROLES, AND RESPONSIBILITIES 14

 1.203 OTHER ROLES AND RESPONSIBILITIES – RESERVED 15

1.3 Project Plan 15

 1.301 PROJECT PLAN MANAGEMENT 15

 1.302 REPORTS 16

1.4 Project Management 16

 1.401 ISSUE MANAGEMENT – RESERVED 16

 1.402 RISK MANAGEMENT – RESERVED 16

 1.403 CHANGE MANAGEMENT 16

1.5 Acceptance 16

 1.501 CRITERIA 16

 1.502 FINAL ACCEPTANCE 17

1.6 Compensation and Payment 17

 1.601 COMPENSATION 17

 A. Payment / Reimbursement Method 17

 B. Contractor Invoicing Method 18

 C. Payment to State (from Bidding Salvage) 19

1.7 Additional Terms and Conditions Specific to this SOW 20

 1.701 DEQ’S REQUEST-FOR-QUOTATION PROCESS& PROJECT ASSIGNMENT: 20

Article 2 – General Terms and Conditions 21

2.010 Contract Structure and Administration 21

 2.011 Definitions 21

 2.012 Attachments and Exhibits 21

 2.013 Statements of Work 21

 2.014 Issuing Office 22

 2.015 Contract Compliance Inspector 22

 2.016 State Project Managers 23

2.020 Contract Objectives/Scope/Background – RESERVED 23

2.030 Legal Effect and Term 23

 2.031 Legal Effect 23

 2.032 Contract Term 23

 2.033 Renewal(s) 23

2.040 Contractor Personnel 24

 2.041 Contractor Personnel 24

 2.042 Contractor Identification – RESERVED 25

 2.043 Cooperation with Third Parties 25

 2.044 Subcontracting by Contractor 25

 2.045 Contractor Responsibility for Personnel 26

2.050 State Standards 26

 2.051 Existing Technology Standards 26

 2.052 PM Methodology Standards – RESERVED 26

 2.053 Adherence to Portal Technology Tools – RESERVED 26

 2.054 Acceptable Use Policy 26

2.060 Deliverables - RESERVED 26



2.070 Performance 27

 2.071 Performance, In General..... 27

 2.072 Time of Performance..... 27

 2.073 Liquidated Damages 27

 2.074 Bankruptcy 27

 2.075 Time is of the Essence - RESERVED..... 27

 2.076 Service Level Agreements (SLA's) RESERVED 27

2.080 Delivery and Acceptance of Deliverables - RESERVED..... 27

2.090 Financial 28

 2.091 Pricing 28

 2.092 Invoicing and Payment Procedures and Terms..... 28

 2.093 State Funding Obligation..... 28

 2.094 Holdback 28

 2.095 Electronic Payment Availability 28

2.100 Contract Management..... 29

 2.101 Contract Management Responsibility 29

 2.102 Problem and Contract Management Procedures 29

 2.103 Reports and Meetings – RESERVED 29

 2.104 System Changes – RESERVED 29

 2.105 RESERVED 29

 2.106 Change Requests – RESERVED 29

 2.107 Management Tools – RESERVED 29

2.110 Records and Inspections..... 29

 2.111 Records and Inspections..... 29

 2.112 Errors..... 29

2.120 State Responsibilities – RESERVED 30

2.130 Security..... 30

 2.131 Background Checks 30

2.140 RESERVED 30

2.150 Confidentiality..... 30

 2.151 Freedom of Information..... 30

 2.152 Confidentiality..... 30

 2.153 Protection of Confidential Information..... 31

 2.154 Exclusions 31

 2.155 No Implied Rights..... 31

 2.156 Remedies 31

 2.157 Security Breach Notification..... 31

 2.158 Survival 31

 2.159 Destruction of Confidential Information..... 32

2.160 Proprietary Rights..... 32

 2.161 RESERVED 32

 2.162 RESERVED 32

 2.163 Rights in Data..... 32

 2.164 Ownership of Materials 32

 2.165 Standard Software – RESERVED 32

 2.166 Pre-existing Materials for Custom Software Deliverables – RESERVED..... 32

 2.167 General Skills..... 32

2.170 Warranties and Representations..... 33

 2.171 Warranties and Representations 33

 2.175a DISCLAIMER 34

 2.175b Standard Warranties 34

 2.176 Consequences for Breach 34

2.180 Insurance..... 34

 2.181 Liability Insurance 34

2.190 Indemnification 37

 2.191 Indemnification 37

 2.192 Continuation of Indemnification Obligations 37

 2.193 Indemnification Procedures 38



2.200 Limits of Liability and Excusable Failure 38

 2.201 Limits of Liability 38

 2.202 Excusable Failure..... 39

 2.203 Disaster Recovery..... 39

2.210 Termination/Cancellation by the State 39

 2.211 Termination for Cause..... 39

 2.212 Termination for Convenience 40

 2.213 Non-Appropriation 40

 2.214 Criminal Conviction 41

 2.215 Approvals Rescinded 41

 2.216 Rights and Obligations Upon Termination 41

 2.217 Reservation of Rights..... 41

 2.218 Contractor Transition Responsibilities 42

 2.219 State Transition Responsibilities..... 42

2.220 Termination by Contractor 42

 2.221 Termination by Contractor 42

2.230 Stop Work..... 43

 2.231 Stop Work Orders 43

 2.232 Cancellation or Expiration of Stop Work Order 43

 2.233 Allowance of Contractor Costs..... 43

2.240 Reserved 43

2.250 Dispute Resolution 43

 2.251 In General 43

 2.252 Informal Dispute Resolution..... 43

 2.253 Injunctive Relief..... 44

 2.254 Continued Performance 44

2.260 Federal and State Contract Requirements..... 44

 2.261 Nondiscrimination..... 44

 2.262 Unfair Labor Practices..... 44

 2.263 Workplace Safety and Discriminatory Harassment 45

2.270 Litigation 45

 2.271 Disclosure of Litigation 45

 2.272 Governing Law 46

 2.273 Compliance with Laws 46

 2.274 Jurisdiction 46

2.280 Environmental Provision..... 46

 2.281 Environmental Provision 46

2.290 General..... 47

 2.291 Amendments 47

 2.292 Assignment 47

 2.293 Entire Contract; Order of Precedence..... 47

 2.294 Headings 47

 2.295 Relationship of the Parties (Independent Contractor Relationship)..... 47

 2.296 Notices 48

 2.297 Media Releases and Contract Distribution..... 48

 2.298 Reformation and Severability 48

 2.299 Consents and Approvals 49

2.300 No Waiver of Default 49

2.301 Survival 49

2.302 Covenant of Good Faith..... 49

2.303 Permits 49

2.304 Website Incorporation 49

2.305 Taxes..... 49

2.306 Prevailing Wage – RESERVED 49

2.307 Call Center Disclosure 49

2.308 Future Bidding Preclusion – RESERVED 50



2.310 Reserved 50
2.320 Extended Purchasing 50
 2.321 MiDEAL - RESERVED 50
 2.322 State Employee Purchases - RESERVED..... 50
2.330 Federal Grant Requirements..... 50
 2.331 Federal Grant Requirements 50



Article 1 – Statement of Work (SOW)

1.0 Project Identification

1.001 IDENTIFICATION

This document is a STATE OF MICHIGAN *CONTRACT* with CHRISTIAN OIL COMPANY, pre-qualifying this vendor to participate in and submit quotations competing for individual project awards, from 01/01/2008 through 12/31/2011 (with 2 options to extend in two-year increments), for a not to exceed, maximum total amount of \$6,000,000.00, when and if requested by the Department of Environmental Quality's Office of Geological Survey (DEQ – OGS), to deliver immediate and / or emergency services to plug, redrill, and complete site restoration for various oil and gas wells, remediate well sites, and perform other services related to the restoration of abandoned well sites, as needed and as may be directed by the State.

1.002 BACKGROUND

Michigan law requires the Supervisor of Wells (Supervisor) to administer and enforce all regulations pertaining to oil and gas wells and also requires the Supervisor to expend funds for the repair and site restoration of wells when appropriated. Specifically:

Public Acts 451 and 325 (as amended), *the Natural Resources and Environmental Protection Act (NREPA)*, Part 615, MCL 324.61506, *Supervisor of Wells, Powers and Duties*, states, in part, that the Well Supervisor has: "jurisdiction and authority over administration and enforcement of all matters relating to the conservation of oil and gas, which shall include the authority to ... (c) require the locating, drilling, deepening, **redrilling, or reopening, casing, sealing, operating, and plugging of wells drilled for oil and gas** ...; (f) to prevent fires or explosions; (g) prevent blow-outs, seepage, and caving-in, ... (h) regulate the mechanical, physical, and chemical treatment of wells...; (o) issue orders for the classifications of wells ...(and) for secondary recovery projects..."

Public Acts 451 and 325 (as amended), Part 616, MCL 324.61603, *Orphan Well Fund, Expenditures from fund*, states, in part, that the Supervisor:

"shall expend money ... upon appropriation for: (a) (the) plugging of abandoned or improperly closed oil or gas wells, or response activity, or site restoration at oil or gas wells for which no operator is known, for which all operators are insolvent, or ... (when) there exists an imminent threat to the public health and safety."

There are numerous gas and oil wells throughout the Lower Peninsula of Michigan that are "orphan" wells. Some of these wells were drilled before 1930, and some were not plugged or were plugged ineffectively or incorrectly by owners, or well containment materials finally degrade, leak, or erupt. These wells may leak, or are likely to start leaking, gas, oil, brine, or other field wastes, or contaminants, and then pose an environmental threat or pollution hazard, thus creating a threat to public health and safety, which must be addressed.

The State is unable to predict the exact volume of needed well plugging or drilling in any given year and unable to predict the exact level of need or restoration for any given project assignment (this depends on significance of leak, contaminants, field wastes, etc.). Therefore, this program requires a service contract which is based on service delivery as needed or as directed by the designated State On Site Coordinator(s) (OSC).

The service need (volume) and the risk to public health and safety require that requests for quotations be issued immediately and draw on a pool of contracted-vendors which can immediately submit a quotation and work plan to provide all services as needed. Thus a pre-qualified contractors' list historically has been utilized to provide these services through the competitive DEQ request-for-quotation process.

This solicitation is to determine the pre-qualified contractor's list of vendors who will compete for those individual DEQ well project assignments.

A bidder awarded a pre-qualified vendor contract under this solicitation, which is then subsequently selected for a well-project assignment, must provide all labor, materials, and equipment needed to successfully complete or advance the compliance status of the designated well(s) or well site(s), subject to the direction and priorities set by the State's DEQ OSC.



1.1 Scope of Work and Deliverables

1.101 IN SCOPE

Program goals and objectives for services include bringing any designated well and site into compliance by the:

- (1) Immediate plugging or redrilling of any orphan or unknown operator wells which become damaged or erupt or leak, or where a current operator fails to repair well or restore site;
- (2) Scheduled plugging / redrilling of any designated orphan well;
- (3) Site cleanup or restoration after plugging or redrilling.

The State is unable to predict the exact volume of needed well plugging or redrilling in any given year and unable to predict the exact level of need or restoration for any given project. Prior to 1927, no permit or registration system existed in Michigan, and there could be hundreds of wells that are unregistered or “orphaned,” which date from late 1800’s through the 1920’s, where the well containment materials finally degrade, leak, or erupt.

There are more than 100 wells currently listed on Michigan’s *Orphan Well List* (and this does not include any active, operator wells that could become damaged and leak or erupt, which may also require immediate repair, plugging, or redrilling, or site restoration).

The *Orphan Well List* includes (3) three risk categories:

- (1) Critical (leaking) [4 currently];
- (2) Non-leaking, registered wells (98 currently);
- (3) Plugged, but with possible environmental contaminants (20 currently).

1.102 OUT OF SCOPE

Out of scope activities or service(s) for this contract shall include:

- Specialized Environmental Remediation, to include (but not limited to):
 - Bio-Remediation
 - Soil Washing / Burning
 - Ground Water Investigation and Remediation
- Gas and Oil Gathering Lines (regulated by Public Service Commission [PSC])

1.103 ENVIRONMENT

The work environment for service delivery will be within the boundaries of the state of Michigan. **The individual project conditions and environment will vary: The environment and nature of the work to be completed under this contract is inherently dangerous and hazardous. It is critical that any Contractor, which accepts a well project assignment, have the ability, staffing, equipment, and all other resources as may be needed, to bring the well and / or site into the level of compliance as directed by the State. The time involved in properly plugging a well and removing any danger will vary depending on the well and site condition.**

Well-project priorities are determined by the designated DEQ OSC and are based on the relative danger or risk to the public, damage to the environment, and projected cost to complete an assignment. A “well-project assignment” may not require immediate plugging (or may have been previously plugged successfully), and it will therefore require the further, or the total, completion of the well abandonment or site restoration. Cleanup and restoration of the site after plugging may also be necessary.



This may include, but is not limited to: production equipment and flow line removal, and salvage, including the clean-out of tanks and disposal of wastes, including naturally occurring radioactive material (NORM); debris and fill removal; leveling and re-contouring of the well site and access road; water well plugging; drilling pit retirement, including proper fluid disposal, solidification, as necessary, and encapsulation; and the cleanup of spills, including possible removal of contaminated soils.

Some wells have problems such as collapsed casing or caved holes. Debris of various sorts may have been put down the holes over the years. Some sites may necessitate that the Contractor bring in the equipment and the fill necessary to construct access to a well site and a platform from which to work.

Contractor must take every precaution to avoid damage to life and property during the period of time required to execute and complete the work required to bring a well and/or site into compliance. Every precaution must be taken to avoid spillage of oil or brine or other environmental containments onto the surface at each location. Should gas in explosive or dangerous quantities be encountered, then special precautions must be taken to eliminate the hazard of fire or explosion and eliminate the hazard of any harmful effect it could have on life and/or property. (Avoidable damage, of any nature, incurred as a result of work done on any of these projects, regardless of whether by Contractor or by any of its Sub-Contractors, shall be repaired or replaced at the expense of Contractor, as determined by the On-Site-Coordinator (OSC). This shall include (but is not limited to) growing crops or other damage by project activities. See § 1.5, *Acceptance*.)

1.104 WORK AND DELIVERABLE

Contractor shall provide deliverables, services, and staff, and otherwise do all things necessary for or incidental to the performance of work, as set forth below, and pursuant to Article 2, §2.072, *Time of Performance*.

However, the following description of service(s) and tasks are the minimum requirements for this contract, and the well or site conditions could require other or additional specific actions or even render some of the listed-tasks unnecessary. The following list is not all-inclusive. Contractor may supplement this listing with additional steps, subtasks, or elements, as necessary, to permit the development of alternative approaches or the application of proprietary analytical techniques, in its final work-plan for a given project assignment.

Final determination of the site-priorities for any given project shall be made by the DEQ – On Site Coordinator (OSC) to achieve the State’s program goals and objectives. Successful completion of these tasks will be determined and verified by the assigned OSC.

Contractor shall, at a minimum, satisfy all federal, state, and local statutes, regulations, ordinances, policies, etc., regarding health and safety while delivering services.

Contractor must also utilize all American Petroleum Industry (API) *Recommended Practices (RP’s) and Standards* while providing services as precautions to prevent any avoidable contaminant release to the environment. Any such contaminant release(s) shall be cleaned up, with the site restored, pursuant to the direction and final approval of the OSC.

- A. Successfully complete the plugging of the designated well(s) according to instructions provided by the OSC. Plugging operations include site preparation as necessary before plugging commences. The Contractor shall assure that adequate equipment is installed on the wellhead so that well control is maintained at all times. Minimum well plugging standards employed by the Office of Geological Survey are:**
- i. The radiation level of well casings, tubulars, and down-hole equipment from the well-bore and miscellaneous substances, soils, or equipment generated on-site during the plugging operation shall be determined immediately prior to plugging the well or during the well plugging operation. The testing protocol and instruments to be used shall be according to *Supervisor of Wells Instruction 1-92*.
 - ii. Casing, tubing, and foreign material shall be removed from the well sufficiently to conform to the requirements of Part 615, of the *Natural Resources and Environmental Protection Act (NREPA)* and all rules promulgated from this.



- iii. Annular space behind casing should be avoided where possible and uncovered strings should be perforated and cement squeezed at required intervals.
- iv. Plugging material shall be neat cement, conditioned with or without additives, mechanical or electric plugs, mud-laden fluid, a combination thereof, or other materials as approved by the OSC.
- v. Water used in mixing cement must be from a source approved by the OSC.
- vi. Plugging fluid or mud-laden fluid shall be placed in all portions of the well not filled with cement unless otherwise approved by the OSC. Specific mud weight requirements if necessary will be identified in the plugging instructions furnished by the OSC.
- vii. Plugging material (cement or mud) shall be placed by the balanced in method through small diameter pipe or tubing except where otherwise approved by the OSC. Wherever possible, the well will be circulated at least once prior to placing plugs in the hole to establish static mud conditions.
- viii. The well shall be plugged under static hole conditions at all times unless otherwise approved by the OSC.
- ix. Each cement plug, except the bottom hole plug, the plug to be set at the base of the surface casing, and the surface plug shall be a minimum of 200 feet in length or contain 50 sacks of cement, whichever is the greater volume of cement; unless otherwise approved by the OSC.
- x. Each cement plug, except the bottom hole plug and the plug to be set at the base of the surface casing shall be allowed to set undisturbed for a minimum of one (1) hour and shall have the fluid level in the casing continuously observed. If the observed fluid level in the casing drops during the hour, the cement plug shall be tagged to insure the plug is still in place before setting the next plug up-hole. If the plug is found not to be in place, the plug shall be reset.
- xi. The bottom-hole cement plug shall be a minimum of 200 feet in length, shall be allowed to set undisturbed for a minimum of four (4) hours, shall have reached a compressive strength of 100 psi or greater, and shall be tagged to insure it is still in place before setting the next plug up-hole; or the Contractor shall set a mechanical bridge plug or other approved bridge and place a minimum of 50 feet of cement on the bridge before setting the next plug up-hole.
- xii. The plug to be set at the base of the surface casing shall be set under one of the following methods as approved by the OSC:
 - (a) In static-hole conditions, a cement plug shall be set at a minimum of 100 feet below the surface casing and shall extend a minimum of 100 feet into the surface casing. The cement plug shall be allowed to set undisturbed a minimum of four (4) hours, shall have reached a compressive strength of 100 psi or greater, and shall be tagged to insure it is still in place before setting the next plug up-hole. If the plug is found not to be in place the plug shall be reset.
 - (b) A mechanical open-hole bridge plug or other approved bridge shall be set a minimum of 100 feet below the surface casing. A cement plug shall then be placed on the mechanical open hole bridge plug or other approved bridge. This cement plug shall extend a minimum of 100 feet into the surface casing, unless otherwise approved by the OSC.
- xiii. A cement surface plug shall be set a minimum of 30 feet below the surface and within five (5) feet of the surface unless otherwise approved by the OSC.
- xiv. If surface casing is not present, a mechanical open-hole bridge plug or other approved bridge shall be set a minimum of 100 feet below the base of the glacial drift or 100 feet below the deepest fresh water stratum, whichever is the greater depth and cement circulated to within five (5) feet of the surface.



- xv. The surface pipe or drive pipe abandoned with the hole shall be cut off at a point not less than four (4) feet below grade unless otherwise authorized by the OSC. A half-inch (½”) steel welded plate or other type seal approved by the OSC shall be placed across the top of the pipe or pipes. The permit number of the well or other identifications designated by the OSC shall be permanently affixed to the plate or approved seal at the top of the well.
- xvi. At the option of the OSC, the well bore may be plugged from bottom to top with a material approved by the Supervisor of Wells, providing that, at no time, the hydrostatic-pressure of the material used exceeds the fracturing pressure of the strata.
- xvii. All other holes (e.g., rat and mouse holes) shall be solidly filled from bottom to top with cement or other suitable material, as approved by the OSC, so that they will not cave or slump in.
- xviii. Equipment used must be maintained so that it fulfills the intended purpose for the **project** (also see Article §2.072, *Time of Performance*); e.g., it must be safe, clean, and function well, relative to the project conditions, and must keep minimum noise levels, etc.
- xix. Contractor shall file, within 60 days, after plugging the final plugging forms and certified copies of the service company records which shall include, but are not limited to, the following:
 - a. Type of cement and number of sacks used, including the percentages of additives for each cement bridge plug.
 - b. Type and volume of plugging material used, if not cement.
 - c. Number of bridge plugs set in the hole and depth.
 - d. Other materials left in the hole.
 - e. Service companies records of cementing operations.
 - f. All available graphics showing pumping, placement of cement, weights, times, pump rates and other pertinent data dealing with the plugging operations.
 - g. Amounts and type of mix water used per sack of cement, if requested by the OSC.
 - h. Volume and types of spacers and flushes used.
 - i. Contractor’s daily plugging records.

B. Successfully complete the retirement and leveling of the drilling pit(s) as necessary. Possible measures to be taken are summarized as follows:

- i. Test the fluids and cuttings remaining in the pit, prior to encapsulation, to determine the concentrations of chloride, benzene, ethylbenzene, toluene, and xylene, and provide certification to the OSC of the test results, except the Contractor shall not be required to test the fluids and cuttings remaining in a pit for benzene, ethylbenzene, toluene, and xylene if the well was drilled with fresh water and during the drilling operation did not encounter liquid hydrocarbons.
- ii. Solidify the pit contents for all pits, where the fluids and cuttings remaining in the pit for encapsulation have a chloride concentration of at least 5,000 ppm and not more than 15,000 ppm, using a solidification method approved by the OSC. Pits having a chloride concentration of over 15,000 ppm will be treated as directed by the OSC.
- iii. Stiffen the pit contents for all pits, where the fluids and cuttings remaining in the pit for encapsulation have chloride concentration of less than 5,000 ppm, using pit-stiffening methods approved by the OSC.



- iv. Close the mud-pit and meet the following minimum requirements:
 - a. All free liquids above the solids in the pit(s) shall be removed to the maximum extent practical and disposed in an approved disposal well or used in a manner approved by the supervisor.
 - b. All drilling mud pits shall be stiffened prior to encapsulation, except where solidification of the drilling mud pit is required. Earthen materials shall be mixed with the pit contents to stiffen it sufficiently to provide physical stability and support for the pit cover. An alternative pit stiffening process approved by the Supervisor of Wells may be required by the OSC.
 - c. Apron edges of the liner shall be folded over the pit proper.
 - d. Mud pit(s) shall be totally covered with a separate piece of material meeting or exceeding the specifications of a 20-mil virgin polyvinyl chloride cover as approved by the OSC. The cover shall extend beyond the outer edges of the pit(s) to cover and entirely encapsulate the pit(s) and shall be sloped to provide surface drainage away from the pit.
 - e. The mud-pit shall be buried not less than four (4) feet below original ground grade level.

C. Remove and, if possible, salvage any production equipment. This may include any of the following tasks:

- i. NORM: If required by applicable State or federal law, conduct a Naturally Occurring Radioactive Material (NORM) survey of the well site. Any NORM (material) found as a result of the Contractor's survey will be handled, stored, transported, used or recycled according to applicable law.
- ii. Tank and vessel cleanout: All oil contained in tanks or other vessels is to be sold for fair market value along with any oil collected during the well plugging phase of the project. The proceeds from the sale of oil will be deposited in escrow accounts by the purchaser or as directed by the OSC. Liquid wastes shall be handled and disposed of according to law. Sludge, tank bottoms, and other non-liquid wastes remaining in the vessels shall be removed. The Contractor shall estimate the volume of liquid and non-liquid wastes attributable to each well or battery and include these estimates in the project records. Wastes may be safely hauled to a temporary containment area as directed by the OSC. Steam cleaning of the tanks may be required.
- iii. Contaminated waste containment: If not immediately transported to an approved landfill, sludge, tank bottoms, and all other non-liquid wastes from the cleanout of equipment are to be placed into diked areas lined with 20 mil pvc plastic and covered so that rain water will not accumulate in the diked areas.
- iv. Equipment set aside: Equipment need not be gathered to a central location unless, in the judgment of the OSC, greater efficiency in the subsequent sale of the equipment may be gained.
- v. Disposition of flowlines: Unless otherwise directed by the OSC, any piping less than 3 feet below grade is to be properly purged and removed for salvage or proper disposal. Any piping three (3) feet below grade or deeper is to be properly purged, cut off at least three (3) feet below grade with the ends properly sealed. Wastes are to be handled the same as tank wastes. By "flowline" the State means a pipe for the transmission of fluids from/to a well to/from a tank, tank battery, or common pipeline (sales line) manifold. "Flowline" does not include a purchaser's gathering lines, manifolds, etc.
- vi. Inventory: Unless otherwise directed by the OSC, the Contractor shall make two distinct inventories of all equipment to be sold or disposed of. One inventory must be well by well and tank battery by tank battery; listing separately all of the equipment at a particular well site or tank battery. The second inventory must be by equipment category i.e. tanks, casing, pump-jacks, etc. The inventories shall include item descriptions, amount, and condition, and identification numbers.



- vii. Bid and sale of equipment / salvage:
- Contractor shall make all arrangements for the sale of the salvaged equipment and shall oversee the removal of same from the project area.
 - Unless otherwise directed by the OSC, the sale shall be under the following conditions: The sale shall include all well equipment including pumpjacks, pumps, rods, tubing, wellheads, casing, tanks, separators, flowlines, etc.
 - Contractor shall solicit at least three (3) bids on an “as is, where is” basis for all items, including reusable, scrap metal, and junk for disposal, and sell to the highest bidder with payment to the State of Michigan.
 - Bids must be reviewed and approved by the OSC.
 - Bids may be taken separately for each category of equipment, such as pumpjacks.
 - The high bidder must submit, to the Contractor, full payment and a detailed inventory of the equipment purchased, within five (5) days after bid acceptance and must remove all equipment under the surveillance of the Contractor no later than five (5) days after payment is made.
 - Reimbursement for any salvage must be made by check payable to “State of Michigan.”
 - The project-Contractor may not bid on salvage equipment.
 - Contractor agrees that it shall not collect any commission for the salvage sale nor charge any storage, handling, or transportation fees.

- viii. Salvage removal and disposal: Any equipment not salvaged and all debris resulting from the plugging activities are to be removed from the well site and disposed of in the most economical DEQ approved landfill.

D. Restore the well site, flow-line routes, and access road. Along with Task B above, if necessary; this task will involve:

- i. Filling and leveling the well cellar and any other excavations.
- ii. Removing all debris, wastes, and excess fill material.
- iii. Re-contouring the well site and road as nearly as possible to the original or to a condition acceptable to the OSC.
- iv. Stabilizing of erodible slopes with vegetation and / or mulch.
- v. Plugging and abandoning, properly, of the well site water well(s).

E. Testing of soils to determine the level of organic and inorganic contamination and removal or remediation of contaminated soils as directed by the OSC.

F. Emergency response involving any of the above tasks.

G. Preliminary site investigation and work plan development for prospective contract projects. This is a planning effort to compile existing well data and to plan operations, budgets, and schedules.

H. Remedial investigations and subsequent response activities. These tasks are not planned during the term of this contract, however, the Contractor may be required to provide these services if particular site circumstances warrant such.

I. Invoice the Office of Geological Survey for services deliver, per § 1.601(B), *Contractor Invoicing*.

1.2 Roles and Responsibilities

1.201 CONTRACTOR STAFF, ROLES, AND RESPONSIBILITIES

For any project assignment award accepted, Contractor must provide enough staff and appropriate personnel who possess ability and expertise in the field of oil and gas well plugging / re-plugging and redrilling services, as described in the specifications of this Contract and any subsequent Requests for Quotation or project specification(s) issued under this Contract by the DEQ-OGS.



Pursuant to Article § 2.041, *Personnel*, **Contractor's Key Staff** are subject to final approval by the State and shall also include at least the following per project assignment:

- **Project Manager:** Minimum experience shall include not less than 10 years of directly related field experience and not less than seven (7) years of experience managing projects directly related to this service. This role must be filled by the Company representative who shall be responsible for issuing the final contractor-approval regarding the Company's final quotation, staff assignment, equipment, subcontractors, and work plan(s).
- **Site Supervisor:** Minimum experience shall include not less than seven (7) years of directly related field experience and not less than three (3) years of prior experience working as a site supervisor for well-drilling/plugging (may or may not be project manager). This key-staff shall be located on-site and shall directly manage implementation of State OSC's approved work plan, and manage the Contractor's crew-staff, equipment and supplies, and all scheduling, including subcontractor scheduling, for the project assignment.
- **Driller / Operator(s):** Minimum experience shall include not less than five (5) years of directly related field experience and not less than three (3) years of prior experience operating a rig. This key-staff shall operate the drill rig.
- **Crew**, providing on-site labor, including but not limited to:
 - Rig-hand(s) (no minimum experience required);
 - Roustabout(s) (no minimum experience required).

1.202 STATE STAFF, ROLES, AND RESPONSIBILITIES

A. Contract Compliance Inspector for Department of Environmental Quality:

Godbold, Thomas, Supervisor
Office of Geological Survey
Department of Environmental Quality
South tower, 1st Floor
525 W. Allegan Street
P.O. Box 30256
Lansing, MI 48909-7756
Tel: (517) 241-1544
E-mail: godboldt@michigan.gov

B. Project Manager(s) and On Site Coordinator(s) [OSC] for Department of Environmental Quality:

- **Jankowski, Paul**, Geologist
Orphan Well Program
Office of Geological Survey
Department of Environmental Quality
525 West Allegan Street – 1 South
P.O. Box 30256
Lansing, MI 48909-7756
Tel: (517) 335-6387
E-mail: jankowskp@michigan.gov
- **Schineman, Louis**, Geologist
Orphan Well Program
Office Geological Survey
Department of Environmental Quality
525 West Allegan Street – 1 South
P.O. Box 30256
Lansing, MI 48909-7756
Tel: (517) 241-1531
E-mail: schineml@michigan.gov



The DEQ OSC, or another officially designated DEQ representative, will be available on the site when consultation is needed during the service delivery activities. Specifically, the OSC is empowered to:

1. Receive, evaluate, and issue final recommendation to the State's Contract Compliance Inspector, all contractor bid-responses to the DEQ's Request for Quotation for any project assignment.
2. Meet with the Contractor prior to the start of any work to discuss and finalize the Contractor's project work plan.
3. Direct and require the reassignment of Contractor's personnel or Subcontractors on given project assignment, pursuant to Article-2, §2.040, *Contractor Personnel*.
4. Require and approve any specific pieces of equipment proposed for use on any project assignment (even after acceptance of initial work plan) [e.g., on higher profile projects, the equipment used must be safe, clean, and function well, relative to the project conditions, must keep minimum noise levels, etc.].
5. Modify and approve Contractor's implementation of project specifications, project directions, plugging instructions, pit retirement, salvage, or treatment of naturally occurring radioactive material (NORM).
6. Receive and approve daily progress reports from the Contractor.
7. Review and approve (via signature) invoices for work performed under the provisions of this contract.
8. Inspect service delivery to insure that individual project assignment specifications are met. If any disputes arise between the Contractor and the OSC, the OSC has the authority to suspend the delivery of services.
9. Determine Contractor's culpability and responsibility for any damages that may occur in the process of service delivery.
10. Provide certification to the Contract Compliance Inspector that all project work has been completed to the State's satisfaction.

1.203 OTHER ROLES AND RESPONSIBILITIES – RESERVED

1.3 Project Plan

1.301 PROJECT PLAN MANAGEMENT

- a. Contractor will carry out this project under the direction and control of the DEQ-OGS.
- b. There must be continuous liaising with the Contractor during the period of this contract and particularly during any given project assignment. The OSC will meet on site with the Contractor's project manager for initial review of the Contractor's work plan prior to beginning service delivery and periodically, as needed, during any service activities. The meetings will provide for reviewing progress and providing necessary guidance to the Contractor regarding the timing of activities and solving issues or problems.
- c. The Contractor's site supervisor, or other designated personnel, will be available on site to the maximum extent possible, and will provide to the OSC a brief, written daily log of progress which outlines the work accomplished, personnel and equipment utilized on-site for that day, and any costs incurred, as well as notification of any significant deviation from previously agreed upon work plans. Problems, real or anticipated, must be brought to the immediate attention of the OSC.



1.302 REPORTS

Contractor shall provide the following reports when and as directed by the DEQ-OGS' OSC:

- Response and Quotation to the DEQ - OGS Request-For-Quotation
- Final Project Work Plan (Reviewed and approved by the OSC prior to service delivery)
- Daily Progress Report: The Contractor or the Contractor's site supervisor will provide the OSC a brief, written daily log of progress which outlines the work accomplished, including field tickets, that describe personnel and equipment on-site and all costs incurred.
- Monthly or Weekly Invoice (as directed by the OCS)
- Record of Well Plugging or Change of Well Status
- Final Invoice

1.4 Project Management

1.401 ISSUE MANAGEMENT – RESERVED.

1.402 RISK MANAGEMENT – RESERVED.

1.403 CHANGE MANAGEMENT

A. **Change to Project Work Plan:**

Any change to an approved project work plan shall be determined on an individual project basis, as needed, and shall be subject to review and final approval by the DEQ On-Site Coordinator (OSC).

B. **Change to this Contract:**

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

1.5 Acceptance

1.501 CRITERIA

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

- Services provided sufficiently so that the well or site (for a project assignment) comply with all requirements of Part 615, of the *Natural Resources and Environmental Protection Act* (NREPA) and all other rules promulgated therefrom.



- Services provided consistent with American Petroleum Industry (API) *Recommended Practices (RP's) and Standards*;
- Services delivered within the minimum descriptions included in § 1.104, *Work and Deliverables*, and adjusted as needed, to complete additional or evolving project assignment specifications;
- Services delivered within the time-frames identified in DEQ's project specifications (also see Article 2, §2.072, *Time of Performance*);
- Avoidable damage, of any nature, incurred as a result of work done (whether by Contractor or Subcontractor), repaired or replaced as directed by OSC;
- Managed and scheduled subcontractor(s) according to project specifications and adjusted as needed to satisfactorily complete project;
- Equipment provided is maintained and serviced by Contractor so that needs of a project assignment are fulfilled timely and according to DEQ specifications (i.e., equipment is well maintained and operational, as needed and as required, so that time-loss for delivery of service or specific task(s) is minimal and so that the overall project is completed on-time and per above-criteria);
- Daily Progress Reports completed so that each are available for immediate reconciliation and verification by the DEQ OSC;
- Invoices submitted at least weekly or as requested by DEQ OSC;
- *Record for Well Plugging* (DEQ form EQP-7200-08) filed within 60 days from project completion.

1.502 FINAL ACCEPTANCE

Final acceptance of a project's services and deliverables is achieved when:

- A. OSC certifies that all work associated with the project is completed, records have been submitted to the State's satisfaction, and any required guarantees have been provided by Contractor; and
- B. Proof, identified by project name and invoice number, is received by the OSC and Contract Compliance Inspector that all subcontractors associated or connected with the work on the project assignment have been paid in full; and
- C. Proof is received by the Contract Compliance Inspector that all entities which incurred damage or loss (e.g., owners of property, including growing crops damaged by contract activities, etc.), have been reimbursed by Contractor, as directed by the OSC.

1.6 Compensation and Payment

1.601 COMPENSATION

A. Payment / Reimbursement Method

Contractor agrees that –

1. CONTRACT is a FIXED, not to exceed, maximum total amount of **\$6,000,000.00**, for the original contract-effective period.
2. Reimbursement method for services shall include both a rate per unit of service and cost-based (time and materials) charges, pursuant to the budget document submitted by the Contractor during the DEQ's competitive Request for Quotation process, for award of an individual project assignment.
3. Payment to Contractor for services shall be processed by electronic funds transfer (EFT), pursuant to § 2.095, *Electronic Payment Availability*.



4. Contractor shall have the opportunity to modify its prices only during the DEQ's competitive bidding process for each individual project assignment. The unit rate(s) and costs quoted by Contractor for a well-project assignment, shall remain FIXED for the life of that assignment once accepted by the State, *except as follows*:
 - a. A request for change(s) shall be based only on change(s) in actual costs for the delivery of services necessary and required to achieve DEQ program goals and objectives and must include documentation to substantiate any such requested change(s).
 - b. DEQ reserves the right to consider additional, various pertinent information or sources to evaluate price increase requests (including but not limited information such as needed emergency equipment, etc.).
 - c. DEQ also reserves the right to consider other information related to special economic and/or industry market circumstances, when evaluating a price change request.
 - d. DEQ reserves the right to deny Contractor's request for a rate-change, and have the original, quoted rates remain in effect for the life of the project assignment.
 - e. Changes may be either increases or decreases, and may be requested by either party.
 - f. Requests for price changes shall be RECEIVED IN WRITING and are subject to written acceptance and approval by the State before becoming effective.
 - g. In the event new prices are not acceptable, the award of the individual project assignment may be cancelled or withdrawn by the State.
 - h. Any changes approved by DEQ shall be firm and fixed for the remainder of that project period unless further revised by the DEQ during the course of service delivery for that project.
 - i. The continued payment for any charges due after September 30th of any State fiscal year for completion of an individual project assignment (awarded in the prior fiscal year) will be subject to the continued availability of the appropriated funds for this purpose; also see § 2.093.

C. Contractor Invoicing Method

1. All Contractor-invoices must be submitted to DEQ within 30 days after project completion.
2. All invoices shall reflect only actual work completed (that was pre-approved by DEQ's OSC).
3. Preliminary planning work must be invoiced separately from all other units of service or costs.
4. All original invoices detailing actual work performed by the Contractor and Subcontractor(s) shall be submitted to the DEQ's OSC, for verification of service delivery and approval.
5. Invoices must include:
 - This Contract number;
 - Official project name;
 - Individual site name, with permit number (if any);
 - DEQ Purchase Order number; and, also must include
 - Units of Service and Costs:
 - Daily, separately itemized individual units of service and costs, with a sub-total for each category, as applicable, for the following:



- DEQ requested planning work;
 - Response Activity (e.g., wellhead replacement, etc.);
 - Well Plugging and/or Redrilling;
 - Site Restoration; and
 - Travel expenditures,
(Expenditures must be separately itemized for meals, lodging, and mileage, respectively).
6. **Travel:** Travel reimbursement to Contractor must follow and is subject to State travel regulations and **cannot exceed the rates established for State employees; such costs must also be pre-approved by the DEQ OSC.**
7. **Holdback and Final Payment:** Payment will be made on approved invoices for up to 80% of the invoice total for services provided at the specified site. The remaining 20% of each invoice shall be retained and released only upon final State acceptance, pursuant to § 1.502, *Final Acceptance* of service delivery, and pursuant to § 2.094, *Holdback*.
8. For the month of September, invoices for a project shall be submitted by Contractor as directed by the DEQ-OSC, DEQ-CCI, or the State Buyer or Contract Administrator to meet fiscal year-end closing due dates or other requirements.
9. If the billing is not received as set forth above, no payment shall be made by the State for that billing period unless an exception is specifically authorized by the DEQ Department Director or his/her delegated representative.

C. Payment to State (from Bidding Salvage)

Reimbursement to the State for any salvage must be made by check that is payable to "State of Michigan" (with the project assignment clearly referenced) and directly submitted to the:
Department of Environmental Quality
Office of Geological Survey
ATTN: Budget Unit
525 West Allegan Street
P.O. Box 30256
Lansing, MI 48909-7756.



1.7 Additional Terms and Conditions Specific to this SOW

1.701 DEQ'S REQUEST-FOR-QUOTATION PROCESS & PROJECT ASSIGNMENT:

A. Request for Quotation:

Contractor is formally pre-qualified and allowed to competitively bid and respond to requests-for-quotations (RFQ) issued from the Michigan Department of Environmental Quality (DEQ), Office of Geological Survey (OGS) to provide well plugging, redrilling, and site restoration services. Instructions for how to participate in this competitive process shall be determined and issued by DEQ-OGS (e.g.: requirements to provide information regarding status of available equipment or subcontractors; pricing and related information; requirements to attend pre-bid meetings; etc.).

B. Acceptance of Project Assignment Award:

As a condition of competing for, or accepting award of, any individual project assignment, this pre-qualified Contractor agrees that it may also be required by the DEQ-OSC to perform the following functions as a part of providing its well plugging/redrilling service described in § 1.104, *Work and Deliverable*:

1. Provide all information, activities, tasks, and services within the time frames required by the RFQ, evolving job specifications, site priorities, or as may be directed by the DEQ-OSC, to achieve the State's program goals and objectives;
2. Attend a pre-job site visit meeting, as requested:
 - DEQ-OSC will provide notification of the date, time, and location of any scheduled meeting(s) and indicate whether meeting attendance is mandatory or optional;
 - The purpose of the pre-job site meeting is so that Contractor can familiarize itself with a project through a field review; each project's pre-job meeting will be held for the purpose of reviewing and discussing the specifications for that individual project in detail;
3. Supply all information for any additional requirements or qualifications that may be added to the specifications for completion of any well project assignment, if it is determined by the DEQ that such modifications are in the best interest of the State or will further the Departmental program goals or objectives;
4. Comply with any modification of the project specifications issued by the DEQ, which may be based on the information received from and pursuant to all or any of the approved Contractors which are given consideration under the DEQ competitive RFQ process for award of an individual project assignment.



Article 2 – General Terms and Conditions

2.010 Contract Structure and Administration

2.011 Definitions

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

- (a) "Days" means calendar days unless otherwise specified.
- (b) "24x7x365" means 24 hours a day, seven days a week, and 365 days a year (including the 366th day in a leap year).
- (c) "Additional Service" means any Services/Deliverables within the scope of the Contract, but not specifically provided under any Statement of Work, that once added will result in the need to provide the Contractor with additional consideration. "Additional Service" does not include New Work.
- (d) RESERVED.
- (e) "Audit Period" has the meaning given in **Section 2.111**.
- (f) "Business Day," whether capitalized or not, shall mean any day other than a Saturday, Sunday or State-recognized legal holiday (as identified in the Collective Bargaining Agreement for State employees) from 8:00am EST through 5:00pm EST unless otherwise stated.
- (g) "Incident" means any interruption in Services.
- (h) "Business Critical" means any function identified in any Statement of Work as Business Critical.
- (i) "Deliverable" means physical goods and/or commodities as required or identified by a Statement of Work
- (j) "Key Personnel" means any Personnel designated in **Article 1, Section 1.201**, as Key Personnel.
- (k) "New Work" means any Services/Deliverables outside the scope of the Contract and not specifically provided under any Statement of Work, that once added will result in the need to provide the Contractor with additional consideration. "New Work" does not include Additional Service.
- (l) "Services" means any function performed for the benefit of the State.
- (m) "State Location" means any physical location where the State performs work. State Location may include state-owned, leased, or rented space.
- (n) "Subcontractor" means a company that Contractor delegates performance of a portion of the Services to, but does not include independent contractors engaged by Contractor solely in a staff augmentation role.
- (o) "Work in Process" means a Deliverable that has been partially prepared, but has not been presented to the State for Approval.

2.012 Attachments and Exhibits

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

2.013 Statements of Work

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



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

(c) Reserved.

(d) The initial Statements of Work, as of the Effective Date, are attached to this Contract.

2.014 Issuing Office

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

Malynda Little, Buyer
Purchasing Operations – Business Services Administration
Department of Management and Budget
Mason Bldg, 2nd Floor
PO Box 30026
Lansing, MI 48909
Tel: (517) 373-8622
E-mail: littlem3@michigan.gov

2.015 Contract Compliance Inspector

Upon receipt at DMB Purchasing Operations of the properly executed Contract, it is anticipated that the Director of DMB Purchasing Operations, in consultation with Department of Environmental Quality, will direct that the person named below, or any other person so designated, be authorized to monitor and coordinate the activities for the Contract on a day-to-day basis during its term. However, monitoring of this Contract implies **no authority to change, modify, clarify, amend, or otherwise alter the prices, terms, conditions and specifications of such Contract as that authority is retained by the Office of Purchasing Operations.**

The Contract Compliance Inspector for this Contract is:

Thomas Godbold, Supervisor
Office of Geological Survey
Department of Environmental Quality
South tower, 1st Floor
525 W. Allegan Street
P.O. Box 30256
Lansing, MI 48909-7756
Tel: (517) 241-1544
E-mail: godboldt@michigan.gov

**2.016 State Project Managers**

The following individuals will oversee the individual project assignments on a day-to-day basis as the State's **On Site Coordinators**:

Paul Jankowski, Geologist
Orphan Well Program
Office of Geological Survey
Department of Environmental Quality
525 West Allegan Street – 1 South
P.O. Box 30256
Lansing, MI 48909-7756
Tel: (517) 335-6387
E-mail: jankowskp@michigan.gov

Louis Schineman, Geologist
Orphan Well Program
Office Geological Survey
Department of Environmental Quality
525 West Allegan Street – 1 South
P.O. Box 30256
Lansing, MI 48909-7756
Tel: (517) 241-1531
E-mail: schineml@michigan.gov

2.020 Contract Objectives/Scope/Background – RESERVED

2.030 Legal Effect and Term

2.031 Legal Effect

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

2.032 Contract Term

This Contract is for a period of three (3) years, commencing on 01/01/2008 and ending on 12/31/2011. All outstanding Purchase Orders shall also expire upon the termination (cancellation for any of the reasons listed in 2.210) of the Contract, unless otherwise extended pursuant to the Contract. Absent an early termination for any reason, Purchase Orders issued but not expired, by the end of the Contract's stated term, will remain in effect for the balance of the fiscal year for which they were issued.

2.033 Renewal(s)

This Contract may be renewed in writing by mutual agreement of the parties not less than 30 days before its expiration. The Contract may be renewed for up to two (2) additional two-year periods (through 12/31/2015). Successful completion of negotiations surrounding the terms of the extension, will be a pre-requisite for the exercise of any option year.



2.040 Contractor Personnel

2.041 Contractor Personnel

(a) Personnel Qualifications. All persons assigned by Contractor to the performance of Services under this Contract shall be employees of Contractor or its majority-owned (directly or indirectly, at any tier) subsidiaries (or a State-approved subcontractor) and shall be fully qualified to perform the work assigned to them. Contractor shall include a similar provision in any subcontract entered into with a Subcontractor. For the purposes of this Contract, independent contractors engaged by Contractor solely in a staff augmentation role shall be treated by the State as if they were employees of Contractor for this Contract only; however, the State understands that the relationship between Contractor and Subcontractor is an independent contractor relationship.

(b) Key Personnel

(i) In discharging its obligations under this Contract, Contractor shall provide the named Key Personnel on the terms indicated. **Article 1.201** provides a description indicating the roles and minimum experience required of certain Key Personnel.

(ii) Key Personnel shall be dedicated as defined in **Article 1, or as may be approved by the State's On Site Coordinator for each individual project**, to the Project for its duration with respect to other individuals designated as Key Personnel for that Statement of Work.

(iii) The State will have the right to recommend and approve in writing the initial assignment, as well as any proposed reassignment or replacement, of any Key Personnel. Before assigning an individual to any Key Personnel position, Contractor will notify the State of the proposed assignment, will introduce the individual to the appropriate State representatives, and will provide the State with a resume and any other information about the individual reasonably requested by the State. The State reserves the right to interview the individual before granting written approval. In the event the State finds a proposed individual unacceptable, the State will provide a written explanation including reasonable detail outlining the reasons for the rejection. Additionally, the State's request shall be based on legitimate, good-faith reasons. Proposed alternative for the individual denied, shall be fully qualified for the position.

(iv) **Contractor shall not remove any Key Personnel from their assigned roles or the Contract without the prior written consent of the State.** If the Contractor does remove Key Personnel without the prior written consent of the State, it shall be considered an unauthorized removal ("Unauthorized Removal"). It shall not be considered an Unauthorized Removal if Key Personnel must be replaced for reasons beyond the reasonable control of Contractor, including illness, disability, leave of absence, personal emergency circumstances, resignation or for cause termination of the Key Personnel's employment. It shall not be considered an Unauthorized Removal if Key Personnel must be replaced because of promotions or other job movements allowed by Contractor personnel policies or Collective Bargaining Agreement(s) as long as the State receives prior written notice before shadowing occurs and Contractor provides 30 days of shadowing unless parties agree to a different time period. The Contractor with the State shall review any Key Personnel replacements, and appropriate transition planning will be established. Any Unauthorized Removal may be considered by the State to be a material breach of the Contract, in respect of which the State may elect to exercise its rights under **Section 2.210**.

(v) RESERVED.

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

(d) Re-assignment of Personnel at the State's Request. The State reserves the right to require the removal from the Project of Contractor personnel found, in the judgment of the State, to be unacceptable. The State's request shall be made with reasonable detail outlining the reasons for the removal request. Additionally, the State's request shall be based on legitimate, good-faith reasons. Replacement personnel for the removed person shall be fully qualified for the position. If the State exercises this right, and the Contractor cannot immediately replace the removed personnel, the State agrees to an equitable adjustment in schedule or other terms that may be affected by the State's required removal.



If any such incident with removed personnel results in delay not reasonable anticipatable under the circumstances and which is attributable to the State, the applicable for the affected Service will not be counted for a time as agreed to by the parties.

(e) Staffing Levels.

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

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

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

(g) Location. All staff assigned by Contractor to work on the Contract will perform their duties either primarily at Contractor's offices or as directed by the State's On Site Coordinator. Without limiting the generality of the foregoing, Key Personnel will, at a minimum, spend at least the amount of time on-site as indicated in the applicable Statement of Work.

2.042 Contractor Identification – RESERVED

2.043 Cooperation with Third Parties

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

2.044 Subcontracting by Contractor

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

The State shall have the right of prior written approval of all Subcontractors and to require Contractor to replace any Subcontractors found, in the reasonable judgment of the State, to be unacceptable. The State's request shall be made with reasonable detail outlining the reasons for the removal request. Additionally, the State's request shall be based on legitimate, good-faith reasons.

Replacement Subcontractor(s) for the removed Subcontractor shall be fully qualified for the position. If the State exercises this right, and the Contractor cannot immediately replace the removed Subcontractor, the State will agree to an equitable adjustment in schedule or other terms that may be affected by the State's required removal.



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

Now incorporated by reference, as stated in Contractor's proposal to the State's solicitation, is a list of the Subcontractors, if any, which are approved by the State (with the execution of this Contract).

(d) Except where specifically approved in writing by the State on a case-by-case basis, Contractor shall flow down the obligations in Sections 2.040, *Contractor Personnel*, 2.110, *Records & Inspections*, 2.150, *Confidentiality*, 2.160, *Proprietary Rights*, 2.171(c), *Warranties and Representations*, 2.180, *Insurance*, and 2.260, *Federal & State Contract Requirements*.

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

2.045 Contractor Responsibility for Personnel

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

2.050 State Standards

2.051 Existing Technology Standards

The Contractor will adhere to all existing standards as described within the comprehensive listing of the State's existing technology standards at http://www.michigan.gov/dit/0,1607,7-139-30639_30655---,00.html.

2.052 PM Methodology Standards – RESERVED

2.053 Adherence to Portal Technology Tools – RESERVED

2.054 Acceptable Use Policy

To the extent that Contractor has access to the State computer system, Contractor must comply with the State's Acceptable Use Policy, see <http://www.michigan.gov/ditservice/0,1607,7-179-25781-73760--,00.html>. All Contractor employees must be required, in writing, to agree to the State's Acceptable Use Policy before accessing the State system. The State reserves the right to terminate Contractor's access to the State system if a violation occurs.

2.060 Deliverables - RESERVED

**2.070 Performance****2.071 Performance, In General**

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

2.072 Time of Performance

(a) Contractor shall use commercially reasonable efforts to provide the resources necessary to complete all Services and Deliverables in accordance with the time schedules contained in the Statements of Work, Project Specifications, and other Exhibits, governing the work, and with professional quality.

(b) Without limiting the generality of **Section 2.072(a)**, Contractor shall notify the State in a timely manner upon becoming aware of any circumstances that may reasonably be expected to jeopardize the timely and successful completion of any Deliverables/Services on the scheduled due dates in the latest State-approved delivery schedule and, in such event, shall inform the State of the projected actual delivery date.

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

2.073 Liquidated Damages

Liquidated Damages, if any, shall be specified by the State in its DEQ-Request for Quotation, based on the site-specific risk category of each individual project assignment.

2.074 Bankruptcy

If Contractor shall file for protection under the bankruptcy laws, or if an involuntary petition shall be filed against Contractor and not removed within 30 days, or if the Contractor becomes insolvent, be adjudicated bankrupt, or if it should make a general assignment for the benefit of creditors, or if a receiver shall be appointed due to its insolvency, and Contractor and/or its affiliates are unable to provide reasonable assurances that Contractor and/or its affiliates can deliver the services provided herein, the State may, without prejudice to any other right or remedy, terminate this Contract, in whole or in part, and, at its option, may take possession of the "Work in Process" and finish such Works in Process by whatever appropriate method the State may deem expedient. Contractor will fix appropriate notices or labels on the Work in Process to indicate ownership by the State. To the extent reasonably possible, materials and Work in Process shall be stored separately from other stock and marked conspicuously with labels indicating ownership by the State.

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

2.075 Time is of the Essence – RESERVED**2.076 Service Level Agreements (SLA's) RESERVED****2.080 Delivery and Acceptance of Deliverables - RESERVED**



2.090 Financial

2.091 Pricing – RESERVED

2.092 Invoicing and Payment Procedures and Terms

(a) Invoicing and Payment – In General – RESERVED (See Article I)

(b) Taxes (See § 2.305 and Article 3, §3.022-§3.024 for additional information) The State is exempt from Federal Excise Tax, State and Local Sales Taxes, and Use Tax with respect to the sale to and use by it of tangible personal property. Such taxes shall not be included in Contract prices as long as the State maintains such exemptions. Copies of all tax exemption certificates shall be supplied to Contractor, if requested.

(c) Out-of-Pocket Expenses - RESERVED

(d) Pro-ration - RESERVED

(e) Antitrust Assignment

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

(f) Final Payment

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

2.093 State Funding Obligation

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

2.094 Holdback

The State shall have the right to hold back an amount equal to 20% of all amounts invoiced by Contractor for Services / Deliverables. The amounts held back shall be released to Contractor after the State has granted Final Acceptance.

2.095 Electronic Payment Availability

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



2.100 Contract Management

2.101 Contract Management Responsibility

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

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

2.102 Problem and Contract Management Procedures

Problem Management and Contract Management procedures will be governed by the Contract and the applicable Project Work Plan(s).

2.103 Reports and Meetings – RESERVED

2.104 System Changes – RESERVED

2.105 RESERVED

2.106 Change Requests – RESERVED

2.107 Management Tools – RESERVED

2.110 Records and Inspections

2.111 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.

2.112 Errors

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



(b) In addition to other available remedies, the difference between the payment received and the correct payment amount is greater than 10%, then the Contractor shall pay all of the reasonable costs of the audit.

2.120 State Responsibilities – RESERVED

2.130 Security

2.131 Background Checks

The Contractor shall authorize the investigation of its personnel proposed to have access to State facilities, systems, and project locations, on a case-by-case basis. **The scope of the background check is at the discretion of the State and the results will be used to determine Contractor personnel eligibility for working within State facilities, systems, and project locations.**

Such investigations may include, but are not limited to, Michigan State Police Background checks (ICHAT) and may include the National Crime Information Center (NCIC) Finger Prints. Proposed Contractor personnel may be required to complete and submit an RI-8 Fingerprint Card for the NCIC Finger Print Check. Any request for background checks will be initiated by the State and will be reasonably related to the type of work requested.

All Contractor personnel will also be expected to comply with the State's security and acceptable use policies for State IT equipment and resources, as applicable. See http://www.michigan.gov/ditservice/0,1607,7-179-25781-73760--_00.html. Furthermore, Contractor personnel are subject to the State's security and acceptable use policies before the Contractor personnel will be accepted as a key-resource to perform work for the State. Contractor is responsible to advise the prospective employee of this before the Contractor presents the individual to the State as a proposed resource.

Further, Contractor-staff shall comply with all physical security procedures in place within the facilities or project-locations, where they are working, pursuant to the direction of the State's On-Site Coordinator.

2.140 RESERVED

2.150 Confidentiality

2.151 Freedom of Information

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

2.152 Confidentiality

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

**2.153 Protection of Confidential Information**

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

2.154 Exclusions

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

2.155 No Implied Rights

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

2.156 Remedies

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

2.157 Security Breach Notification

In the event of a breach of this Section, Contractor shall take (i) prompt corrective action to cure any such deficiencies and (ii) any action pertaining to such unauthorized disclosure required by applicable federal and state laws and regulations. Contractor and the State will cooperate to mitigate, to the extent practicable, the effects of any breach, intrusion, or unauthorized use or disclosure. Contractor shall report to the State in writing any use or disclosure of Confidential Information, whether suspected or actual, other than as provided for by the Contract within 10 days of becoming aware of such use or disclosure or such shorter time period as is reasonable under the circumstances.

2.158 Survival

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

**2.159 Destruction of Confidential Information**

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

2.160 Proprietary Rights

2.161 RESERVED**2.162 RESERVED****2.163 Rights in Data**

(a) The State will be and remain the owner of all data made available by the State to Contractor or its agents, Subcontractors, or representatives pursuant to delivery of services under this Contract. Contractor will not use the State's data for any purpose other than providing the Services, nor will any part of the State's data be disclosed, sold, assigned, leased or otherwise disposed of to the general public or to specific third parties or commercially exploited by or on behalf of Contractor, nor will any employee of Contractor other than those on a strictly need to know basis have access to the State's data. Contractor will not possess or assert any lien or other right against the State's data. Without limiting the generality of this Section, Contractor shall only use personally identifiable information as strictly necessary to provide the Services and shall disclose such information only to its employees who have a strict need to know such information. Contractor shall comply at all times with all laws and regulations applicable to such personally identifiable information.

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

2.164 Ownership of Materials

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

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

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



2.170 Warranties and Representations

2.171 Warranties and Representations

The Contractor represents and warrants:

(a) It is capable in all respects of fulfilling and shall fulfill all of its obligations under this Contract. The performance of all obligations under this Contract shall be provided in a timely, professional, and workman-like manner and shall meet the performance and operational standards required under this Contract.

(b) The Contract Appendices, Attachments and Exhibits identify the equipment and software and services necessary for the Deliverable(s) to perform and Services to operate in compliance with the Contract's requirements and other standards of performance.

(c) It is the lawful owner or licensee of any Deliverable licensed or sold to the State by Contractor or developed by Contractor under this Contract, and Contractor has all of the rights necessary to convey to the State the ownership rights or licensed use, as applicable, of any and all Deliverables. None of the Deliverables provided by Contractor to the State under this Contract, nor their use by the State will infringe the patent, copyright, trade secret, or other proprietary rights of any third party.

(d) If, under this Contract, Contractor procures any equipment, software or other Deliverable for the State (including equipment, software and other Deliverables manufactured, re-marketed or otherwise sold by Contractor under Contractor's name), then in addition to Contractor's other responsibilities with respect to such items in this Contract, Contractor shall assign or otherwise transfer to the State or its designees, or afford the State the benefits of, any manufacturer's warranty for the Deliverable.

(e) The contract signatory has the power and authority, including any necessary corporate authorizations, necessary to enter into this Contract, on behalf of Contractor.

(f) It is qualified and registered to transact business in all locations where required.

(g) Neither the Contractor nor any Affiliates, nor any employee of either, has, shall have, or shall acquire, any contractual, financial, business, or other interest, direct or indirect, that would conflict in any manner or degree with Contractor's performance of its duties and responsibilities to the State under this Contract or otherwise create an appearance of impropriety with respect to the award or performance of this Agreement. Contractor shall notify the State within two (2) days of any such interest that may be incompatible with the interests of the State.

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

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

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

(k) All financial statements, reports, and other information furnished by Contractor to the State as part of its response to the 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 change in the business, properties, financial condition, or results of operations of Contractor.



(l) 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.

(m) It is not in material default or breach of any other contract or agreement that it may have with the State or any of its departments, commissions, boards, or agencies. Contractor further represents and warrants that it has not been a party to any contract with the State or any of its departments that was terminated by the State or such department within the previous five (5) years for the reason that Contractor failed to perform or otherwise breached an obligation of such contract.

2.172 Software Warranties - RESERVED

2.173 Equipment Warranty - RESERVED

2.174 Physical Media Warranty - RESERVED

2.175a DISCLAIMER

THE FOREGOING EXPRESS WARRANTIES ARE IN LIEU OF ALL OTHER WARRANTIES AND EACH PARTY EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, BY OPERATION OF LAW OR OTHERWISE, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

2.175b STANDARD WARRANTIES

(a) Warranty of Merchantability - RESERVED

(b) Warranty of fitness for a particular purpose

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

(c) Warranty of title - RESERVED

2.176 Consequences for Breach

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

2.180 Insurance

2.181 Liability Insurance

(a) Liability Insurance

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



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

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

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

The insurers selected by Contractor shall have an A.M. Best rating of A or better, or as otherwise approved in writing by the State, or if such ratings are no longer available, with a comparable rating from a recognized insurance rating agency. All policies of insurance required in this Contract shall be issued by companies that have been approved to do business in the State. See http://www.mi.gov/cis/0,1607,7-154-10555_22535---,00.html.

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

Before the Contract is signed by both parties or before the purchase order is issued by the State, the Contractor must furnish to the Director of Purchasing Operations, certificate(s) of insurance verifying insurance coverage ("Certificates"). The Certificate must be on the standard "accord" form or equivalent. **THE CONTRACT OR PURCHASE ORDER NO. MUST BE SHOWN ON THE CERTIFICATE OF INSURANCE TO ASSURE CORRECT FILING.** All Certificate(s) are to be prepared and submitted by the Insurance Provider. All Certificate(s) shall contain a provision indicating that 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 Purchasing Operations, Department of Management and Budget. The notice must include the Contract or Purchase Order number affected and be mailed to: Director, Purchasing Operations, Department of Management and Budget, P.O. Box 30026, Lansing, Michigan 48909. Failure to provide evidence of coverage, may, at the State's sole option, result in this Contract's termination.

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

1. Commercial General Liability with the following minimum coverage:

\$2,000,000 General Aggregate Limit other than Products/Completed Operations
 \$2,000,000 Products/Completed Operations Aggregate Limit
 \$1,000,000 Personal & Advertising Injury Limit
 \$1,000,000 Each Occurrence Limit
 \$ 500,000 Fire Damage Limit (any one fire)

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

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

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

3. Workers' compensation coverage must be provided in accordance with applicable laws governing the employees and employers work activities in the state of the Contractor's domicile. If the applicable coverage is provided by a self-insurer, proof must be provided of approved self-insured authority by the jurisdiction of domicile. For employees working outside of the state of qualification, Contractor must provide appropriate certificates of insurance proving mandated coverage levels for the jurisdictions where the employees' activities occur.

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



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

- 4. Employers liability insurance with the following minimum limits:
 - \$100,000 each accident
 - \$100,000 each employee by disease
 - \$500,000 aggregate disease

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

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

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

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

(b) Subcontractors

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

(c) Certificates of Insurance and Other Requirements

Contractor shall furnish to the Office of Purchasing Operations certificate(s) of insurance verifying insurance coverage or providing satisfactory evidence of self-insurance as required in this Section (the "Certificates"). Before the Contract is signed, and not less than 20 days before the insurance expiration date every year thereafter, the Contractor shall provide evidence that the State and its agents, officers and employees are listed as additional insureds under each commercial general liability and commercial automobile liability policy. In the event the State approves the representation of the State by the insurer's attorney, the attorney may be required to be designated as a Special Assistant Attorney General by the Attorney General of the State of Michigan.

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



2.190 Indemnification

2.191 Indemnification

(a) General Indemnification

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

(b) Code Indemnification

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

(c) Employee Indemnification

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

(d) Patent / Copyright Infringement Indemnification

To the extent permitted by law, the Contractor shall indemnify, defend and hold harmless the State from and against all losses, liabilities, damages (including taxes), and all related costs and expenses (including reasonable attorneys' fees and costs of investigation, litigation, settlement, judgments, interest and penalties) incurred in connection with any action or proceeding threatened or brought against the State to the extent that such action or proceeding is based on a claim that any piece of equipment, software, commodity or service supplied by the Contractor or its subcontractors, or the operation of such equipment, software, commodity or service, or the use or reproduction of any documentation provided with such equipment, software, commodity or service infringes any United States patent, copyright, trademark or trade secret of any person or entity, which is enforceable under the laws of the United States.

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

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

2.192 Continuation of Indemnification Obligations

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



2.193 Indemnification Procedures

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

(a) After receipt by the State of notice of the action or proceeding involving a claim in respect of which it will seek indemnification, the State shall promptly notify Contractor of such claim in writing and take or assist Contractor in taking, as the case may be, any reasonable action to avoid the imposition of a default judgment against Contractor. No failure to notify Contractor shall relieve Contractor of its indemnification obligations except to the extent that Contractor can demonstrate damages attributable to such failure. Within 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.

2.200 Limits of Liability and Excusable Failure

2.201 Limits of Liability

The Contractor's liability for damages to the State shall be limited to two times the value of the individual Project Assignment (awarded through the DEQ competitive Request-For-Quotation process) or \$200,000 which ever is higher. The foregoing limitation of liability shall not apply to claims for infringement of United States patent, copyright, trademarks or trade secrets; to claims for personal injury or damage to property caused by the gross negligence or willful misconduct of the Contractor; to claims covered by other specific provisions of this Contract calling for liquidated damages; or to court costs or attorney's fees awarded by a court in addition to damages after litigation based on this Contract.

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

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



2.202 Excusable Failure

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

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

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

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

2.203 Disaster Recovery

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

2.210 Termination/Cancellation by the State

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

2.211 Termination for Cause

(a) In the event that Contractor breaches any of its material duties or obligations under this Contract, which are either not capable of or subject to being cured, or are not cured within the time period specified in the written notice of breach provided by the State (such time period not to be less than 30 days), or pose a serious and imminent threat to the health and safety of any person, or the imminent loss, damage or destruction of any real or tangible personal property, the State may, having provided written notice of termination to Contractor, terminate this Contract in whole or in part, for cause, as of the date specified in the notice of termination.



(b) In the event that this Contract is terminated for cause, in addition to any legal remedies otherwise available to the State by law or equity, Contractor shall be responsible for all costs incurred by the State in terminating this Contract, including but not limited to, State administrative costs, reasonable attorneys' fees and court costs, and any reasonable additional costs the State may incur to procure the Services/Deliverables required by this Contract from other sources. Re-procurement costs shall not be considered by the parties to be consequential, indirect or incidental damages, and shall not be excluded by any other terms otherwise included in this Contract, provided such costs are not in excess of 50% more than the prices for such Service/Deliverables provided under this Contract.

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

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

2.212 Termination for Convenience

The State may terminate this Contract for its convenience, in whole or part, if the State determines that such a termination is in the State's best interest. Reasons for such termination shall be left to the sole discretion of the State and may include, but not necessarily be limited to (a) the State no longer needs the Services or products specified in the Contract, (b) relocation of office, program changes, changes in laws, rules, or regulations make implementation of the Services no longer practical or feasible, (c) unacceptable prices for Additional Services or New Work requested by the State, or (d) falsification or misrepresentation, by inclusion or non-inclusion, of information material to a response to any ITB issued by the State. The State may terminate this Contract for its convenience, in whole or in part, by giving Contractor written notice at least 30 days prior to the date of termination. If the State chooses to terminate this Contract in part, the charges payable under this Contract shall be equitably adjusted to reflect those Services/Deliverables that are terminated. Services and related provisions of this Contract that are terminated for cause shall cease on the effective date of the termination.

2.213 Non-Appropriation

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

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

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

**2.214 Criminal Conviction**

The State may terminate this Contract immediately and without further liability or penalty in the event Contractor, an officer of Contractor, or an owner of a 25% or greater share of Contractor is convicted of a criminal offense incident to the application for, or performance of, a State, public or private Contract or subcontract; convicted of a criminal offense, including any of the following: embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, attempting to influence a public employee to breach the ethical conduct standards for State of Michigan employees; convicted under State or federal antitrust statutes; or convicted of any other criminal offense which in the sole discretion of the State reflects upon Contractor's business integrity.

2.215 Approvals Rescinded

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

2.216 Rights and Obligations Upon Termination

(a) If this Contract is terminated by the State for any reason, Contractor shall (1) stop all work as specified in the notice of termination, (2) take any action that may be necessary, or that the State may direct, for preservation and protection of Deliverables or other property derived or resulting from this Contract that may be in Contractor's possession, (3) return all materials and property provided directly or indirectly to Contractor by any entity, agent or employee of the State, (4) in the event that the Contractor maintains title in Deliverables that is intended to be transferred to the State at the termination of the Contract, Contractor will transfer title in, and deliver to, the State, unless otherwise directed, all Deliverables intended to be transferred to the State at the termination of the Contract and which are resulting from the Contract (which shall be provided to the State on an "As-Is" basis except to the extent the amounts paid by the State in respect of such items included compensation to Contractor for the provision of warranty services in respect of such materials), and (5) take any action to mitigate and limit any potential damages, or requests for Contractor adjustment or termination settlement costs, to the maximum practical extent, including terminating or limiting as otherwise applicable those subcontracts and outstanding orders for material and supplies resulting from the terminated Contract.

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

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

2.217 Reservation of Rights

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

**2.218 Contractor Transition Responsibilities**

In the event this contract is terminated, for convenience or cause, dissolved, voided, rescinded, nullified, expires or is otherwise rendered unenforceable, the Contractor agrees to comply with direction provided by the State to assist in the orderly transition of equipment, services, software, leases, etc. to the State or a third party designated by the State. In the event of termination or the expiration of this Contract, the Contractor agrees to make all reasonable efforts to effect an orderly transition of services within a reasonable period of time that in no event will exceed 90 days. These efforts shall include, but are not limited to, the following:

(a) Personnel - The Contractor shall work with the State, or a specified third party, to develop a transition plan setting forth the specific tasks and schedule to be accomplished by the parties, to effect an orderly transition. The Contractor shall allow as many personnel as practicable to remain on the job to help the State, or a specified third party, maintain the continuity and consistency of the services required by this Contract. In addition, during or following the transition period, in the event the State requires the Services of the Contractor's subcontractors or vendors, as necessary to meet its needs, Contractor agrees to reasonably, and with good-faith, work with the State to use the Services of Contractor's subcontractors or vendors. Contractor will notify all of Contractor's subcontractors of procedures to be followed during transition.

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

(d) Software – RESERVED.

(e) Payment - If the transition results from a termination for any reason, reimbursement shall be governed by the termination provisions of this Contract. If the transition results from expiration, the Contractor will be reimbursed for all reasonable transition costs (i.e. costs incurred within the agreed period after contract expiration that result from transition operations) at the rates specified by **Article 1**. The Contractor will prepare an accurate accounting from which the State and Contractor may reconcile all outstanding accounts.

2.219 State Transition Responsibilities

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

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

2.220 Termination by Contractor**2.221 Termination by Contractor**

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



2.230 Stop Work

2.231 Stop Work Orders

The State may, at any time, by written stop work order to Contractor, require that Contractor stop all, or any part, of the work called for by the Contract for a period of up to 90 calendar days after the stop work order is delivered to Contractor, and for any further period to which the parties may agree. The stop work order shall be specifically identified as such and shall indicate that it is issued under this **Section 2.230**. Upon receipt of the stop work order, Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the stop work order during the period of work stoppage. Within the period of the stop work order, the State shall either: (a) cancel the stop work order; or, (b) terminate the work covered by the stop work order as provided in **Section 2.210**.

2.232 Cancellation or Expiration of Stop Work Order

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

2.233 Allowance of Contractor Costs

If the stop work order is not canceled and the work covered by the stop work order is terminated for reasons other than material breach, such termination shall be deemed to be a termination for convenience under **Section 2.212**, and the State shall allow reasonable costs resulting from the stop work order in arriving at the termination settlement. For the avoidance of doubt, the State shall not be liable to Contractor for loss of profits because of a stop work order issued under this **Section 2.230**.

2.240 Reserved

2.250 Dispute Resolution

2.251 In General

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

2.252 Informal Dispute Resolution

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

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



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

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

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

(b) This **Section 2.250** will not be construed to prevent either party from instituting, and a party is authorized to institute, formal proceedings earlier to avoid the expiration of any applicable limitations period, to preserve a superior position with respect to other creditors, or pursuant to **Section 2.253**.

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

2.253 Injunctive Relief

The only circumstance in which disputes between the State and Contractor will not be subject to the provisions of **Section 2.252** is where a party makes a good faith determination that a breach of the terms of the Contract by the other party is such that the damages to such party resulting from the breach will be so immediate, so large or severe and so incapable of adequate redress after the fact that a temporary restraining order or other immediate injunctive relief is the only adequate remedy.

2.254 Continued Performance

Each party agrees to continue performing its obligations under the Contract while a dispute is being resolved except to the extent the issue in dispute precludes performance (dispute over payment shall not be deemed to preclude performance) and without limiting either party's right to terminate the Contract as provided in **Section 2.210** and **2.220**, as the case may be.

2.260 Federal and State Contract Requirements

2.261 Nondiscrimination

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

2.262 Unfair Labor Practices

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



2.263 Workplace Safety and Discriminatory Harassment

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

2.270 Litigation

2.271 Disclosure of Litigation

(a) Disclosure. Contractor must disclose any material criminal litigation, investigations or proceedings involving the Contractor (and each Subcontractor) or any of its officers or directors or any litigation, investigations or proceedings under the Sarbanes-Oxley Act. In addition, each Contractor (and each Subcontractor) must notify the State of any material civil litigation, arbitration or proceeding which arises during the term of the Contract and extensions thereto, to which Contractor (or, to the extent Contractor is aware, any Subcontractor hereunder) is a party, and which involves: (i) disputes that might reasonably be expected to adversely affect the viability or financial stability of Contractor or any Subcontractor hereunder; or (ii) a claim or written allegation of fraud against Contractor or, to the extent Contractor is aware, any Subcontractor hereunder by a governmental or public entity arising out of their business dealings with governmental or public entities. Any such litigation, investigation, arbitration or other proceeding (collectively, "Proceeding") must be disclosed in a written statement to the Contract Administrator within 30 days of its occurrence. Details of settlements which are prevented from disclosure by the terms of the settlement may be annotated as such. Information provided to the State from Contractor's publicly filed documents referencing its material litigation will be deemed to satisfy the requirements of this Section.

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

(1) the ability of Contractor (or a Subcontractor hereunder) to continue to perform this Contract in accordance with its terms and conditions, or

(2) whether Contractor (or a Subcontractor hereunder) in performing Services for the State is engaged in conduct which is similar in nature to conduct alleged in such Proceeding, which conduct would constitute a breach of this Contract or a violation of Michigan law, regulations or public policy, then Contractor shall be required to provide the State all reasonable assurances requested by the State to demonstrate that:

(i) Contractor and/or its Subcontractors hereunder will be able to continue to perform this Contract and any Statements of Work in accordance with its terms and conditions, and

(ii) Contractor and/or its Subcontractors hereunder have not and will not engage in conduct in performing the Services which is similar in nature to the conduct alleged in such Proceeding.

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

(1) Within 30 days of Contractor becoming aware that a change in its ownership or officers has occurred, or is certain to occur, or a change that could result in changes in the valuation of its capitalized assets in the accounting records, Contractor shall notify the Office of Purchasing Operations.

(2) Contractor shall also notify the Office of Purchasing Operations within 30 days whenever changes to asset valuations or any other cost changes have occurred or are certain to occur as a result of a change in ownership or officers.

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

**2.272 Governing Law**

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

2.273 Compliance with Laws

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

2.274 Jurisdiction

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

2.280 Environmental Provision**2.281 Environmental Provision**

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

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

(b) RESERVED.

(c) RESERVED.

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



2.290 General

2.291 Amendments

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

2.292 Assignment

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

(b) Contractor may not, without the prior written approval of the State, assign its right to receive payments due under the Contract. In the event of any such permitted assignment, Contractor shall not be relieved of its responsibility to perform any duty imposed upon it herein, and the requirement under the Contract that all payments shall be made to one entity shall continue.

2.293 Entire Contract; Order of Precedence

(a) The Contract, including any Statements of Work, Project Specifications, or Work Plans, to the extent not contrary to the Contract, each of which is incorporated for all purposes, constitutes the entire agreement between the parties with respect to the subject matter and supersedes all prior agreements, whether written or oral, with respect to such subject matter and as additional terms and conditions on the purchase order shall apply, as well as the:

1. DEQ Request for Quotation and Project Specifications (and any addenda)
2. Contractor's Response and Quote to DEQ's Request, and
3. Subsequent, On-Site-Coordinator final-approved, Project Work Plan.

(b) In the event of any inconsistency between the terms of the Contract and the DEQ's Request for Quotation, or Project Specifications, or an approved Work Plan, the terms of this Contract's Statement of Work will take precedence; provided, however, that a Statement of Work may not modify or amend the terms of **Sections 2.110 through 2.220** of this Contract, which may be modified or amended only by a formal Contract amendment.

2.294 Headings

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

2.295 Relationship of the Parties (Independent Contractor Relationship)

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

**2.296 Notices**

(a) Any notice given to a party under the Contract shall be deemed effective, if addressed to such party as addressed below, upon: (i) delivery, if hand delivered; (ii) receipt of a confirmed transmission by facsimile if a copy of the notice is sent by another means specified in this Section; (iii) the third (3rd) Business Day after being sent by U.S. mail, postage pre-paid, return receipt requested; or (iv) the next Business Day after being sent by a nationally recognized overnight express courier with a reliable tracking system.

State:

State of Michigan – Business Services – Purchasing Operations

Attention: Malynda Little, Buyer

P.O. Box 30026

530 West Allegan Street

Lansing, MI 48909

Tel: (517) 373-8622

E-mail: littlem3@michigan.gov

with a copy to:

Department of Environmental Quality's Contract Compliance Inspector:

Attention: Thomas Godbold, Supervisor

(and respective, assigned On Site Coordinator(s))

Office of Geological Survey

Department of Environmental Quality

South Tower, 1st Floor

P.O. Box 30256

525 West Allegan Street

Lansing, MI 48909-7756

Tel: (517) 241-1544

E-mail: godboldt@michigan.gov

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

(b) Binding Commitments

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

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

Contractor will not make any news releases, public announcements, or public disclosures, nor will they have any conversations with representatives of the news media, pertaining to the Contract, the subsequent Requests for Quotation(s), the Services, or the Project without the prior written approval of the other party, and then only in accordance with explicit written instructions provided by that party. In addition, neither Contractor nor the State will use the name, trademarks, or other proprietary identifying symbol of the other party or its affiliates without such party's prior written consent. Prior written consent of the Contractor must be obtained from authorized representatives.

(b) Contract Distribution

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

2.298 Reformation and Severability

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

**2.299 Consents and Approvals**

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

2.300 No Waiver of Default

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

2.301 Survival

Any provisions of the Contract that impose continuing obligations on the parties including the parties' respective warranty, indemnity and confidentiality obligations, shall survive the expiration or termination of the Contract for any reason. Specific references to survival in the Contract are solely for identification purposes and not meant to limit or prevent the survival of any other section.

2.302 Covenant of Good Faith

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

2.303 Permits

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

2.304 Website Incorporation

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

2.305 Taxes

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

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

2.306 Prevailing Wage – RESERVED**2.307 Call Center Disclosure**

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

**2.308 Future Bidding Preclusion – RESERVED**

2.310 Reserved

2.320 Extended Purchasing

2.321 MiDEAL - RESERVED**2.322 State Employee Purchases - RESERVED**

2.330 Federal Grant Requirements

2.331 Federal Grant Requirements

The following links contain certifications and terms which may be required for some purchases paid via Federal funds. They are included here to be utilized as required.

Lobbying Certifications are usually for agreements over \$100,000. The debarment certification is required for all agreements. The last link is where you can go and search for debarred or suspended contractors.

http://straylight.law.cornell.edu/uscode/html/uscode31/usc_sec_31_00001352----000-.html

http://www.archives.gov/federal_register/codification/executive_order/12549.html

http://www.archives.gov/federal_register/executive_orders/pdf/12869.pdf

<http://www.epls.gov/epls/servlet/EPLSSearchMain/1>