Form No. DTMB-3524 (Created 4/2012)
AUTHORITY: Act 431 of 1984
COMPLETION: Required
PENALTY: No further payment will be made to the previous Contractor name and or number.

STATE OF MICHIGAN
DEPARTMENT OF TECHNOLOGY, MANAGEMENT AND BUDGET
PROCUREMENT
P.O. BOX 30026, LANSING, MI 48909
OR
530 W. ALLEGAN, LANSING, MI 48913

October 25, 2013

CHANGE OF CONTRACTOR NAME AND OR TAX IDENTIFICATION NUMBER

CONTRACT NO. 071B9200066

hereafter referred as

CONTRACT NO. 071B4300021

between

THE STATE OF MICHIGAN

and

CURRENT NAME & ADDRESS OF CONTRACTOR:	PRIMARY CONTACT	EMAIL
DLP Marquette Physician Practices, Inc. 26374 Network Place Chicago, IL 60673-1263	Pam Schmeltzer	Pamela.schmeltzer@mghs.org
	TELEPHONE	NEW CONTRACTOR #, MAIL CODE
	(906) 225-4556	

PREVIOUS NAME & ADDRESS OF CONTRACTOR:	PRIMARY CONTACT	EMAIL
Marquette General Health System Occupational Medicine Services 1414 W. Fair Avenue, Suite 35 Marquette, MI 49855	Pam Schmeltzer	Pamela.schmeltzer@mghs.org
	TELEPHONE	PREVIOUS CONTRACTOR #, MAIL CODE
	(9060 225-4555	

DESCRIPTION OF CHANGE NOTICE:
THE CONTRACTOR HAS NOTIFIED THE STATE OF MICHIGAN OF A CHANGE IN ITS BUSINESS NAME AND OR TAX IDENTIFICATION NUMBER. DUE TO THE INTERNAL SYSTEMS RELATED TO THE RELEASE OF CONTRACTOR PAYMENTS, A NEW CONTRACT NUMBER MUST BE ASSIGNED. THE NEW CONTRACT NUMBER IS 071B430021**. EXCEPT FOR THE NEWLY-ASSIGNED NUMBER, THE CONTRACT TERMS AND CONDITIONS REMAIN IN EFFECT.** **THIS CHANGE IS EFFECTIVE:** October 22, 2013
$6,818.60 **REMAINING ON CONTRACT #** 071B9200066 **TO BE TRANSFERRED TO CONTRACT #** 071B4300021

Form No. DTMB-3524 (Created 4/2012)
Change of Contractor Name or Tax Identification Number

Contract No. 071B9200066 **hereafter referred as Contract No.** 071B4300021

STATE CONTACTS	AGENCY	NAME	PHONE	EMAIL
CONTRACT COMPLIANCE INSPECTOR:	DNR	Ruth Thole	517-335-1553	tholer@michigan.gov
BUYER:	DTMB	Don Mandernach	517-241-7233	mandernachd@michigan.gov

CONTRACT SUMMARY:			
DESCRIPTION: (Descriptive Contract Title (Not always the same language as provided in MAIN)			
Firefighting Fitness Testing Services, Upper Peninsula – Department of Natural Resources			
INITIAL TERM	EFFECTIVE DATE	INITIAL EXPIRATION DATE	AVAILABLE OPTIONS
3 years	December 1, 2008	December 31, 2011	2, one year
PAYMENT TERMS	F.O.B	SHIPPED	SHIPPED FROM
N/A	N/A	N/A	N/A
ALTERNATE PAYMENT OPTIONS:			AVAILABLE TO MiDEAL PARTICIPANTS
☐ P-card ☐ Direct Voucher (DV) ☐ Other			☐ YES ☒ NO
MINIMUM DELIVERY REQUIREMENTS:			

FOR THE CONTRACTOR:	**FOR THE STATE:**
DLP Marquette Physician Practices, Inc.	
Firm Name	Signature
	Jeff Brownlee, Chief Procurement Officer
Authorized Agent Signature	Name/Title
	DTMB Procurement
Authorized Agent (Print or Type)	Enter Name of Agency
Date	Date

Form No. DTMB-3521 (Rev. 4/2012)
AUTHORITY: Act 431 of 1984
COMPLETION: Required
PENALTY: Contract change will not be executed unless form is filed

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

CHANGE NOTICE NO. 3
to
CONTRACT NO. 071B9200066
between
THE STATE OF MICHIGAN
and

NAME & ADDRESS OF CONTRACTOR:	PRIMARY CONTACT	EMAIL
Marquette General Health System	Pam Schmeltzer	pamela.schmeltzer@mghs.org
Occupational Medicine Services 1414 W. Fair Avenue, Suite 35 Marquette, MI 49855	TELEPHONE (906) 225-4555	CONTRACTOR #, MAIL CODE

STATE CONTACTS	AGENCY	NAME	PHONE	EMAIL
CONTRACT COMPLIANCE INSPECTOR	DNR	Ruth Thole	(517) 335-1553	tholer@michigan.gov
BUYER	DTMB	Don Mandernach	(517) 241-7233	mandernachd@michigan.gov

CONTRACT SUMMARY:

Firefighting Fitness Testing Services, Upper Peninsula – Department of Natural Resources

INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW
December 1, 2008	December 31, 2011	2, 1 yr. options	December 31, 2012
PAYMENT TERMS	F.O.B	SHIPPED	SHIPPED FROM
N/A	N/A	N/A	N/A

ALTERNATE PAYMENT OPTIONS:			AVAILABLE TO MiDEAL PARTICIPANTS
☐ P-card	☐ Direct Voucher (DV)	☐ Other	☐ Yes ☒ No

MINIMUM DELIVERY REQUIREMENTS:

N/A

DESCRIPTION OF CHANGE NOTICE:

EXTEND CONTRACT EXPIRATION DATE	EXERCISE CONTRACT OPTION YEAR(S)	EXTENSION BEYOND CONTRACT OPTION YEARS	LENGTH OF OPTION/EXTENSION	EXPIRATION DATE AFTER CHANGE
☐ No ☒ Yes	☒	☐	One Year	December 31, 2013

VALUE/COST OF CHANGE NOTICE:	ESTIMATED REVISED AGGREGATE CONTRACT VALUE:
$12,000.00	$85,000.00

Per Agency request dated 10/24/12 and vendor agreement dated 11/15/12, the final option year will be utilized for this Contract and additional funds of $12,000.00 will be added. The new end date will be December 31, 2013. All other terms, conditions, specifications and pricing remain unchanged. Per vendor and agency agreement and the approval of DTMB Procurement.

Form No. DMB 234 (Rev. 1/96)
AUTHORITY: Act 431 of 1984
COMPLETION: Required
PENALTY: Contract will not be executed unless form is filed

STATE OF MICHIGAN
DEPARTMENT OF TECHNOLOGY, MANAGEMENT AND BUDGET November 15, 2011
PROCUREMENT
P.O. BOX 30026, LANSING, MI 48909
OR
530 W. ALLEGAN, LANSING, MI 48933

CHANGE NOTICE NO. 2
TO
CONTRACT NO. 071B9200066
between
THE STATE OF MICHIGAN
and

NAME & ADDRESS OF CONTRACTOR **Marquette General Health System** **Occupational Medicine Services** **1414 W. Fair Avenue, Suite 35** **Marquette, MI 49855** **Pamela.Jensen@mghs.org**	TELEPHONE (906) 225-4555 **Pam Jensen** BUYER/CA (517) 241-3768 **Lance Kingsbury**
Contract Compliance Inspector: Mary Nowinski (517) 241-2100 **Firefighting Fitness Testing Services – Upper Peninsula – Department of Natural Resources**	
CONTRACT PERIOD: From: **December 1, 2008** To: **December 31, 2012**	
TERMS **N/A**	SHIPMENT **N/A**
F.O.B. **N/A**	SHIPPED FROM **N/A**
MINIMUM DELIVERY REQUIREMENTS **N/A**	

NATURE OF CHANGE(S):

Effective immediately, this Contract is INCREASED by $19,000.00 and EXTENDED to December 31, 2012.

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

AUTHORITY/REASON:

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

INCREASE: $19,000.00

TOTAL REVISED ESTIMATED CONTRACT VALUE: $73,000.00

Form No. DMB 234 (Rev. 1/96)
AUTHORITY: Act 431 of 1984
COMPLETION: Required
PENALTY: Contract will not be executed unless form is filed

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

October 19, 2009

CHANGE NOTICE NO. 1
TO
CONTRACT NO. 071B9200066
between
THE STATE OF MICHIGAN
and

NAME & ADDRESS OF CONTRACTOR	TELEPHONE (906) 225-4555 **Pam Jensen**
Marquette General Health System **Occupational Medicine Services** **1414 W. Fair Avenue, Suite 35** **Marquette, MI 49855** **p.jensen@mgh.org**	BUYER/CA (517) 241-3768 **Lance Kingsbury**
Contract Compliance Inspector: Mary Nowinski (517) 241-2100 **Firefighting Fitness Testing Services – Upper Peninsula – Department of Natural Resources**	
CONTRACT PERIOD: From: **December 1, 2008** To: **December 31, 2011**	
TERMS **N/A**	SHIPMENT **N/A**
F.O.B. **N/A**	SHIPPED FROM **N/A**
MINIMUM DELIVERY REQUIREMENTS **N/A**	

NATURE OF CHANGE(S):

Effective immediately, <u>all costs</u> are hereby reduced by 3 %.

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

AUTHORITY/REASON:

Per vendor agreement (email dated 10/12/09) and DMB/Purchasing Operations' approval.

CURRENT AUTHORIZED SPEND LIMIT REMAINS: $54,000.00

Form No. DMB 234 (Rev. 1/96)
AUTHORITY: Act 431 of 1984
COMPLETION: Required
PENALTY: Contract will not be executed unless form is filed

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

November 21, 2008

NOTICE
TO
CONTRACT NO. 071B9200066
between
THE STATE OF MICHIGAN
and

NAME & ADDRESS OF CONTRACTOR	TELEPHONE (906) 225-4555 **Pam Jensen**
Marquette General Health System **Occupational Medicine Services** **1414 W. Fair Avenue, Suite 35** **Marquette, MI 49855** **p.jensen@mgh.org**	BUYER/CA (517) 241-3768 **Lance Kingsbury**
Contract Compliance Inspector: Mary Nowinski (517) 241-2100 **Firefighting Fitness Testing Services – Upper Peninsula – Department of Natural Resources**	
CONTRACT PERIOD: From: **December 1, 2008** To: **December 31, 2011**	
TERMS **N/A**	SHIPMENT **N/A**
F.O.B. **N/A**	SHIPPED FROM **N/A**
MINIMUM DELIVERY REQUIREMENTS **N/A**	

The terms and conditions of this Contract are those of RFP #071I9200005, this Contract Agreement and the Contractor's quote dated 9/30/08. In the event of any conflicts between the specifications, and terms and conditions, indicated by the State and those indicated by the Contractor, those of the State take precedence.

Estimated Contract Value: $54,000.00

Form No. DMB 234 (Rev. 1/96)
AUTHORITY: Act 431 of 1984
COMPLETION: Required
PENALTY: Contract will not be executed unless form is filed

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. 071B9200066
between
THE STATE OF MICHIGAN
and

NAME & ADDRESS OF CONTRACTOR	TELEPHONE (906) 225-4555 **Pam Jensen**
Marquette General Health System **Occupational Medicine Services** **1414 W. Fair Avenue, Suite 35** **Marquette, MI 49855** **p.jensen@mgh.org**	BUYER/CA (517) 241-3768 **Lance Kingsbury**
Contract Compliance Inspector: Mary Nowinski (517) 241-2100 **Firefighting Fitness Testing Services – Upper Peninsula – Department of Natural Resources**	
CONTRACT PERIOD: From: **December 1, 2008** To: **December 31, 2011**	
TERMS **N/A**	SHIPMENT **N/A**
F.O.B. **N/A**	SHIPPED FROM **N/A**
MINIMUM DELIVERY REQUIREMENTS **N/A**	

MISCELLANEOUS INFORMATION:

The terms and conditions of this Contract are those of RFP #071I9200005, this Contract Agreement and the Contractor's quote dated 9/30/08. In the event of any conflicts between the specifications, and terms and conditions, indicated by the State and those indicated by the Contractor, those of the State take precedence.

Estimated Contract Value: $54,000.00

THIS IS NOT AN ORDER: This Contract Agreement is awarded on the basis of our inquiry bearing the RFP No. 071I9200005. Orders for delivery will be issued directly by the Department of Natural Resources through the issuance of a Purchase Order Form.

FOR THE CONTRACTOR:	**FOR THE STATE:**
Marquette General Health System Firm Name	Signature
Authorized Agent Signature	**Lance Kingsbury, Buyer Specialist** Name/Title
Authorized Agent (Print or Type)	**Services Division, Purchasing Operations** Division
Date	Date

STATE OF MICHIGAN
Department of Management and Budget
Purchasing Operations

Contract No. 071B9200066

Wildland Fire Fitness Testing Services for the Upper Peninsula

Buyer Name: Lance Kingsbury
Telephone Number: (517) 241-3768
E-Mail Address: kingsburyL@michigan.gov

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Definitions

"Days" means calendar days unless otherwise specified.

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

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

"Audit Period" has the meaning given in **Section 2.093.**

"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.

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

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

"Chronic Failure" is defined in any applicable Service Level Agreements.

"Deleted – Not Applicable (N/A)" means that section is not applicable or included in this Contract. This is used as a placeholder to maintain consistent numbering.

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

"DMB" means the Michigan Department of Management and Budget

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

"Excusable Failure" has the meaning given in **Section 2.214.**

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

"Incident" means any interruption in Services.

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

"Key Personnel" means any Personnel designated in **Section 1.031** as Key Personnel.

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

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

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

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

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

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

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

"Services" means any function performed for the benefit of the State.

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

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

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

"Unauthorized Removal" means the Contractor's removal of Key Personnel without the prior written consent of the State.

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

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

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

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

All times noted in this Contract relates to the Eastern Time Zone, which is either Eastern Standard Time (EST) or Eastern Daylight/Summer Time (EDT). EDT is defined as the second Sunday in March to the first Sunday in November.

Article 1 – Statement of Work (SOW)

1.010 Project Identification

1.011 Project Request
This is a Contract for Wildland Fire Fitness Testing Services for the Upper Peninsula (UP) for the Michigan Department of Natural Resources (DNR).

1.012 Background
Annually Michigan State Wildland Fire Fighters are required, by policy, to pass a physical fitness work capacity test. This policy started back in the early 1980s with a series of sit-ups, push-ups, pull downs, and aerobic step test. This past year, the step portion was changed to a treadmill test that includes four levels of testing for three minutes, each with a one minute rest between each level. The pre-testing includes a physician evaluated resting EKG, Blood Pressure, and Pulse. Since firefighters are subjected to stressful environments, strenuous activities, and long hours, good physical fitness is required to perform the job safely.

1.020 Scope of Work and Deliverables

1.021 In Scope
The Contractor will provide the tests called for and provide the Department with results. Tests are to be conducted at a facility within three hours travel of all DNR field Office locations in the UP (range from Wakefield on the Western end to Detour on the Eastern end).

1.022 Work and Deliverable
The Contractor must provide Deliverables/Services and staff, and otherwise do all things necessary for or incidental to the performance of work, as set forth below:

Administer Fire Fighter Fitness Testing Program for DNR and the Forest, Mineral, and Fire Management Division (FMFMD) in the Upper Peninsula. The test must be completed in accordance with the following specifications:

Facility Requirements:

a) Location – within three hours travel of all DNR Field Office locations in the UP (Range from Wakefield on the Western end to Detour on the Eastern end).
b) Two separate dressing/changing areas must be provided (men/women).
c) Testing room – 15 ft. width x 30 ft. length x 10 ft. height (minimum).
d) Post-test rest area – 15 ft. width x 30 ft. length x 20 ft. height (minimum).
e) Isolated on-site EKG.
f) Testing equipment will include four treadmills (220 volt electrical required), lateral pull-down machine, and associated equipment; this equipment will be stored in place so that it is available when needed for testing.

Test Protocol Requirements:

a) On–site completion of Michigan DNR “Health Risk Evaluation” and “Health Risk Fitness Evaluation” forms by each individual (forms to be provided by DNR and FMFMD).
b) Collection of vitals (Pre-test blood pressure and pulse), height, weight, and conduct of resting EKG for each individual. EKG may be waived for individuals retesting within six months at the discretion of the evaluating physician.
c) Physician evaluation for medical clearance to participate.
d) Review “Exercise Warning Signs” form with individuals prior to testing.
e) Supervise test exercises as specified in FMFMD Policy 161, Physical Fitness Standards.
f) Supervised 10 minute cool down.
g) Periodic post-test blood pressure and pulse check to evaluate each individual’s return to normal before release from testing site.

1.030 Roles and Responsibilities

1.031 Contractor Staff, Roles, and Responsibilities

On-site Personnel Requirements:

a) Clerk: One available to register clients and to receive histories and other related administrative paperwork.
b) Test Administrator: Licensed physician qualified to evaluate health/history and resting EKG for up to six individuals per hour for the purpose of providing medical clearance to participate.
c) At least one qualified health professional(s) to conduct resting EKG's, intakes, vitals, height, weight, and history for up to six individuals per hour.
d) At least one qualified Advanced Cardiac Life Support (ACLS) certified health professional for direct supervision of firefighter fitness tests for up to six individuals/hour.

1.040 Project Plan

1.041 Project Plan Management

Testing Date Requirements:

a) Scheduled testing of approximately 150 individuals in December at a rate of up to six per hour on scheduled days during each year of this Contract.
b) Scheduled testing of failed individuals three weeks after initial test. May include others not tested in December – up to 20 employees.
c) Scheduled testing of failed retests six weeks after the three week retest date; may include others that need testing, up to 24 employees.
d) Scheduled testing of temporary fire officers in March each year of this Contract; may include others that need testing, up to 24 employees.
e) Scheduled testing of new hires, as needed, throughout the fiscal year.

1.042 Reports

Recordkeeping Requirements:

a) Report to DNR and FMFMD representative, the qualification scores for each individual tested within two weeks of testing date.
b) Maintain confidential test administration file for each individual tested that contains:
   1. Results from resting EKG;
   2. Health/history Questionnaire;
   3. Documentation of medical clearance; and
   4. Test results – documentation of performance and test results.
c) Be prepared to forward confidential test administration file to individual or their personal physician upon request.

1.050 Acceptance

1.051 Criteria – Deleted N/A

1.052 Final Acceptance – Deleted N/A

1.060 Proposal Pricing

1.061 Proposal Pricing

Pricing shall be broken down by:

1. Resting EKG with interpretation
2. Physician interpretation of previous EKG
3. Fitness test completed by staff

Contractor's out-of-pocket expenses are not separately reimbursable by the State unless, on a case-by-case basis for unusual expenses, the State has agreed in advance and in writing to reimburse Contractor for the expense at the State's current travel reimbursement rates. See **www.michigan.gov/dmb** for current rates.

1.062 Price Term
Firm Fixed Price – prices quoted are firm for the entire length of this Contract.

1.063 Tax Excluded from Price
(a) Sales Tax: For purchases made directly by the State, the State is exempt from State and Local Sales Tax. Prices must not include the taxes. Exemption Certificates for State Sales Tax will be furnished upon request.

(b) Federal Excise Tax: The State may be exempt from Federal Excise Tax, or the taxes may be reimbursable, if articles purchased under this Contract are used for the State's exclusive use. Certificates showing exclusive use for the purposes of substantiating a tax-free, or tax-reimbursable sale will be sent upon request. If a sale is tax exempt or tax reimbursable under the Internal Revenue Code, prices must not include the Federal Excise Tax.

1.064 Holdback – Deleted N/A

1.070 Additional Requirements

1.071 Additional Terms and Conditions specific to this Contract – Deleted N/A

Article 2, Terms and Conditions

2.000 Contract Structure and Term

2.001 Contract Term
This Contract is for a period of three years beginning December 1, 2009 through December 31, 2011. All outstanding Purchase Orders must also expire upon the termination (cancellation for any of the reasons listed in **Section 2.130**) of this Contract, unless otherwise extended under this Contract. Absent an early termination for any reason, Purchase Orders issued but not expired, by the end of this Contract's stated term, will remain in effect for the balance of the fiscal year for which they were issued.

2.002 Renewal(s)
This Contract may be renewed in writing by mutual agreement of the parties not less than 30 days before its expiration. This Contract may be renewed for up to two additional one-year periods.

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

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

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

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

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

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

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

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

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

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

2.011 No Waiver of Default
If a party fails to insist upon strict adherence to any term of this Contract then the party has not waived the right to later insist upon strict adherence to that term, or any other term, of this Contract.

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

2.020 Contract Administration

2.021 Issuing Office
This Contract is issued by the Department of Management and Budget, Purchasing Operations and DNR (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 this 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:

Lance Kingsbury
Purchasing Operations
Department of Management and Budget
Mason Bldg, 2nd Floor
PO Box 30026
Lansing, MI 48909
kingsburyL@michigan.gov
517.241.3768

2.022 Contract Compliance Inspector (CCI)
After DMB-Purchasing Operations receives this properly executed Contract, it is anticipated that the Director of Purchasing Operations, in consultation with DNR, will direct the person named below, or any other person so designated, to monitor and coordinate the activities for this 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 this Contract as that authority is retained by DMB Purchasing Operations**. The CCI for this Contract is:

Mary Nowinski, Administrator
Department of Natural Resources
530 W. Allegan
Lansing, MI 48933
Nowinskm@michigan.gov
Voice: 517-241-2100
Fax: 517-373-2443

2.023 Project Manager
The following individual will oversee the project:

Allan Keto, Resource Protection manager – UP
Department of Natural Resources
Forest, Mineral & Fire Management division
Marquette ICC
110 Ford Road
Marquette, MI 49855
Ketoa@michigan.gov
Phone: 906-249-1497
Fax: 906-228-5245

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

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

Change Requests:

(a) By giving Contractor written notice within a reasonable time, the State must be entitled to accept a Contractor proposal for Change, to reject it, or to reach another agreement with Contractor. Should the parties agree on carrying out a Change, a written Contract Change Notice must be prepared and issued under this Contract, describing the Change and its effects on the Services and any affected components of this Contract (a "Contract Change Notice").

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

(c) If the State requests or directs the Contractor to perform any activities that Contractor believes constitute a Change, the Contractor must notify the State that it believes the requested activities are a Change before beginning to work on the requested activities. If the Contractor fails to notify the State before beginning to work on the requested activities, then the Contractor waives any right to assert any claim for additional compensation or time for performing the requested activities. If the Contractor commences performing work outside the scope of this Contract and then ceases performing that work, the Contractor must, at the request of the State, retract any out-of-scope work that would adversely affect this Contract.

2.025 Notices
Any notice given to a party under this Contract must be deemed effective, if addressed to the party as addressed in **Section 2.021** and the Contractor's address on the cover of this Contract, upon: (i) delivery, if hand delivered; (ii) receipt of a confirmed transmission by facsimile if a copy of the notice is sent by another means specified in this Section; (iii) the third Business Day after being sent by U.S. mail, postage pre-paid, return receipt requested; or (iv) the next Business Day after being sent by a nationally recognized overnight express courier with a reliable tracking system.

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

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

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

2.028 Covenant of Good Faith
Each party must act reasonably and in good faith. Unless stated otherwise in this 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 this Contract.

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

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

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

2.030 General Provisions

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

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

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

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

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

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

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

2.040 Financial Provisions

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

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

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

2.044 Invoicing and Payment – In General
(a) Each Statement of Work issued under this Contract shall list (or indicate by reference to the appropriate Contract Exhibit) the prices for all Services/Deliverables, equipment and commodities to be provided, and the associated payment milestones and payment amounts.

(b) Each Contractor invoice will show details as to charges by Service/Deliverable component and location at a level of detail reasonably necessary to satisfy the State's accounting and charge-back requirements. Invoices for Services performed on a time and materials basis will show, for each individual, the number of hours of Services performed during the billing period, the billable skill/labor category for such person and the applicable hourly billing rate. Prompt payment by the State is contingent on the Contractor's invoices showing the amount owed by the State minus any holdback amount to be retained by the State in accordance with **Section 1.064**.

(c) Correct invoices will be due and payable by the State, in accordance with the State's standard payment procedure as specified in 1984 Public Act No. 279, MCL 17.51 et seq., within 45 days after receipt, provided the State determines that the invoice was properly rendered.

(d) All invoices should reflect actual work done. Specific details of invoices and payments will be agreed upon between the CCI and the Contractor after this Contract Agreement has been signed and accepted by both the Contractor and the Director of Purchasing Operations, Department of Management & Budget. This activity will occur only upon the specific written direction from Purchasing Operations.

The specific payment schedule for any Contract(s) entered into, as the State and the Contractor(s) will mutually agree upon. The schedule should show payment amount and should reflect actual work done by the payment dates, less any penalty cost charges accrued by those dates. As a general policy statements shall be forwarded to the designated representative by the 15th day of the following month.

The State may make progress payments to the Contractor when requested as work progresses, but not more frequently than monthly, in amounts approved by the CCI, after negotiation. Contractor must show verification of measurable progress at the time of requesting progress payments.

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

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

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

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

2.050 Taxes

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

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

2.060 Contract Management

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

2.062 Contractor Key Personnel
(a) The Contractor must provide the CCI with the names of the Key Personnel.

(b) Key Personnel must be dedicated as defined in the Statement of Work to the Project for its duration in the applicable Statement of Work with respect to other individuals designated as Key Personnel for that Statement of Work.

(c) The State will have the right to recommend and approve in writing the initial assignment, as well as any proposed reassignment or replacement, of any Key Personnel. Before assigning an individual to any Key Personnel position, Contractor will notify the State of the proposed assignment, will introduce the individual to the appropriate State representatives, and will provide the State with a resume and any other information about the individual reasonably requested by the State. The State reserves the right to interview the individual before granting written approval. In the event the State finds a proposed individual unacceptable, the State will provide a written explanation including reasonable detail outlining the reasons for the rejection.

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

(e) The Contractor must notify the CCI and the Contract Administrator at least 10 business days before redeploying non-Key Personnel, who are dedicated to primarily to the Project, to other projects. If the State does not object to the redeployment by its scheduled date, the Contractor may then redeploy the non-Key Personnel.

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

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

2.064 Contractor Personnel Location

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

2.065 Contractor Identification

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

2.066 Cooperation with Third Parties

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

2.067 Contractor Return of State Equipment/Resources

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

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

2.070 Subcontracting by Contractor

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

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

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

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

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

2.080 State Responsibilities

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

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

2.090 Security

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

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

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

2.093 PCI Data Security Requirements – Deleted N/A

2.100 Confidentiality

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

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

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

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

2.104 No Implied Rights
Nothing contained in this Section must be construed as obligating a party to disclose any particular Confidential Information to the other party, or as granting to or conferring on a party, expressly or impliedly, any right or license to the Confidential Information of the other party.

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

2.110 Records and Inspections

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

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

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

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

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

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

2.120 Warranties

2.121 Warranties and Representations
The Contractor represents and warrants:

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

(b) These 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 this Contract's requirements and other standards of performance.

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

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

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

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

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

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

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

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

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

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

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

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

2.122 Warranty of Merchantability

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

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

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

2.125 Equipment Warranty – Deleted N/A

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

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

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

2.130 Insurance

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

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

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

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

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

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

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

☑ 1. Commercial General Liability with the following minimum coverage:

$2,000,000 General Aggregate Limit other than Products/Completed Operations
$2,000,000 Products/Completed Operations Aggregate Limit
$1,000,000 Personal & Advertising Injury Limit
$1,000,000 Each Occurrence Limit

The Contractor must list the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees and agents as ADDITIONAL 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 according to applicable laws governing the employees and employers work activities in the state of the Contractor's domicile. If the applicable coverage is provided by a self-insurer, proof must be provided of approved self-insured authority by the jurisdiction of domicile. For employees working outside of the state of qualification, Contractor must provide appropriate certificates of insurance proving mandated coverage levels for the jurisdictions where the employees' activities occur.

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

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

☑ 4. Employers liability insurance with the following minimum limits:

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

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

2.133 Certificates of Insurance and Other Requirements
Contractor must furnish to DMB-Purchasing Operations, certificate(s) of insurance verifying insurance coverage or providing satisfactory evidence of self-insurance as required in this Section (the "Certificates"). The Certificate must be on the standard "accord" form or equivalent. **THIS CONTRACT OR PURCHASE ORDER NO. MUST BE SHOWN ON THE CERTIFICATE OF INSURANCE TO ASSURE CORRECT FILING.** All Certificate(s) are to be prepared and submitted by the Insurance Provider. All Certificate(s) must contain a provision indicating that coverages afforded under the policies WILL NOT BE CANCELLED, MATERIALLY CHANGED, OR NOT RENEWED without 30 days prior written notice, except for 10 days for non-payment of premium, having been given to the Director of Purchasing Operations, Department of Management and Budget. The notice must include this Contract or Purchase Order number affected. Before this Contract is signed, and not less than 20 days before the insurance expiration date every year thereafter, the Contractor must provide evidence that the State and its agents, officers and employees are listed as additional insureds under each commercial general liability and commercial automobile liability policy.

In the event the State approves the representation of the State by the insurer's attorney, the attorney may be required to be designated as a Special Assistant Attorney General by the Attorney General of the State of Michigan.

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

2.140 Indemnification

2.141 General Indemnification

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

2.142 Code Indemnification

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

2.143 Employee Indemnification

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

2.144 Patent/Copyright Infringement Indemnification

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

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

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

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

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

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

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

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

2.150 Termination/Cancellation

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

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

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

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

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

2.153 Termination for Convenience

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

2.154 Termination for Non-Appropriation

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

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

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

2.155 Termination for Criminal Conviction

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

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

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

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

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

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

2.160 Termination by Contractor

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

The Contractor may terminate this Contract if the State (i) materially breaches its obligation to pay the Contractor undisputed amounts due and owing under this Contract, (ii) breaches its other obligations under this Contract to an extent that makes it impossible or commercially impractical for the Contractor to perform the Services, or (iii) does not cure the breach within the time period specified in a written notice of breach. But the Contractor must discharge its obligations under **Section 2.190** before it terminates this Contract.

2.170 Transition Responsibilities

2.171 Contractor Transition Responsibilities

If the State terminates this Contract, for convenience or cause, or if this Contract is otherwise dissolved, voided, rescinded, nullified, expires or rendered unenforceable, the Contractor agrees to comply with direction provided by the State to assist in the orderly transition of equipment, services, software, leases, etc. to the State or a third party designated by the State. If this Contract expires or terminates, the Contractor agrees to make all reasonable efforts to effect an orderly transition of services within a reasonable period of time that in no event will exceed 30 days. These efforts must include, but are not limited to, those listed in **Sections 2.171, 2.172, 2.173, 2.174, and 2.175.**

2.172 Contractor Personnel Transition

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

2.173 Contractor Information Transition

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

2.174 Contractor Software Transition

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

2.175 Transition Payments

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

2.176 State Transition Responsibilities

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

(a) Reconciling all accounts between the State and the Contractor;

(b) Completing any pending post-project reviews.

2.180 Stop Work

2.181 Stop Work Orders

The State may, at any time, by written stop work order to Contractor, require that Contractor stop all, or any part, of the work called for by this Contract for a period of up to 90 calendar days after the stop work order is delivered to Contractor, and for any further period to which the parties may agree. The stop work order must be identified as a stop work order and must indicate that it is issued under this **Section 2.180**. Upon receipt of the stop work order, Contractor must immediately comply with its terms and take all reasonable steps to minimize incurring costs allocable to the work covered by the stop work order during the period of work stoppage. Within the period of the stop work order, the State must either: (a) cancel the stop work order; or (b) terminate the work covered by the stop work order as provided in **Section 2.150**.

2.182 Cancellation or Expiration of Stop Work Order
The Contractor must resume work if the State cancels a Stop Work Order or if it expires. The parties will agree upon an equitable adjustment in the delivery schedule, this Contract price, or both, and this Contract must be modified, in writing, accordingly, if: (a) the stop work order results in an increase in the time required for, or in Contractor's costs properly allocable to, the performance of any part of this 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 this Contract. Any adjustment will conform to the requirements of **Section 2.024**.

2.183 Allowance of Contractor Costs
If the stop work order is not canceled and the work covered by the stop work order is terminated for reasons other than material breach, the termination must be deemed to be a termination for convenience under **Section 2.150**, and the State will pay reasonable costs resulting from the stop work order in arriving at the termination settlement. For the avoidance of doubt, the State is not be liable to Contractor for loss of profits because of a stop work order issued under this **Section 2.180.**

2.190 Dispute Resolution

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

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

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

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

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

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

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

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

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

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

2.200 Federal and State Contract Requirements

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

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

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

2.210 Governing Law

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

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

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

2.220 Limitation of Liability

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

The State's liability for damages to the Contractor is limited to the value of this Contract.

2.230 Disclosure Responsibilities

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

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

(i) the ability of Contractor (or a Subcontractor) to continue to perform this Contract according to its terms and conditions, or
(ii) whether Contractor (or a Subcontractor) in performing Services for the State is engaged in conduct which is similar in nature to conduct alleged in the Proceeding, which conduct would constitute a breach of this Contract or a violation of Michigan law, regulations or public policy, then the Contractor must provide the State all reasonable assurances requested by the State to demonstrate that:
(a) Contractor and its Subcontractors will be able to continue to perform this Contract and any Statements of Work according to its terms and conditions, and
(b) Contractor and its Subcontractors have not and will not engage in conduct in performing the Services which is similar in nature to the conduct alleged in the Proceeding.

(c) Contractor must make the following notifications in writing:
(1) Within 30 days of Contractor becoming aware that a change in its ownership or officers has occurred, or is certain to occur, or a change that could result in changes in the valuation of its capitalized assets in the accounting records, Contractor must notify DMB Purchasing Operations.
(2) Contractor must also notify DMB 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 must also notify DMB Purchasing Operations within 30 days whenever changes to company affiliations occur.

2.232 Call Center Disclosure – Deleted N/A

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

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

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

2.240 Performance

2.241 Time of Performance

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

(b) Without limiting the generality of **Section 2.241(a),** Contractor must notify the State in a timely manner upon becoming aware of any circumstances that may reasonably be expected to jeopardize the timely and successful completion of any Deliverables/Services on the scheduled due dates in the latest State-approved delivery schedule and must inform the State of the projected actual delivery date.

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

2.242 Service Level Agreements (SLAs)

(a) SLAs will be completed with the following operational considerations:
(i) SLAs will not be calculated for individual Incidents where any event of Excusable Failure has been determined; Incident means any interruption in Services.
(ii) SLAs will not be calculated for individual Incidents where loss of service is planned and where the State has received prior notification or coordination.
(iii) SLAs will not apply if the applicable Incident could have been prevented through planning proposed by Contractor and not implemented at the request of the State. To invoke this consideration, complete documentation relevant to the denied planning proposal must be presented to substantiate the proposal.
(iv) Time period measurements will be based on the time Incidents are received by the Contractor and the time that the State receives notification of resolution based on 24x7x365 time period, except that the time period measurement will be suspended based on the following:
1. Time period(s) will not apply where Contractor does not have access to a physical State Location and where access to the State Location is necessary for problem identification and resolution.
2. Time period(s) will not apply where Contractor needs to obtain timely and accurate information or appropriate feedback and is unable to obtain timely and accurate information or appropriate feedback from the State.

(b) Chronic Failure for any Service(s) will be defined as three unscheduled outage(s) or interruption(s) on any individual Service for the same reason or cause or if the same reason or cause was reasonably discoverable in the first instance over a rolling 30 day period. Chronic Failure will result in the State's option to terminate the effected individual Service(s) and procure them from a different vendor for the chronic location(s) with Contractor to pay the difference in charges for up to three additional months. The termination of the Service will not affect any tiered pricing levels.

(c) Root Cause Analysis will be performed on any Business Critical outage(s) or outage(s) on Services when requested by the Contract Administrator. Contractor will provide its analysis within two weeks of outage(s) and provide a recommendation for resolution.

(d) All decimals must be rounded to two decimal places with five and greater rounding up and four and less rounding down unless otherwise specified.

2.243 Liquidated Damages
The parties acknowledge that late or improper completion of the Work will cause loss and damage to the State, and that it would be impracticable and extremely difficult to fix the actual damage sustained by the State as a result. Therefore, Contractor and the State agree that if there is late or improper completion of the Work and the State does not elect to exercise its rights under **Section 2.152**, the State is entitled to collect liquidated damages in the amount of $5,000.00 and an additional $100.00 per day for each day Contractor fails to remedy the late or improper completion of the Work.

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

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

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

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

2.250 Approval of Deliverables – Deleted N/A

2.260 Ownership

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

2.262 Vesting of Rights
With the sole exception of any preexisting licensed works identified in the SOW, the Contractor assigns, and upon creation of each Deliverable automatically assigns, to the State, ownership of all United States and international copyrights, trademarks, patents, or other proprietary rights in each and every Deliverable, whether or not registered by the Contractor, insofar as any the Deliverable, by operation of law, may not be considered work made for hire by the Contractor for the State. From time to time upon the State's request, the Contractor must confirm the assignment by execution and delivery of the assignments, confirmations of assignment, or other written instruments as the State may request. The State may obtain and hold in its own name all copyright, trademark, and patent registrations and other evidence of rights that may be available for Deliverables.

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

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

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

2.270 State Standards

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

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

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

2.280 Extended Purchasing – Deleted N/A

2.290 Environmental Provision – Deleted N/A

Attachment A, Price Proposal

Test	Estimated Quantity	U/M	Unit Cost	Total Annual Costs
Physician Interpretation	200	EA	$45.00	$9,000.00
Previous EKG	200	EA	N/A	N/A
Fitness Test Completed by Staff	200	EA	$45.00	$9,000.00
Total annual costs for all tests				$18,000.00

Total Annual Costs	X 3 years	Total Estimated Contract Cost
$18,000.00	X 3	$54,000.00

Attachment B, Testing Guidelines

Michigan Department of Natural Resources

Physical Fitness Testing Guidelines

September 4, 2008

These guidelines are for the use of Contracted health care personnel administering the Michigan Department of Natural Resources Physical Fitness Testing Program. The guidelines are designed to provide consistency and promote the welfare of the participants involved in the testing procedure.

On the day that DNR fitness testing is to be administered:

1. Have the participant fill out the health risk fitness evaluation and consent statement, and have this signed by the participant.

2. Conduct a pre-testing EKG, and have this reviewed by a physician. The physician should also review the Health Risk Fitness Evaluation questionnaire. If any questions are answered "yes," the participant should be referred to his/her personal physician for clearance before the testing proceeds.

   If an individual is taking any medications for heart problems, high blood pressure, asthma, or diabetes, the person should be referred to their personal physician for clearance before proceeding with the testing.

3. Make sure the participant is familiar with the exercise warning signs.

4. Check the pulse and blood pressure of the participant.

5. **Pushup:** Straight knees and back. Start in the down position, extend arms and come back down so upper arm is parallel to the floor. This is one repetition. Repeat 10 times in 60 seconds.

6. **Situp:** Knees bent and feet held down. Start in the down position, hold arms crossed across chest; come up and touch both elbows on knees, then down flat. This is one repetition. Do 11 repetitions, alternating elbows each time, in 30 seconds.

7. **Lateral Pull Down** Grasp bar and pull down to the level of the chin and then back to the starting point. This is one repetition. Twenty repetitions with a 40 pound weight.

8. **Treadmill Test**

   Prior to beginning the treadmill test, inform the participant that they are not allowed to grab and hold either the front bar (if the treadmill has one) or the side rails. The side rails may only be used to restore balance. If the participant grabs and holds the front bar (if the treadmill has one) or the side rail, the test will be terminated.

   a. Stage One: Start with the treadmill set at 2 mph and 6% incline. When the participant steps on the belt, start the time and quickly bring the treadmill to 3.5 mph. The stage lasts for 3 minutes; at the end of the three minutes, reduce the treadmill speed to 2 mph before allowing the participant to step off. Allow the participant one minute of rest, during which time take the participant's pulse.

   b. Stage Two (**National "Light")**: Start with the treadmill set at 2 mph and 12.3% incline. When the participant steps on the belt, start the time and quickly bring the treadmill to 3.5 mph. The stage lasts for 3 minutes; at the end of the three minutes, reduce the treadmill speed to 2 mph before allowing the participant to step off. Allow the participant one minute of rest, during which time take the participant's pulse.

   c. Stage Three (**Michigan in-state Passing Stage)**: Start with the treadmill set at 2 mph and 17.5% incline. When the participant steps on the belt, start the time and quickly bring the treadmill to 3.5 mph. The stage lasts for 3 minutes; at the end of the three minutes, reduce the treadmill speed to 2 mph before allowing the participant to step off. Allow the participant one minute of rest, during which time take the participant's pulse.

d. Stage Four (**National "Arduous")**: Start with the treadmill set at 2 mph and 19.8% incline. When the participant steps on the belt, start the time and quickly bring the treadmill to 4 mph. The stage lasts for 1 minute; at the end of the one minute, reduce the treadmill speed to 2 mph before allowing the participant to step off.

Take the participant's pulse after each stage with a pulse/ox meter. After stages two and three, also manually take the participant's pulse to check for irregularities. If a person seems to have an irregular pulse where either skipping or extra beats are noted, take the pulse for one minute and note the number of irregular heartbeats on the form. Terminate the test, and refer the individual to their personal physician for additional evaluation.

If the participant's pulse exceeds any of the following suggested pulse rates, watch the participant carefully and terminate the test if the participant has any discomfort, breathing difficulty, dizziness, unsteadiness, or unusual appearance, such as discoloration (either redness or bluish coloration), and most specifically the inability to keep pace with the treadmill.

Age	Suggested Pulse Rate
20 – 29	180 beats per minute or 30 beats per 10 seconds
30 – 39	171 beats per minute or 29 beats per 10 seconds
40 – 49	166 beats per minute or 28 beats per 10 seconds
50 – 59	162 beats per minute or 27 beats per 10 seconds
60+	150 beats per minute or 25 beats per 10 seconds

If the individual is unable to maintain position on the treadmill, and repeatedly drifts toward the rear of the belt, or if they exhibit any of the above mentioned symptoms in trying to maintain the pace, terminate the test.

9. After the completion of the last stage of the test, instruct the participant to remain in the testing room for 10 minutes. During this time, they are to continue to walk around. Check pulse and blood pressure at the end of the 10 minutes. The pulse rate should be below 100 beats per minute (17 beats in 10 seconds) with no irregularities, and the blood pressure should be below 140/90. If the participant exceeds either of these measures, they should be kept for an additional period of time until the pulse and blood pressure return to normal.

Be conservative; err on the side of the participant's safety if you suspect there are any problems. Always refer the participant to their personal physician for additional evaluation and clearance if you suspect there is, or could be, a problem. All clearances from a personal physician **must** be in writing.

Take any participant who exhibits any cardiovascular warning signs or irregular heart beats that do not resolve within a short period of time to the nearest hospital providing emergency services. Have the participant sit or lay down, and watch the individual closely.

Treadmill Calibration

1. **Measure the Incline:**
   a. Set the treadmill to the appropriate incline. Measure the length of the treadmill in inches between the center of the feet in the rear, and the center of the belt spindle in the front.
   b. Measure the height of the front of the treadmill in inches. between the floor and the center of the belt spindle in the front.
   c. Compute the incline % = (rise/run)*100= (height of front spindle/treadmill length)*100.
2. **Measure the speed:**
   a. Measure the length of the belt: Measure the distance between the two belt spindles in inches. Measure the diameter of the spindles in inches. Length = (distance between the spindles) + (diameter of the spindles*3.1416). Convert this distance to feet by multiplying by 12.
   b. Place a piece of tape on the treadmill belt, and another piece of tape adjacent to it on the side of the treadmill. Using a stopwatch, Count how many times the piece of tape goes around in one minute. Measure the distance of any partial revolutions in feet. 3.5 mph = 308 feet/minute; four mph = 352 feet/minute. If the speed is off by more than nine feet/minute, adjust the treadmill speed accordingly.

Attachment C, Physical Fitness Standards

MICHIGAN	**POLICY & PROCEDURE**	**NO**. 161
DEPARTMENT OF	**FOREST, MINERAL, AND FIRE MANAGEMENT DIVISION**	
NATURAL RESOURCES	**RESOURCE PROTECTION & COOPERATIVE PROGRAMS SECTION**	**DATE**: 9/4/2008

SUBJECT: Physical Fitness Standards

POLICY: Individuals given a conditional offer of employment as Forest Fire Officer after January 1, 1984, shall be required to take and pass the Forest, Mineral, & Fire Management's Physical Fitness Testing Program for fire fighters with at least the minimum acceptable levels as established in the Physical Fitness Program.

Any individual hired as a Forest Fire Officer after January 1, 1984, shall be required to annually take the Physical Fitness Test and pass at the minimum acceptable levels or above established in the Physical Fitness Testing Program. The annual testing shall be done by the Forest, Mineral, & Fire Management or its designated representative. Persons failing the annual physical fitness testing shall have three weeks from their annual testing date established by the Division for conditioning and retesting. Not showing for the scheduled test without prior notification is considered a failure. If the second testing is failed, a less than satisfactory interim service rating will be issued for six weeks in accordance with all applicable procedures. Retesting shall be done at the completion of the conditional service rating period. Forest Fire Officers not able to pass the physical fitness testing after the six-week interim rating period shall be separated.

Before separation, an attempt will be made to find work for the employee within the department which would be within the individual's physical capability and for which the individual is qualified. If a position cannot be found the employee shall be separated.

After January 1, 1984, any individual who is qualified for the position of Fire Officer and who through transfer or other process seeks to be appointed as a Fire Officer, shall be required to pass the Forest, Mineral, & Fire Management's Physical Examination and Physical Fitness Testing Program established for new employees. Annual retesting requirements as for new employees will also be in effect.

Any individual, after January 1, 1984, who seeks a reallocation/promotion to the position of Forest Fire Officer 8, 9, or 10 and 11 (also known as Forest Fire Officer Supervisor or Area Fire Supervisor) and who meets all other requirements for promotion, shall be required to pass the physical fitness testing standards at the minimum acceptable level or above and shall be required annually, at a time established by the Forest, Mineral, & Fire Management, to be retested and to meet the physical fitness testing standards at the minimum acceptable level or above.

All Forest, Mineral, & Fire Management personnel hired prior to January 1, 1984, shall be exempt from the Forest, Mineral, & Fire Management's Physical Fitness Standards Policy as long as they remain in the same position held prior to January 1, 1984.

Forest, Mineral, & Fire Management personnel hired after January 1, 1984, other than Forest Fire Officers 7, 8, 9, 10 and 11 who are covered under a separate part of this policy, shall be required to pass the Forest, Mineral, & Fire Management's Physical Fitness Test before being assigned to wildland fire control duties in either initial attack, active fire line control, or prescribed fire operations. This requirement shall require annual retesting at a time established by the Forest, Mineral, & Fire Management, but in all cases, prior to being assigned fire control duties each calendar year.

All other Department of Natural Resources' employees shall be required to take and pass the Forest Management's Physical Fitness Testing Program for fire fighters at levels that meet minimum identified standards before being assigned to wildland fire control duties, either initial attack, active fire line control capacity, or assigned to assist in prescribed burning operations. Each calendar year retesting shall be required and the individual must meet the current acceptable standards. No exception for time of hire applies to Department of Natural Resources' employees other than as established for Forest Management personnel.

All Michigan Wildland Firefighters (Keymen) must take and pass the Forest, Mineral, & Fire Management Physical Fitness Test before being assigned to wildland fire control duties; either initial attack, active fire line control, or prescribed burning operations.

The Physical Fitness Program for wildland fire control, Forest, Mineral, & Fire Management, and standards established therein shall be the standards established for this policy.

The approved physical fitness tests are as follows:

1. **Lateral Pull Down:** 20 repetitions of 40 lbs.

2. **Situps:** 11 situps in 30 seconds, minimum standard

3. **Pushups:** 10 pushups in 60 seconds, minimum standard.

4. **Treadmill Test:** Completion of Stage Three

The interpreted resting EKG and physical fitness testing shall be done at or near a medical care facility.

All physical fitness testing will be done in compliance with the Division's Fitness Testing Guidelines.

All physical fitness test scores will be entered and maintained in Forest, Mineral, & Fire Management's Incident Qualification System (IQS) database.

Employees failing to meet minimum acceptable physical fitness standards at the time of testing shall not be allowed to work on wildland fire suppression or active prescribed fires.

Exception for Medical Reasons:
There may be situations due to medical reasons that an employee may not be able to take the annual fitness exam when it is originally scheduled. In these situations the following steps will be taken:

The employee must provide medical documentation from their physician that he/she cannot take the fitness test as soon as possible after they know they cannot take the test. This medical statement must provide diagnosis, prognosis and expected date when restrictions may be lifted. The employees supervisor will provide this information to the FMFM Personnel Liaison who will then consult with appropriate FMFM managers and the DNR Disability Manager, Human Resources Division (HRD). HRD and FMFM managers will determine if a modified work assignment is possible for the employee until the fitness test can be taken.

The modified work assignment shall have a start date and end date. A determination will be made based on medical documentation and operational needs whether the modified work assignment will be extended. The modified work assignment shall not exceed 6 months. If a modified work assignment is not possible, the employee will be sent home on sick leave, annual leave or medical leave of absence. If an employee fails the first annual physical fitness testing and provides a medical statement delaying the three weeks allowed under this policy for conditioning and retesting, the Department will require a release from the physician before a second test is scheduled. Upon release from the physician, the second testing will be scheduled as soon as possible. If the employee fails the second test a conditional service rating will be issued for six weeks in accordance with all applicable procedures. Retesting shall be done at the completion of the conditional service rating period. Forest Fire Officers not able to pass the physical fitness test after the six weeks conditional service rating period shall be separated.

PURPOSE: Firefighting is recognized as a mentally and physically demanding dangerous job. The safety of the fire fighter and the public, and the ability of the fire fighter to effectively function in the entire fire suppression job requires a high degree of physical fitness as well as fire fighting skills. This policy assures that those fitness requirements are met and maintained by all fire fighters within the Department.

RELATED PROCEDURES:

- Department of Natural Resources Commission Policy # 2207 and Department of Natural Resources Procedure # 2207.7
- Department of Natural Resources Commission Policy #4201
- Forest, Mineral, & Fire Management Policy and Procedure #121
- Forest, Mineral, & Fire Management Physical Fitness Testing Protocol

WHO	DOES WHAT
	Fire Officers Who Fail the Physical Fitness Test
Test Administrator	1. Notifies the immediate supervisor of the employee's failure to pass the Physical Fitness Test
Immediate Supervisor Test Administrator	2. Officially notifies the employee, in writing, of his/her failure to pass the test, and notifies them of the re-test date, providing three weeks to condition and prepare. This notification shall include notification that the employee cannot perform wildland fire suppression or prescribed fire duties. Provides a copy of the notification memo to the Division Personnel Liaison.
Immediate Supervisor	3. Re-tests in three weeks, conducting the entire physical fitness test, not just the portion the employee failed. In case of a second failure of the physical fitness test, notifies the employee's immediate supervisor.
	4. Notifies the Division Personnel Liaison, and discusses the possibility of a modified work assignment within the division.
Test Administrator	5. Issues a conditional service rating to the employee by holding a disciplinary conference, following normal procedures for such actions. Notifies the employee of the third retest date, allowing the employee six (6) weeks for further conditioning and preparation.
Immediate Supervisor	6. Re-tests the employee in six weeks, conducting the entire physical fitness test, not just the portion the employee failed. In case of a third failure of the physical fitness test, notifies the employee's immediate supervisor.
Division Personnel Liaison	7. Notifies the Division Personnel Liaison. 8. Requests an updated resume from the employee, and provides this to the Division Personnel Liaison. The employee shall provide the updated resume within five work days.
Immediate Supervisor	9. Works with Human Resources Division to attempt to find an alternate position within the department which would be within the employee's physical capability and for which the employee is qualified. 10. If an alternate position is found, completes the required documents to transfer the employee into the new position. 11. If no alternate position is found, the employee shall be separated.

Procedure Approved:

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FOREST, MINERAL, AND FIRE MANAGEMENT CHIEF Date