Form No. DTMB-3521 (Rev. 7/2015)
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**
**525 W. ALLEGAN, LANSING, MI 48933**

# CHANGE NOTICE NO. 3

**to**

# CONTRACT NO. 071B2200278

**between**

# THE STATE OF MICHIGAN

**and**

| NAME & ADDRESS OF CONTRACTOR | PRIMARY CONTACT | EMAIL |
|---|---|---|
| Rose Pest Solutions | David Grantham | dgrantham@rosepestsolutions.com |
| 7706 Rickle Street | PHONE | CONTRACTOR'S TAX ID NO. (LAST FOUR DIGITS ONLY) |
| Lansing, MI 48917 | 517-749-9173 | 3006 |

| STATE CONTACTS | AGENCY | NAME | PHONE | EMAIL |
|---|---|---|---|---|
| PROGRAM MANAGER / CCI | MDOC | Kari Kerstetter | 517-780-6102 | kersteeterk@michigan.gov |
| CONTRACT ADMINISTRATOR | DTMB | Steve Rigg | 517-284-7043 | riggs@michigan.gov |

## CONTRACT SUMMARY

**DESCRIPTION:** Pest Control Services – MDOC MI Reformatory – Ionia, Michigan

| INITIAL EFFECTIVE DATE | INITIAL EXPIRATION DATE | INITIAL AVAILABLE OPTIONS | EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW |
|---|---|---|---|
| October 1, 2012 | September 30, 2014 | 2, one year | August 31, 2015 |

| PAYMENT TERMS | DELIVERY TIMEFRAME |
|---|---|
| Net 45 | N/A |

| ALTERNATE PAYMENT OPTIONS | EXTENDED PURCHASING |
|---|---|
| ☐ P-card ☐ Direct Voucher (DV) ☐ Other | ☐ Yes ☒ No |

**MINIMUM DELIVERY REQUIREMENTS**

N/A

## DESCRIPTION OF CHANGE NOTICE

| EXERCISE OPTION? | LENGTH OF OPTION | EXERCISE EXTENSION? | LENGTH OF EXTENSION | REVISED EXP. DATE |
|---|---|---|---|---|
| ☒ | One year | ☐ | | September 30, 2016 |

| CURRENT VALUE | VALUE OF CHANGE NOTICE | ESTIMATED AGGREGATE CONTRACT VALUE |
|---|---|---|
| $16,800.00 | $6,000.00 | $22,800.00 |

**DESCRIPTION:** Effective August 11, 2015, this contract is exercising the last option year and is increased by $6,000.00. The revised contract expiration date is September 30, 2016. Please note the Contract Administrator has been changed to Steve Rigg.

All other terms, conditions, specifications and pricing remain the same. Per contractor and agency agreement, and DTMB Procurement approval.

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**
**525 W. ALLEGAN, LANSING, MI 48933**

**June 4, 2014**

# CHANGE NOTICE NO. 2

**to**

# CONTRACT NO. 071B2200278

**between**

# THE STATE OF MICHIGAN

**and**

| NAME & ADDRESS OF CONTRACTOR: | PRIMARY CONTACT | EMAIL |
|---|---|---|
| **Rose Pest Solutions** | David Grantham | dgrantham@rosepestsolutions.com |
| **7706 Rickle Street** | **TELEPHONE** | **CONTRACTOR #, MAIL CODE** |
| **Lansing, MI 48917** | (517) 749-9173 | |

| STATE CONTACTS | AGENCY | NAME | PHONE | EMAIL |
|---|---|---|---|---|
| CONTRACT COMPLIANCE INSPECTOR | MDOC | Kari Kerstetter | 517-780-6102 | kerstetterk@michigan.gov |
| BUYER | DTMB | Lisa Crozier-Green | 517-284-7042 | CrozierGreenL@michigan.gov |

## CONTRACT SUMMARY:

DESCRIPTION: Pest Control Services – MDOC MI Reformatory – Ionia, Michigan

| INITIAL EFFECTIVE DATE | INITIAL EXPIRATION DATE | INITIAL AVAILABLE OPTIONS | EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW |
|---|---|---|---|
| 09/01/2012 | 08/31/2014 | Two, 1 Year | **08/31/2014** |
| **PAYMENT TERMS** | **F.O.B** | **SHIPPED** | **SHIPPED FROM** |
| Net 45 | N/A | N/A | N/A |

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

**MINIMUM DELIVERY REQUIREMENTS:**

## DESCRIPTION OF CHANGE NOTICE:

| EXTEND CONTRACT EXPIRATION DATE | EXERCISE CONTRACT OPTION YEAR(S) | EXTENSION BEYOND CONTRACT OPTION YEARS | LENGTH OF OPTION/EXTENSION | EXPIRATION DATE AFTER CHANGE |
|---|---|---|---|---|
| ☐ No ☒ Yes | ☒ | ☐ | One (1) Year | 08/31/2015 |

| VALUE/COST OF CHANGE NOTICE: | ESTIMATED REVISED AGGREGATE CONTRACT VALUE: |
|---|---|
| $6,000.00 | $16,800.00 |

Effective 9/1/2014 this contract is **AMENDED** to **EXERCISE OPTION YEAR 1** for Pest Control Services – MDOC MI Reformatory, Ionia. New expiration date is **8/31/2015**. **ADD $6,000.00** to adequately fund option year. **CHANGE** contact to David Grantham. **CHANGE** email address to dgrantham@rosepestsolutions.com. **CHANGE** phone to (517) 749-9173. **CHANGE** Buyer to Lisa Crozier-Green. All other terms, conditions, pricing, and specifications remain the same. Per agency request, vendor agreement and approval from DTMB-Procurement.

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

April 10, 2013

# CHANGE NOTICE NO. 1
to
# CONTRACT NO. 071B2200278
between
# THE STATE OF MICHIGAN
and

| NAME & ADDRESS OF CONTRACTOR: | PRIMARY CONTACT | EMAIL |
|---|---|---|
| Rose Pest Solutions | Dennis Henderson | dhenderson@rosepestsolutions.com |
| 7706 Rickle Street | TELEPHONE | CONTRACTOR #, MAIL CODE |
| Lansing, MI 48917 | (517) 322-9422 | |

| STATE CONTACTS | AGENCY | NAME | PHONE | EMAIL |
|---|---|---|---|---|
| CONTRACT COMPLIANCE INSPECTOR | MDOC | Marie Gutekunst | (517) 780-6104 | gutekunstm@michigan.gov |
| BUYER | DTMB | Lymon Hunter | (517) 241-1145 | hunterl@michigan.gov |

## CONTRACT SUMMARY:

DESCRIPTION: **Pest Control Services – MDOC – Michigan Reformatory**

| INITIAL EFFECTIVE DATE | INITIAL EXPIRATION DATE | INITIAL AVAILABLE OPTIONS | EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW |
|---|---|---|---|
| September 1, 2012 | August 31, 2014 | 2, one year | August 31, 2014 |
| **PAYMENT TERMS** | **F.O.B** | **SHIPPED** | **SHIPPED FROM** |
| N/A | Delivered | Per the attached specs | 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 | ☐ | ☐ | | Aug. 31, 2014 |

| VALUE/COST OF CHANGE NOTICE: | ESTIMATED REVISED AGGREGATE CONTRACT VALUE: |
|---|---|
| $960.00 | $10,800.00 |

Effective April 4, 2013, the Michigan Reformatory training center is hereby added to this contract. This building was originally omitted from the Attachment A, per the attached revised pricing page (Attachment A). All other terms, conditions, pricing and specifications remain the same. Per vendor and agency agreement and the approval of DTMB Procurement.

***Revised Attachment A, Price***

**Pest Control Service**

| Item # | **Description** | **Annual Price** |
|---|---|---|
| **01.** | **Michigan Reformatory Correctional 1342 W. Main St.**<br>**Ionia, Michigan 48846**<br>Service Area: Rotunda Buildings 1, 3, 4, 5, 8 and Wards C, D, E, F, H. Services include offices, closets, restrooms, classrooms, library, and open areas. Wards A/B/G are cell blocks and the gym, treatment of perimeter and catwalk only **(cells only as needed).**<br>Services shall be performed **two times per month** and also on an as needed basis with the contractor responding within 48 hours of agency request.<br>**Price per service: $32.00** | **$768.00** |
| **02.** | **Michigan Reformatory Correctional 1342 W. Main St.**<br>**Ionia, Michigan 48846**<br>Service Area: Buildings 6 & 7 (J & I Block). Services include perimeter and catwalk base floor treatment **(cells only as needed).**<br>Services shall be performed **two times per month** and also on an as needed basis with the contractor responding within 48 hours of agency request.<br>**Price per service: $24.00** | **$576.00** |
| **03.** | **Michigan Reformatory Correctional 1342 W. Main St.**<br>**Ionia, Michigan 48846**<br>Service Area: Chapel Building 17. Services include perimeter, offices, utility closets, and restrooms. Services shall be performed **two times per month** and also on an as needed basis with the contractor responding within 48 hours of agency request.<br>**Price per service: $ 22.00** | **$528.00** |
| **04.** | **Michigan Reformatory Correctional 1342 W. Main St.**<br>**Ionia, Michigan 48846**<br>Service Area: Food Service Building 24. Services include main dining room, kitchen, commissary, dish room, bakery, mechanical closets, restrooms, offices, staircases, auditorium (2nd floor), mechanical room, basement, basement offices, cage rooms (excluding main sub-station electrical room). Services shall be performed **two times per month** and also on an as needed basis with the contractor responding within 48 hours of agency request.<br>**Price per service: $48.00** | **$1,152.00** |
| **05** | **Michigan Reformatory Correctional 1342 W. Main St.**<br>**Ionia, Michigan 48846**<br>Service Area: Administration Building 26. Services include First floor main lobby, closets, offices, break room, restrooms, bubble area, hallways. Second floor stair and hallways, offices, conference room, restrooms, and closets. Basement including stair and hallways, open areas, caged Areas, arsenal, lock shop, and old record storage areas. Services shall be performed **two times per month** and also on an as needed basis with the contractor responding within 48 hours of agency request.<br>**Price per service: $20.00** | **$480.00** |

**06** **Michigan Reformatory Correctional 1342 W. Main St.**
**Ionia, Michigan 48846**
**Additional Service Areas:** Tunnels, Maintenance Building, Maintenance Garage and Carpenter Shop Tunnels-starting at building, Food Service tunnel to yard tunnel to I Block tunnel to hobby craft tunnel to I.B. tunnel (Approx. 1200 ft.) **on a monthly basis.** Maintenance building, garage and carpenter shop offices, restrooms, and open areas on a **monthly basis**, with Sally Port and guard posts on an as needed basis with the contractor responding within 48 hours of agency requests.
**Price per service: $22.00** **$264.00**

**07** **Michigan Reformatory Correctional 1342 W. Main St.**
**Ionia, Michigan 48846**
Service Area: Power Plant. Services include basement, restrooms, offices, and main floor. Services shall be performed **two times per month** and also on an as needed basis with the contractor responding within 48 hours of agency request.
**Price per service: $ 20.00** **$480.00**

**08** **Michigan Reformatory Correctional 1342 W. Main St.**
**Ionia, Michigan 48846**
Service Area: Regional Warehouse. Services include inmate seating area, break room, receiving area, restrooms and offices. Services shall be performed **two times per month** and also on an as needed basis with the contractor responding within 48 hours of agency request.
**Price per service: $28.00** **$672.00**

**09** **Michigan Reformatory Correctional 1342 W. Main St.**
**Ionia, Michigan 48846**
Service Area: Training Center. Services include **all areas** of the Training Center. Services shall be performed **monthly** and also on an as needed basis with the contractor responding within 48 hours of agency request.
**Price per service: $40.00** **$480.00**

Form No. DTMB-3522 (Rev. 4/2012)
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**
**PROCUREMENT**
**P.O. BOX 30026, LANSING, MI 48909**
**OR**
**530 W. ALLEGAN, LANSING, MI 48933**

# NOTICE
# OF
# CONTRACT NO. 071B2200278
**between**
# THE STATE OF MICHIGAN
**and**

| NAME & ADDRESS OF CONTRACTOR: | PRIMARY CONTACT | EMAIL |
|---|---|---|
| **Rose Pest Solutions** | Dennis Henderson | dhenderson@rosepestsolutions.com |
| **7706 Rickle Street** | TELEPHONE | CONTRACTOR #, MAIL CODE |
| **Lansing, MI 48917** | (517) 322-9422 | |

| STATE CONTACTS | AGENCY | NAME | PHONE | EMAIL |
|---|---|---|---|---|
| CONTRACT COMPLIANCE INSPECTOR: | MDOC | Marie Gutekunst | (517) 780-6104 | gutekunstm@michigan.gov |
| BUYER: | DTMB | Lymon Hunter | (517) 241-1145 | hunterl@michigan.gov |

| **CONTRACT SUMMARY:** | | | |
|---|---|---|---|
| DESCRIPTION: **Pest Control Services – MDOC – Michigan Reformatory** | | | |
| INITIAL TERM | EFFECTIVE DATE | INITIAL EXPIRATION DATE | AVAILABLE OPTIONS |
| 2 Years | September 1,2 012 | August 31, 2014 | 2, one year |
| PAYMENT TERMS | F.O.B | SHIPPED | SHIPPED FROM |
| N/A | Delivered | Per the attached specs | N/A |
| ALTERNATE PAYMENT OPTIONS:+ | | | AVAILABLE TO MiDEAL PARTICIPANTS |
| ☐ P-card ☐ Direct Voucher (DV) ☐ Other | | | ☐ YES ☒ NO |
| MINIMUM DELIVERY REQUIREMENTS: | | | |
| Per the attached specifications | | | |
| MISCELLANEOUS INFORMATION: | | | |
| **The terms and conditions of this Contract are those of solicitation #** 071I2200155 **and this Contract Agreement. In the event of any conflicts between the specifications, and terms and conditions, indicated by the State and those indicated by the vendor, those of the State take precedence.** | | | |
| ESTIMATED CONTRACT VALUE AT TIME OF EXECUTION: | | | $9,840.00 |

Form No. DTMB-3522 (Rev. 4/2012)
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**
**PROCUREMENT**
**P.O. BOX 30026, LANSING, MI 48909**
**OR**
**530 W. ALLEGAN, LANSING, MI 48933**

# CONTRACT NO. 071B2200278

**between**

# THE STATE OF MICHIGAN

**and**

| NAME & ADDRESS OF CONTRACTOR: | PRIMARY CONTACT | EMAIL |
|---|---|---|
| **Rose Pest Solutions** | Dennis Henderson | dhenderson@rosepestsolutions.com |
| **7706 Rickle Street** | TELEPHONE | CONTRACTOR #, MAIL CODE |
| **Lansing, MI 48917** | (517) 322-9422 | |

| STATE CONTACTS | AGENCY | NAME | PHONE | EMAIL |
|---|---|---|---|---|
| CONTRACT COMPLIANCE INSPECTOR: | MDOC | Marie Gutekunst | (517) 780-6104 | gutekunstm@michigan.gov |
| BUYER: | DTMB | Lymon Hunter | (517) 241-1145 | hunterl@michigan.gov |

| **CONTRACT SUMMARY:** | | | |
|---|---|---|---|
| DESCRIPTION: **Pest Control Services – MDOC – Michigan Reformatory** | | | |
| INITIAL TERM | EFFECTIVE DATE | INITIAL EXPIRATION DATE | AVAILABLE OPTIONS |
| 2 Years | September 1,2 012 | August 31, 2014 | 2, one year |
| PAYMENT TERMS | F.O.B | SHIPPED | SHIPPED FROM |
| N/A | Delivered | Per the attached specs | N/A |
| ALTERNATE PAYMENT OPTIONS:+ | | | AVAILABLE TO MiDEAL PARTICIPANTS |
| ☐ P-card ☐ Direct Voucher (DV) ☐ Other | | | ☐ YES ☒ NO |
| MINIMUM DELIVERY REQUIREMENTS: | | | |
| Per the attached specifications | | | |
| MISCELLANEOUS INFORMATION: | | | |
| **The terms and conditions of this Contract are those of solicitation #** 071I2200155 **and this Contract Agreement. In the event of any conflicts between the specifications, and terms and conditions, indicated by the State and those indicated by the vendor, those of the State take precedence.** | | | |
| ESTIMATED CONTRACT VALUE AT TIME OF EXECUTION: | | | $9,840.00 |

**THIS IS NOT AN ORDER: This Contract Agreement is awarded on the basis of our inquiry bearing the solicitation #** 071I2200155**. Orders for delivery will be issued directly by the Department of Corrections through the issuance of a Purchase Order Form.**

**All terms and conditions of the solicitation are made a part hereof.**

| FOR THE CONTRACTOR: | FOR THE STATE: |
|---|---|
| **Rose Pest Solutions** | |
| Firm Name | Signature |
| | **Jeff Brownlee, Chief Procurement Officer** |
| Authoriz ed Agent Signature | Name/Title |
| | **DTMB Procurement** |
| Authorized Agent (Print or Type) | Enter Name of Agency |
| | |
| Date | Date |

**STATE OF MICHIGAN**
**Department of Technology, Management and Budget**
**Procurement**

Contract No. 071B2200278
PEST CONTROL SERVICES for Michigan Reformatory, Ionia, MI

Buyer Name: Lymon C. Hunter, CPPB
Telephone Number: 517.241.1145
E-Mail Address: HunterL@michigan.gov

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## ***Definitions***

**This section provides definitions for terms used throughout this document.**

**Business Day** - whether capitalized or not, means any day other than a Saturday, Sunday, State employee temporary layoff day, or State-recognized legal holiday (as identified in the Collective Bargaining Agreement for State employees) from 8:00am through 5:00pm Eastern Time unless otherwise stated.

**Buyer** – the DTMB-Procurement employee identified on the cover page of this RFP.

**Chronic Failure** - as defined in applicable Service Level Agreements.

**Contract** – based on this RFP, an agreement that has been approved and executed by the awarded Contractor, the DTMB-Procurement Director, and the State Administrative Board.

**Contractor** – the awarded bidder after the Effective Date.

**Days** - Business Days unless otherwise specified.

**Deleted, Not Applicable** - the section is not applicable or included in this RFP. This is used as a placeholder to maintain consistent numbering.

**Deliverable(s)** - physical goods or commodities as required or identified in a Statement of Work.

**Eastern Time** – either Eastern Standard Time or Eastern Daylight Time, whichever is prevailing in Lansing, Michigan.

**Effective Date** - the date that a binding contract is executed by the final party.

**Final Acceptance** - has the meaning provided in Section 2.8.7, Final Acceptance, unless otherwise stated in Article 1.

**Key Personnel** - any personnel designated as Key Personnel in Sections 1.3.3, Staff, Duties, and Responsibilities, and 2.4.2, Contractor Key Personnel, subject to the restrictions of Section 2.4.2.

**Post-Industrial Waste** - 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.

**Purchase Order** - a written document issued by the State that requests full or partial performance of the Contract.

**State** - the State of Michigan.

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

**Stop Work Order** - a notice requiring the Contractor to fully or partially stop work in accordance with the terms of the notice.

**Subcontractor** - a company or person that the Contractor delegates performance of a portion of the Deliverable(s) to, but does not include independent contractors engaged by the Contractor solely in a staff augmentation role.

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

# Article 1 – Statement of Work

## *1.1 Project Identification*

### *1.1.1 Project*

This Contract is for *Pest Control Services* for correctional facilities located in Ionia, MI for the Michigan Department of Corrections (DOC). The correctional facility is the Michigan Reformatory.

### *1.1.2 Background*

The Contractor shall complete contract deliverables in compliance with DOC policies, including Sanitation and Housekeeping Standards (04.03.102). The Contractor may request current policies from the CCI.

## *1.2 Scope of Work and Deliverable(s)*

### *1.2.1 In Scope*

The Contractor shall provide pest management measures as needed to control for roaches (all kinds), mice, rats, ants, silverfish, carpet beetles, spiders and pantry pests, in accordance with the applicable standards of the National Pest Control Association and to maintain the areas pest-free unless pest threshold levels are established elsewhere.

### *1.2.2 Deliverable(s)*

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:

1. The Contractor shall service all areas per frequency (listed on Attachment A) for pest control services at the following location:
   - Michigan Reformatory Correctional Facility, 1342 W. Main Street, Ionia, MI 48846

2. Contractor shall make emergency service calls when requested by authorized DOC personnel at no extra charge (evening or weekends) to meet the institutions' scheduling needs. If a mobilization occurs during the Contractor's scheduled visit, the Contractor will be asked to leave the institution for the duration of the mobilization and will be available to return to the facility to complete the services within 24 hours.

3. The Contractor shall only include usage of pesticides registered under the Natural Resources and Environmental Protection Act, Act No. 451, Public Acts 1994, Part 83, Pesticide Control. This can be found at:

   http://www.legislature.mi.gov/(S(b34syb45vemx0vj1wss2kzrq))/mileg.aspx?page=getobject&objectname=mcl-451-1994-II-2-83&query=on&highlight=pesticide#top.

4. The Contractor shall fully guarantee that pest control services that are performed will be satisfactory to the facility manager of the location being serviced.

5. **Contractors must be licensed and applicators must be certified in the following: Category 7A – General Pesticide Management per the Michigan Department of Agriculture and Rural Development.**

### *1.2.3 Quantity*

The State is not obligated to purchase in any specific quantity.

### *1.2.4 Ordering*

The Contract, once it has been executed by the State, constitutes an order for the Deliverable(s). The bidder is not authorized to begin performance until commencement of the Contract term or receipt of an executed Contract, whichever is later.

### *1.2.5 Alternate Bids – [Deleted, Not Applicable]*

## 1.3 Management and Staffing

### 1.3.1 Project Management

The Contractor will use a verifiable integrated pest management approach as part of the pest control program. Inspections during treatment are mandatory as part of the services provided by the certified pest control operator. Only certified pest control operators will provide services.

### 1.3.2 Reports

The Contractor shall provide a report of service performed at each location, including integrated pest management records to the Facilities Manager of that location. The report shall be submitted at the completion of each service call.

### 1.3.3 Staff, Duties, and Responsibilities

Contractor must maintain adequate number of certified staff to assure continuation of quality uninterrupted services in instances of personal emergencies, illnesses, quits, etc., and to adequately perform Contract specifications.

### 1.3.4 Meetings – [Deleted, Not Applicable]

### 1.3.5 Place of Performance (See section 1.2.2)

### 1.3.6 Reserved

### 1.3.7 Binding Commitments

The Contractor's representative with the authority to make binding commitments on the Contractor's behalf is Dennis Henderson or Bill Welsh, District & Regional Managers of Rose Pest Solutions.

### 1.3.8 Training– [Deleted, Not Applicable]

### 1.3.9 Security

The State reserves the right to screen for the purpose of security all employees of the Contractor who will work on the premises. The Contractor must replace any prospective employees who are found to constitute security risks. The State further reserves the right to recommend reassignment of personnel deemed unsatisfactory by the State. Such employees in either case may not be assigned at any other State location.

The Contractor must provide security background (LEIN) clearance information for all employees that will provide services to each site. LEIN clearance is valid for one year and is the responsibility of the Contractor to have it renewed. Information consists of, but not limited to, date of birth, full name, driver's license number, race, social security number and sex.

## 1.4 Delivery and Acceptance

### 1.4.1 Time Frames [Deleted, Not Applicable]

### 1.4.2 Minimum Order –[Deleted, Not Applicable]

### 1.4.3 Packaging –[Deleted, Not Applicable]

### 1.4.4 Palletizing –[Deleted, Not Applicable]

### 1.4.5 Delivery Term –[Deleted, Not Applicable]

### 1.4.6 Acceptance Process

The State Review Period for approval of Services is governed by the applicable Statement of Work (and if the Statement of Work does not state the State Review Period, it is by default 30 Business Days for Services). The State agrees to notify the Contractor in writing by the end of the State Review Period either stating that the Service is approved in the form delivered by the Contractor or describing any deficiencies that must be corrected before approval of the Services (or at the State's election, after approval of the Service). If the State delivers to the Contractor a notice of deficiencies, the Contractor will correct the described deficiencies and

within 30 Business Days resubmit the Service in a form that shows all revisions made to the original version delivered to the State. The Contractor's correction efforts will be made at no additional charge. Upon implementation of a corrected Service from Contractor, the State will have a reasonable additional period of time, not to exceed the length of the original State Review Period, to review the corrected Service for conformity and that the identified deficiencies have been corrected.

#### ***1.4.7 Criteria [Deleted, Not Applicable]***

### ***1.5 Pricing***

#### 1.***5.1 Pricing***

See **Attachment A** for pricing details.

#### 1.***5.2 Quick Payment Terms–[Deleted, Not Applicable]***

#### 1.***5.3 Price Term***

Prices in **Attachment A** are firm with prospective renegotiation at an agreed upon time. The criteria for a re-determination of pricing are under Section 2.3.5, Price Changes.

#### ***1.5.4 Tax Excluded from Price***

(a) Sales Tax: The State is exempt from sales tax for direct purchases. The Contractor's prices must not include sales tax. DTMB-Procurement will furnish exemption certificates for sales tax 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 any resulting 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, the Contractor's prices must not include the Federal Excise Tax.

#### 1.***5.5 Invoices***

Invoices should include, at a minimum, the following information:

(a) Date
(b) PO #
(c) Facility Address & Account Number
(d) Unit Price
(e) Total Price
(f) Deliverable(s)

### ***1.6 Commodity Requirements***

#### 1.***6.1 Customer Service***

The Contractor must have: (a) one or more knowledgeable individual(s) specifically assigned to State of Michigan accounts that will respond to State agency inquiries promptly; and (b) a statewide toll-free number for customer service calls.

Contractor shall make emergency service calls when requested by authorized DOC personnel at no extra charge (evening or weekends) to meet the institutions' scheduling needs. If a mobilization occurs during the Contractor's scheduled visit, the Contractor will be asked to leave the institution for the duration of the mobilization and will be available to return the facility to complete the services within 24 hours.

If a pest/vermin issue arises outside of the regularly scheduled visit, the Contractor must respond within 48 hours of agency request.

#### ***1.6.2 Research and Development – [Deleted, Not Applicable]***

***1.6.3 Quality Assurance Program – [Deleted, Not Applicable]***

1.***6.4 Warranty for Deliverable(s) – [Deleted, Not Applicable]***

***1.6.5 Special Incentives – [Deleted, Not Applicable]***

***1.6.6 Energy Efficiency– [Deleted, Not Applicable]***

1.***6.7 Environmental Requirements***

The Contractor shall advise the state and the CCI in writing of any changes in the certification and/or the products being applied for the control of pests under this contract.

***1.6.8 Recycled Content and Recyclability – [Deleted, Not Applicable]***

***1.6.9 Materials Identification and Tracking***

(a) **Hazardous Chemical Identification**. The Contractor must list any hazardous chemical, as defined in 40 CFR §370.2, to be delivered. Each hazardous chemical must be properly identified, including any applicable identification number, such as a National Stock Number or Special Item Number. Material Safety Data Sheets must be submitted in accordance with the federal Emergency Planning and Community Right-to-Know Act, 42 USC 11001 *et seq.*, as amended. This list must be updated whenever any other chemical to be delivered is hazardous.

| Chemical<br>(if none, enter 'None') | Identification Number |
|---|---|
| None used | N/A |

(b) **Mercury Content**. Under MCL 18.1261d, the Contractor must offer mercury-free products whenever possible.

Contractor affirms there are none used in their service delivery.

(c) **Brominated Flame Retardants**.
Contractor affirms their products do not contain brominated flame retardants (BFRs).

(d) **Environmental Permits and Requirements**. The Contractor must disclose whether any of its facilities are in violation of any environmental laws. The Contractor must immediately notify DTMB-Procurement of the receipt of any EPA, State, or local agency communication indicating that any of the Contractor's facilities are in violation of applicable environmental laws.

Contractor affirms its facilities are not in violation of any environmental laws.

***1.7 Extended Purchasing***

***1.7.1 MiDEAL- Deleted - [Deleted, Not Applicable]***

***1.7.2 State Employee Purchases - [Deleted, Not Applicable]***

## Article 2 – Terms and Conditions

### *2.1 Contract Term*

#### *2.1.1 Contract Term*

The Contract term begins October 1, 2012 and expires September 30, 2014. All outstanding Purchase Orders will expire upon the termination of the Contract for any of the reasons listed in Section 2.16, Termination by the State, unless otherwise agreed to in writing by DTMB-Procurement. Absent an early termination, Purchase Orders issued, but not expired, by the end of the Contract's term will remain in effect until the next September 30.

#### *2.1.2 Options to Renew*

This Contract may be renewed for up to two additional one-year period(s). Renewal must be by mutual written agreement of the parties, not less than 30 days before expiration of the Contract.

### *2.2 Payments and Taxes*

#### *2.2.1 Fixed Prices for Deliverable(s)*

Prices are fixed for all Deliverable(s).

#### *2.2.2 Payment Deadlines*

Undisputed invoices will be due and payable by the State, in accordance with the State's standard payment procedure as specified in 1984 PA 279, MCL 17.51 *et seq.*, within 45 days after receipt.

#### *2.2.3 Invoicing and Payment – In General [Deleted, Not Applicable]*

#### *2.2.4 Pro-ration [Deleted, Not Applicable]*

#### *2.2.5 Final Payment and Waivers*

The Contractor's acceptance of final payment by the State constitutes a waiver of all claims by the Contractor against the State for payment under this Contract, other than those claims previously filed in writing on a timely basis and still disputed. For other claims, final payment by the State will not constitute a waiver by either party of any rights as to the other party's continuing obligations, nor will it constitute a waiver of any claims under this Contract, including claims for Deliverable(s) not reasonably known to be defective or substandard.

#### *2.2.6 Electronic Payment Requirement*

As required by MCL 18.1283a, the Contractor must electronically register with the State at http://www.michigan.gov/cpexpress to receive electronic fund transfer (EFT) payments.

#### *2.2.7 Employment Taxes*

The Contractor must collect and pay all applicable federal, state, and local employment taxes.

#### *2.2.8 Sales and Use Taxes*

The Contractor must register and remit sales and use taxes on taxable sales of tangible personal property or services delivered into the State. If the Contractor lacks sufficient presence in Michigan to be required to register and pay taxes, it must do so on a voluntary basis. The requirement to register and remit sales and use taxes extends to (a) all members of a "controlled group of corporations" as defined in § 1563(a) of the Internal Revenue Code, 26 USC 1563(a), and applicable regulations; and (b) all organizations under common control that make sales at retail for delivery into the State. Any United States Department of Treasury regulation that references "two or more trades or businesses under common control" includes organizations such as sole proprietorships, partnerships (as defined in § 7701(a)(2) of the Internal Revenue Code, 26 USC 7701(a)(2)), trusts, estates, corporations, or limited liability companies.

### *2.3 Contract Administration*

### ***2.3.1 Issuing Office***

This Contract is issued by DTMB-Procurement on behalf of the MDOC (State). **DTMB-Procurement is the only entity authorized to modify the terms and conditions of this Contract, including the prices and specifications.** The Contract Administrator within DTMB-Procurement for this Contract is:

Lymon C. Hunter, CPPB, Buyer Specialist
Procurement
Department of Technology, Management and Budget
Mason Bldg, 2nd Floor
PO Box 30026
Lansing, MI 48909

### ***2.3.2 Contract Compliance Inspector***

The Contract Compliance Inspector, named below, will monitor and coordinate Contract activities on a day-to-day basis. However, monitoring of this Contract implies **no authority to modify the terms and conditions of this Contract, including the prices and specifications.**

Maria Gutekunst – Regional Purchasing
Department of Corrections
4000 Cooper Street, Jackson, MI 49201
gutekunstm@michigan.gov
517-780-6104

### ***2.3.3 Project Manager -[Deleted, Not Applicable]***

### ***2.3.4 Contract Changes***

(a) If the State requests or directs the Contractor to provide any Deliverable(s) that the Contractor believes are outside the scope of the Contractor's responsibilities under the Contract, the Contractor must notify the State before performing the requested activities. If the Contractor fails to notify the State, any activities performed will be considered in-scope and not entitled to additional compensation or time. If the Contractor begins work outside the scope of the Contract and then ceases performing that work, the Contractor must, at the request of the State, retract any out-of-scope work that would adversely affect the Contract.

(b) The State or the Contractor may propose changes to the Contract. If the Contractor or the State requests a change to the Deliverable(s) or if the State requests additional Deliverable(s), the Contractor must provide a detailed outline of all work to be done, including tasks, timeframes, listing of key personnel assigned, estimated hours for each individual per Deliverable, and a complete and detailed cost justification. If the parties agree on the proposed change, DTMB-Procurement will prepare and issue a notice that describes the change, its effects on the Deliverable(s), and any affected components of the Contract (Contract Change Notice).

(c) No proposed change may be performed until DTMB-Procurement issues a duly executed Contract Change Notice for the proposed change.

### ***2.3.5 Price Changes***

If allowed by Section 1.5.3, Price Term, the State and the Contractor will complete a pricing review (Review) every 365 days following the Effective Date, to allow for changes based on actual costs incurred. Requested changes may include increases or decreases in price and must be accompanied by supporting information indicating market support of proposed modifications (such as the CPI and PPI, US City Average, as published by the US Department of Labor, Bureau of Labor Statistics).

(a) The State may request a Review upon 30 days written notice that specifies what Deliverable is being reviewed. At the Review, each party may present supporting information including information created by, presented, or received from third parties.

(b) Following the presentation of supporting information, both parties will have 30 days to review the supporting information and prepare any written response.

(c) In the event the Review reveals no need for modifications of any type, pricing will remain unchanged unless mutually agreed to by the parties. However, if the Review reveals that changes may be

recommended, both parties will negotiate in good faith for 30 days unless extended by mutual agreement of the parties.

(d) If the supporting information reveals a reduction in prices is necessary and Contractor agrees to reduce rates accordingly, then the State may elect to exercise the next one year option, if available.

(e) If the supporting information reveals a reduction in prices is necessary and the parties are unable to reach agreement, then the State may eliminate all remaining Contract renewal options.

(f) Any changes based on the Review must be implemented through the issuance of a Contract Change Notice.

### ***2.3.6 Notices***

All notices and other communications required or permitted under this Contract must be in writing and will be considered given when delivered personally, by fax (if provided) or by e-mail (if provided), or by registered mail, return receipt requested, addressed as follows (or any other address that is specified in writing by either party):

If to State:

State of Michigan
DTMB-Procurement
Attention: Lymon C. Hunter, CPPB
PO Box 30026
530 West Allegan
Lansing, MI 48909
HunterL@Michigan.gov
517.335.0046

If to Contractor:
Rose Pest Solutions
Attention: Dennis Henderson
7706 Rickle Street
Lansing, MI 48197

Delivery by a nationally recognized overnight express courier will be treated as personal delivery.

### ***2.3.7 Covenant of Good Faith***

Each party must act reasonably and in good faith. Unless otherwise provided in this Contract, the parties will not unreasonably delay, condition or withhold their consent, decision, or approval any time it is requested or reasonably required in order for the other party to perform its responsibilities under the Contract.

### ***2.3.8 Assignments***

(a) Neither party may assign this Contract, or assign or delegate any of its duties or obligations under the Contract, to another party (whether by operation of law or otherwise), without the prior approval of the other party. The State may, however, assign this Contract to any other State agency, department, or division without the prior approval of the Contractor.

(b) If the Contractor intends to assign this Contract or any of the Contractor's rights or duties under the Contract, the Contractor must notify the State and provide adequate information about the assignee at least 90 days before the proposed assignment or as otherwise provided by law or court order. The State may withhold approval from proposed assignments, subcontracts, or novations if the State determines, in its sole discretion, that the transfer of responsibility would decrease the State's likelihood of receiving performance on the Contract or the State's ability to recover damages.

(c) If the State permits an assignment of the Contractor's right to receive payments, the Contractor is not relieved of its responsibility to perform any of its contractual duties. All payments must continue to be made to one entity.

### ***2.3.9 Equipment***

The State will not provide equipment and resources unless specifically identified in the Statement(s) of Work or other Contract exhibits.

#### 2.3.10 Facilities [Deleted, Not Applicable]

### 2.4 Contract Management

#### 2.4.1 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.

#### 2.4.2 Contractor Key Personnel [Deleted, Not Applicable]

#### 2.4.3 Removal or Reassignment 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.

#### 2.4.4 Contractor Personnel Location [Deleted, Not Applicable]

#### 2.4.5 Contractor Identification

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

#### 2.4.6 Cooperation with Third Parties

The Contractor and its Subcontractors must cooperate with the State and its agents and other contractors, including the State's quality assurance personnel. The Contractor must provide reasonable access to its personnel, systems, and facilities related to the Contract to the extent that access will not interfere with or jeopardize the safety or operation of the systems or facilities.

#### 2.4.7 Relationship of the Parties

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

#### 2.4.8 Contractor Return of State Equipment/Resources [Deleted, Not Applicable]

#### 2.4.9 Background Checks

See Section 1.3.9 – Security for requirement.

#### 2.4.10 Compliance With State Policies [Deleted, Not Applicable]

### 2.5 Subcontracting by Contractor

#### ***2.5.1 Contractor Responsible***

The Contractor is responsible for the completion of all Deliverable(s). The State will consider the Contractor to be the sole point of contact with regard to all contractual matters, including payment of any charges for Deliverable(s). The Contractor must make all payments to its Subcontractors or suppliers. Except as otherwise agreed in writing, the State is not obligated to make payments for the Deliverable(s) to any party other than the Contractor.

#### ***2.5.2 State Approval of Subcontractor***

(a) The Contractor may not delegate any duties under this Contract to a Subcontractor unless DTMB-Procurement gives prior approval to the delegation. Attached as Exhibit A is a list of the Subcontractors, if any, approved by the State as of the Effective Date. The State is entitled to receive copies of and review all subcontracts. The Contractor may delete or redact any proprietary information before providing it to the State.
(b) The State may require the Contractor to terminate and replace any Subcontractor the State reasonably finds unacceptable. The required replacement of a Subcontractor must be written and contain reasonable detail outlining the State's reasons. If the State exercises this right, and the Contractor cannot immediately replace the Subcontractor, the State will agree to an equitable adjustment in the schedule or other terms that may be affected by the State's required replacement. If this requirement results in a delay, the delay will not be counted against any applicable Service Level Agreement (SLA).

#### ***2.5.3 Subcontract Requirements***

Except where specifically approved by the State, Contractor must include the obligations in Sections 2.24.2, Media Releases, 2.4, Contract Management, 2.11, Confidentiality, 2.12, Records and Inspections, 2.13, Warranties, 2.14, Insurance, and 2.23, Laws, in all of its agreements with Subcontractors.

#### ***2.5.4 Competitive Selection***

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

### ***2.6 Reserved***

### ***2.7 Performance***

#### ***2.7.1 Time of Performance [Deleted, Not Applicable]***

#### ***2.7.2 Service Level Agreements [Deleted, Not Applicable]***

#### ***2.7.3 Liquidated Damages [Deleted, Not Applicable]***

#### ***2.7.4 Excusable Failure [Deleted, Not Applicable]***

### ***2.8 Acceptance of Deliverable(s)***

See Section 1.2.2 – Deliverables for requirement.

#### ***2.8.1 Quality Assurance***

See Section 1.2.2 – Deliverables for requirement.

#### ***2.8.2 Delivery Responsibilities***

See Section 1.2.2 – Deliverables for requirement.

#### ***2.8.3 Process for Acceptance of Deliverable(s) [Deleted, Not Applicable]***

#### ***2.8.4 Acceptance of Deliverable(s)***

#### ***2.8.5 Process for Approval of Written Deliverable(s) [Deleted, Not Applicable]***

#### ***2.8.6 Process for Approval of Services***

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

#### ***2.8.7 Final Acceptance [Deleted, Not Applicable]***

### ***2.9 Ownership [Deleted, Not Applicable]***

### ***2.10 State Standards [Deleted, Not Applicable]***

### ***2.11 Confidentiality***

#### ***2.11.1 Confidential Information***

As used in this Section, "Confidential Information" means all information of the parties, except information that is:

(a) disclosable under the Michigan Freedom Of Information Act (FOIA);
(b) now available or becomes available to the public without breach of this Contract;
(c) released in writing by the disclosing party;
(d) obtained from a third party or parties having no obligation of confidentiality with respect to such information;
(e) publicly disclosed pursuant to federal or state law; or
(f) independently developed by the receiving party without reference to Confidential Information of the furnishing party.

#### ***2.11.2 Protection and Destruction of Confidential Information***

(a) Each party must use the same care to prevent unauthorized disclosure of Confidential Information as it uses to prevent disclosure of its own information of a similar nature, but in no event less than a reasonable degree of care. Neither the 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 interest or license 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.

(b) Each party will limit disclosure of the other party's Confidential Information to employees, agents, and Subcontractors who must have access to fulfill the purposes of this Contract. Disclosure to, and use by, a Subcontractor is permissible where: (i) use of a Subcontractor is authorized under this Contract; (ii) the disclosure is necessary or otherwise naturally occurs in connection with work that is within the Subcontractor's scope of responsibility; and (iii) 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 to the State's Confidential Information may be required to execute a separate agreement to be bound by the confidentiality requirements of this Section.

(c) Upon termination of the Contract, Contractor must promptly return the State's Confidential Information or certify to the State that Contractor has destroyed all of the State's Confidential Information.

#### ***2.11.3 Exclusions***

The provisions of Section 2.11, Confidentiality, will not apply where the receiving party is required by law to disclose the other party's 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.

#### ***2.11.4 No Obligation to Disclose***

Nothing contained in Section 2.11, Confidentiality, will be construed as obligating a party to disclose any particular Confidential Information to the other party.

#### ***2.11.5 Security Breach Notification***

If Contractor breaches this Section, it must (i) promptly cure any deficiencies in Contractor's internal security controls; 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 access, use, or disclosure. Contractor must notify the State of any unauthorized use or disclosure of Confidential Information, whether suspected or actual, within 10 days of becoming aware of the use or disclosure or a shorter time period as is reasonable under the circumstances. The State may require Contractor to purchase credit monitoring services for any individuals affected by the breach.

### ***2.12 Records and Inspections***

#### ***2.12.1 Inspection of Work Performed***

The State's authorized representatives, at reasonable times and with 10 days prior notice, have the right to enter the Contractor's premises or any other places where work is being performed in relation to this Contract. The representatives may inspect, monitor, or evaluate the work being performed, to the extent the access will not reasonably interfere with or jeopardize the safety or operation of Contractor's systems or facilities. The Contractor must provide reasonable assistance for the State's representatives during inspections.

#### ***2.12.2 Retention of Records***

(a) The Contractor must retain all financial and accounting records related to this Contract for a period of seven years after the Contractor performs any work under this Contract (Audit Period).

(b) If an audit, litigation, or other action involving the Contractor's records is initiated before the end of the Audit Period, the Contractor must retain the records 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.

#### ***2.12.3 Examination of Records***

The State, upon 10 days notice to the Contractor, may examine and copy any of the Contractor's records that relate to this Contract. The State does not have the right to review any information deemed confidential by the Contractor if access would require the information to become publicly available. This requirement also applies to the records of any parent, affiliate, or subsidiary organization of the Contractor, or any Subcontractor that performs services in connection with this Contract.

#### ***2.12.4 Audit Resolution***

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

#### ***2.12.5 Errors***

(a) If an audit reveals any financial errors in the records provided to the State, the amount in error must be reflected as a credit or debit on the next invoice and subsequent invoices until the amount is paid or refunded in full. However, a credit or debit may not be carried forward for more than four invoices or beyond the termination of the Contract. If a balance remains after four invoices, the remaining amount will be due as a payment or refund within 45 days of the last invoice on which the balance appeared or upon termination of the Contract, whichever is earlier.

(b) In addition to other available remedies, if the difference between the State's actual payment and the correct invoice amount, as determined by an audit, is greater than 10%, the Contractor must pay all reasonable audit costs.

### ***2.13 Warranties***

***2.13.1 Warranties and Representations***

The Contractor represents and warrants:

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

(b) The Contract appendices, attachments, and exhibits identify the equipment, software, and services necessary for the Deliverable(s) to comply with the Contract's requirements.

(c) It is the lawful owner or licensee of any Deliverable licensed or sold to the State by Contractor or developed by the Contractor for 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 Deliverable(s). None of the Deliverable(s) provided by Contractor to the State, nor their use by the State, will infringe the patent, trademark, copyright, trade secret, or other proprietary rights of any third party.

(d) If the Contractor procures any equipment, software, or other Deliverable(s) for the State (including equipment, software, and other Deliverable(s) manufactured, re-marketed or otherwise sold by the Contractor or under the Contractor's name), then the 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(s).

(e) The Contract signatory has the authority to enter into this Contract on behalf of the 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, will have, or will acquire, any interest that would conflict in any manner with the Contractor's performance of its duties and responsibilities to the State or otherwise create an appearance of impropriety with respect to the award or performance of this Contract. The Contractor must notify the State about the nature of any conflict or appearance of impropriety within two days of learning about it.

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

(i) Neither the 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 the 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 Contractor arrived at its proposed prices independently, without communication or agreement with any other Contractor for the purpose of restricting competition. The Contractor did not knowingly disclose its quoted prices for this Contract to any other Contractor before the award of the Contract. The Contractor made no attempt to induce any other person or entity to submit or not submit a proposal for the purpose of restricting competition.

(k) All financial statements, reports, and other information furnished by the Contractor to the State in connection with the award of this Contract fairly and accurately represent the Contractor's business, properties, financial condition, and results of operations as of the respective dates covered by the financial statements, reports, or other information. There has been no material adverse change in the Contractor's business, properties, financial condition, or results of operation.

(l) All written information furnished to the State by or for the Contractor in connection with the award of this Contract is true, accurate, and complete, and contains no false statement of material fact nor omits any material fact that would make the submitted information misleading.

(m) It will immediately notify DTMB-Procurement if any of the certifications, representations, or disclosures made in the Contractor's original bid response change after the Contract is awarded.

***2.13.2 Warranty of Merchantability[Deleted, Not Applicable]***

***2.13.3 Warranty of Fitness for a Particular Purpose[Deleted, Not Applicable]***

***2.13.4 Warranty of Title[Deleted, Not Applicable]***

***2.13.5 Equipment Warranty[Deleted, Not Applicable]***

***2.13.6 New Deliverable(s) [Deleted, Not Applicable]***

***2.13.7 Prohibited Products [Deleted, Not Applicable]***

***2.13.8 Consequences For Breach***

In addition to any remedies available in law, if the Contractor breaches any of the warranties contained in Section 2.13, Warranties, the breach may be considered a material default.

## *2.14 Insurance*

***2.14.1 Liability Insurance***

For the purpose of this Section, "State" includes its departments, divisions, agencies, offices, commissions, officers, employees, and agents.

(a) The following apply to all insurance requirements:

(i) The State, in its sole discretion, may approve the use of a fully-funded self-insurance program in place of any specified insurance identified in this Section.

(ii) Where specific coverage limits are listed in this Section, they represent the minimum acceptable limits. If the Contractor's policy contains higher limits, the State is entitled to coverage to the extent of the higher limits. The minimum limits of coverage specified are not intended, and may not be construed to limit any liability or indemnity of the Contractor to any indemnified party or other persons.

(iii) If the Contractor fails to pay any premium for a required insurance policy, or if any insurer cancels or significantly reduces any required insurance without the State's approval, the State may, after giving the Contractor at least 30 days 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 require the Contractor to pay that cost upon demand.

(iv) 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 Michigan Attorney General.

(b) The Contractor must:

(i) provide proof that it has obtained the minimum levels of insurance coverage indicated or required by law, whichever is greater. The insurance must protect the State from claims that are alleged or may arise or result from the Contractor's or a Subcontractor's performance, including any person directly or indirectly employed by the Contractor or a Subcontractor, or any person for whose acts the Contractor or a Subcontractor may be liable.

(ii) waive all rights against the State for the recovery of damages that are covered by the insurance policies the Contractor is required to maintain under this Section. The Contractor's failure to obtain and maintain the required insurance will not limit this waiver.

(iii) ensure that all insurance coverage provided relative to this Contract is primary and non-contributing to any comparable liability insurance (including self-insurance) carried by the State.

(iv) obtain insurance, unless the State approves otherwise, from any insurer that has an A.M. Best rating of "A" or better and a financial size of VII or better, or if those ratings are not available, a comparable rating from an insurance rating agency approved by the State. All policies of insurance must be issued by companies that have been approved to do business in the State.

(v) maintain all required insurance coverage throughout the term of this Contract and any extensions. However, in the case of claims-made Commercial General Liability policies, the Contractor must secure tail coverage for at least three years following the termination of this Contract.

(vi) pay all deductibles.

(vii) pay for and provide the type and amount of insurance checked ☑ below:

☑ **(A) Commercial General Liability Insurance**

Minimal Limits:

$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; and
$1,000,000 Each Occurrence Limit.

Deductible maximum:

$50,000 Each Occurrence

Additional Requirements:

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.

☐ **(B) Umbrella or Excess Liability Insurance**

Minimal Limits:

$10,000,000 General Aggregate

Additional Requirements:

Umbrella or Excess Liability limits must at least apply to the insurance required in (A), General Commercial Liability. The Contractor must list the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees, and agents as additional insureds on the certificate. The Contractor also agrees to provide evidence that insurance policies contain a waiver of subrogation by the insurance company.

☑ **(C) Motor Vehicle Insurance**

Minimal Limits:

If a motor vehicle is used in relation to the Contractor's performance, the Contractor must have vehicle liability insurance on the motor vehicle for bodily injury and property damage as required by law.

☐ **(D) Hired and Non-Owned Motor Vehicle Coverage**

Minimal Limits:

$1,000,000 Per Accident

Additional Requirements:

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 must also provide evidence that insurance policies contain a waiver of subrogation by the insurance company.

☑ **(E) Workers' Compensation Insurance**

Minimal Limits:

The Contractor must provide Workers' Compensation coverage according to applicable laws governing work activities in the state of the Contractor's domicile. If the applicable coverage is provided by a self-insurer, the Contractor must provide proof of an approved self-insured authority by the jurisdiction of domicile.

For employees working outside of the state of the Contractor's domicile, the Contractor must provide certificates of insurance proving mandated coverage levels for the jurisdictions where the employees' activities occur.

Additional Requirements:

The Contractor must provide the applicable certificates of insurance and a list of states where the coverage is applicable. Contractor must provide proof that the Workers' Compensation insurance policies contain a waiver of subrogation by the insurance company, except where such a provision is prohibited or limited by the laws of the jurisdiction in which the work is to be performed.

☑ **(F) Employers Liability Insurance**

Minimal Limits:

$100,000 Each Accident;
$100,000 Each Employee by Disease
$500,000 Aggregate Disease

Additional Requirements:
The Contractor must list the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees, and agents as additional insureds on the certificate.

#### ***2.14.2 Subcontractor Insurance Coverage [Deleted, Not Applicable]***

#### ***2.14.3 Certificates of Insurance and Other Requirements***

Before the Contract is signed, and not less than 20 days before the insurance expiration date every year thereafter, the Contractor must provide evidence that the State and its agents, officers, and employees are listed as additional insureds under each commercial general liability and commercial automobile liability policy. The Contractor must provide DTMB-Procurement with all applicable certificates of insurance verifying insurance coverage or providing satisfactory evidence of self-insurance as required in Section 2.14.1, Liability Insurance. Each certificate must be on the standard "accord" form or equivalent and MUST CONTAIN THE APPLICABLE CONTRACT OR PURCHASE ORDER NUMBER. Each certificate must be prepared and submitted by the insurer and must contain a provision indicating that the coverage afforded will not be cancelled, materially changed, or not renewed without 30 days prior notice, except for 10 days for nonpayment of premium, to the Director of DTMB-Procurement. The notice to the Director of DTMB-Procurement must include the applicable Contract or Purchase Order number.

### ***2.15 Indemnification***

#### ***2.15.1 General Indemnification***

To the extent permitted by law, the Contractor must indemnify, defend, and hold the State harmless 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, any of its subcontractors, or by anyone else for whose acts any of them may be liable.

#### ***2.15.2 Code Indemnification [Deleted, Not Applicable]***

#### ***2.15.3 Employee Indemnification***

In any claims against the State, its departments, agencies, commissions, officers, employees, and agents, by any employee of the Contractor or any of its subcontractors, the indemnification obligation will 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.

#### ***2.15.4 Patent/Copyright Infringement Indemnification***

(a) To the extent permitted by law, the Contractor must indemnify and hold the State harmless 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) resulting from any action threatened or brought against the State to the extent that the action is based on a claim that any piece of equipment, software, commodity, or service supplied by the Contractor or its subcontractors, or its operation, use, or reproduction, infringes any United States patent, copyright, trademark or trade secret of any person or entity.

(b) If, in the State's or the Contractor's opinion, any piece of equipment, software, commodity or service supplied by the Contractor or its subcontractors, or its operation, use, or reproduction, is likely to become the subject of an infringement claim, the Contractor must, at its expense: (i) procure for the State the right to continue using the equipment, software, commodity or service or, if this 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 this 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.

(c) 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 infringement claim based upon: (i) equipment, software, commodity or service developed based on written specifications of the State; (ii) use of the equipment, software, or commodity in a configuration other than implemented or approved by the Contractor, including any modification of the same by the State; or (iii) the combination, operation, or use of the equipment, software, or commodity with equipment, software, or commodities not supplied by the Contractor under this Contract.

***2.15.5 Continuing Obligation***

The Contractor's duty to indemnify under Section 2.15, Indemnification, continues in full force and effect, notwithstanding the expiration or early cancellation of the Contract, with respect to any claims based on facts or conditions that occurred before expiration or cancellation.

***2.15.6 Indemnification Procedures***

These procedures apply to all indemnity obligations:

(a) After the State receives notice of an action or proceeding involving a claim for which it will seek indemnification, the State must promptly notify the Contractor of the claim and take, or assist the Contractor in taking, any reasonable action to avoid a default judgment against the Contractor. Failure to notify the Contractor does not relieve the Contractor of its indemnification obligations except to the extent that the Contractor can prove damages attributable to the notification failure. Within 10 days following receipt of notice from the State relating to any claim, the Contractor must notify the State whether the Contractor agrees to assume control of the defense and settlement of that claim (a "Notice of Election"). After notifying the Contractor of a claim and before the State receives the 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, including attorney fees, incurred by the State in defending against the claim during that period.

(b) If the 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 handling 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 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 prior 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. The State may retain control of the defense and settlement of a claim by notifying the Contractor within 10 days after the State's receipt of the 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 the Contractor does not deliver a Notice of Election relating to any claim of which it is notified, the State may defend the claim in a manner it deems appropriate, at the cost and expense of the Contractor. If it is determined that the claim was one against which the Contractor was required to indemnify the State, upon request of the State, the Contractor must promptly reimburse the State for all reasonable costs and expenses.

***2.15.7 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 attorneys' fees awarded by a court in addition to damages after litigation based on this Contract.

## 2.16 Termination by the State

### 2.16.1 Notice and Right to Cure

If the Contractor breaches the Contract, and the State, in its sole discretion, determines that the breach is curable, the State will provide the Contractor notice of the breach and a period of at least 30 days to cure the breach. The State does not need to provide notice or an opportunity to cure for successive or repeated breaches or if the State determines, in its sole discretion, that a 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.

### 2.16.2 Termination for Cause

(a) The State may fully or partially terminate this Contract for cause by notifying the Contractor if the Contractor: (i) breaches any of its material duties or obligations (including a Chronic Failure to meet any SLA); or (ii) fails to cure a breach within the time period specified in a notice of breach provided by the State.

(b) The Contractor must pay all reasonable costs incurred by the State in terminating this Contract for cause, including administrative costs, attorneys' fees and court costs, and any additional costs the State incurs to procure the Deliverable(s) 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 Deliverable(s).

(c) If the State partially terminates this Contract for cause, any charges payable to the Contractor will be equitably adjusted to reflect those Deliverable(s) that are terminated. The State must pay for all Deliverable(s) for which Final Acceptance has been granted before the termination date. Any services or 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 and it is determined, for any reason, that the Contractor was not in breach of the Contract, the termination will be deemed to have been a termination under Section 2.16.3, Termination for Convenience, effective as of the same date, and the rights and obligations of the parties will be limited to those provided in that Section.

### 2.16.3 Termination for Convenience

The State may fully or partially terminate this Contract for its convenience if the State determines that a termination is in the State's best interest. Reasons for the termination are within the sole discretion of the State and may include: (a) the State no longer needs the Deliverable(s) specified in this Contract; (b) a relocation of office, program changes, or changes in laws, rules, or regulations make the Deliverable(s) no longer practical or feasible for the State; (c) unacceptable prices for Contract changes; 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 by giving Contractor notice at least 30 days before the date of termination. If the State chooses to terminate this Contract in part, any charges payable to the Contractor must be equitably adjusted to reflect those Deliverable(s) that are terminated.

### 2.16.4 Termination for Non-Appropriation

(a) If this Contract extends for more than one fiscal year, continuation of this Contract is subject to the appropriation or availability of funds. If sufficient funds to enable the State to continue payment are not appropriated or otherwise made available, the State must fully or partially terminate this Contract at the end of the last period for which funds have been appropriated or otherwise made available The State must give the Contractor notice at least 30 days before the date of termination, unless the State receives notice of the non-appropriation or unavailability less than 30 days before the end of the last period for which funds have been appropriated or otherwise made available.

(b) If funding for this Contract is reduced by law, or funds to pay the Contractor for the Deliverable(s) are not appropriated or are otherwise unavailable, the State may, upon 30 days notice to the Contractor, change the Deliverable(s) in the manner and for the periods of time the State may elect. The charges payable under this Contract will be equitably adjusted to reflect any Deliverable(s) not provided because of the reduction.

(c) If the State fully or partially terminates this Contract for non-appropriation, the State must pay the Contractor for all work-in-progress performed through the effective date of the termination to the extent funds are available.

***2.16.5 Termination for Criminal Conviction***

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

***2.16.6 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 all work-in-progress performed through the effective date of the termination. The Contract may be fully or partially terminated and will be effective as of the date stated in the notice.

***2.16.7 Rights and Obligations upon Termination***

(a) If the State terminates this Contract for any reason, the Contractor must:

(i) stop all work as specified in the notice of termination;

(ii) take any action that may be necessary, or that the State may direct, to preserve and protect Deliverable(s) or other State property in the Contractor's possession;

(iii) return all materials and property provided directly or indirectly to the Contractor by any entity, agent, or employee of the State;

(iv) transfer title in and deliver to the State, unless otherwise directed, all Deliverable(s) intended to be transferred to the State at the termination of the Contract (which will be provided to the State on an "As-Is" basis except to the extent the State compensated the Contractor for warranty services related to the materials);

(v) to the maximum practical extent, take any action to mitigate and limit potential damages, including terminating or limiting subcontracts and outstanding orders for materials and supplies; and

(vi) take all appropriate action to secure and maintain State information confidentially in accordance with Section 2.11, Confidentiality.

(b) If the State terminates this Contract under Section 2.16.3, Termination for Convenience, the State must pay the Contractor all charges due for Deliverable(s) provided before the date of termination and, if applicable, as a separate item of payment, for work-in-progress, based on a percentage of completion determined by the State. All completed or partially completed Deliverable(s) prepared by the Contractor, at the option of the State, become the State's property, and the Contractor is entitled to receive equitable compensation for those Deliverable(s). Regardless of the basis for the termination, the State is not obligated to pay or otherwise compensate the Contractor for any lost expected future profits, costs, or expenses incurred with respect to Deliverable(s) not actually completed.

(c) If the State terminates this Contract for any reason, the State may assume, at its option, any subcontracts and agreements for Deliverable(s), and may pursue completion of the Deliverable(s) by replacement contract or as the State deems expedient.

***2.16.8 Reservation of Rights***

In the event of any full or partial termination of this Contract, each party reserves all rights or remedies otherwise available to the party.

***2.16.9 Contractor Transition Responsibilities***

If this Contract terminates under Section 2.16, Termination by the State, the Contractor must make reasonable efforts to transition the performance of the work, including all applicable equipment, services, software, and leases, to the State or a third party designated by the State within a reasonable period of time that does not exceed 90 days from the date of termination. The Contractor must provide any required reports and documentation.

***2.16.10 Transition Payments***

If the transition responsibilities outlined in Section 2.16.9, Contractor Transition Responsibilities, arise based on a termination of this Contract, reimbursement will be governed by the provisions of Section 2.16, Termination by the State. If the transition results from expiration, the Contractor will be reimbursed for all

reasonable transition costs (i.e., costs incurred after the expiration within the time period in Section 2.16.9 that result from transition operations) at the Contract rates. The Contractor must prepare an accurate accounting from which the State and the Contractor may reconcile all outstanding accounts.

## ***2.17 Termination by the Contractor***

### ***2.17.1 Termination***

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

The Contractor may terminate this Contract if the State: (a) materially breaches its obligation to pay the Contractor undisputed amounts due; (b) breaches its other obligations to an extent that makes it impossible or commercially impractical for the Contractor to complete the Deliverable(s); or (c) does not cure the breach within the time period specified in a notice of breach. The Contractor must discharge its obligations under Section 2.20, Dispute Resolution, before it terminates the Contract.

## ***2.18 Stop Work***

### ***2.18.1 Stop Work Order***

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 2.16.3**.

### ***2.18.2 Termination 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 2.3.4**.

### ***2.18.3 Allowance of the Contractor's 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 2.16.3**, 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.**

## ***2.19 Reserved***

## ***2.20 Dispute Resolution***

### ***2.20.1 General***

(a) The Contractor must submit any claim related to this Contract to the State under Section 2.3.6, Notices, together with all supporting documentation for the claim.

(b) The representatives of the Contractor and the State must meet as often as the parties reasonably deem necessary to gather and furnish to each other all information related to the claim.

(c) During the course of negotiations, each party will honor all reasonable requests made by the other for non-privileged information reasonably related to the claim.

***2.20.2 Informal Dispute Resolution***

(a) If, after a reasonable time following submission of a claim under Section 2.20.1, General, the parties are unable to resolve the claim, the parties must meet with the Director of DTMB-Procurement, or his or her designee, for the purpose of attempting to resolve the dispute without the need for formal legal proceedings.

(b) Within 60 calendar days of the meeting with the Director of DTMB-Procurement, or such other time as agreed to by the parties, the Director of DTMB-Procurement will issue a written recommendation regarding settlement of the claim. The Contractor must notify DTMB-Procurement within 21 days after the recommendation is issued whether the Contractor accepts or rejects the recommendation. Acceptance by the Contractor constitutes the final resolution of the claim addressed in the recommendation, and the Contractor may not assert that claim in any future litigation or other proceeding between the parties.

(c) The recommendation of the Director of DTMB-Procurement is not admissible in any future litigation or other proceeding between the parties. The conduct and statements made during the course of negotiations or dispute resolution under Section 2.20, Dispute Resolution, are subject to Michigan Rule of Evidence 408 and are not admissible in any future litigation or other proceeding between the parties.

(d) This section will not be construed to prohibit either party from instituting formal proceedings to avoid the expiration of any applicable limitations period, to preserve a superior position with respect to other creditors, or under Section 2.20.3, Injunctive Relief.

(e) DTMB-Procurement will not mediate disputes between the Contractor and any other entity, except State agencies, concerning responsibility for performance of work.

***2.20.3 Injunctive Relief***

A claim between the State and the Contractor is not subject to the provisions of Section 2.20.2, Informal Dispute Resolution, where a party makes a good faith determination that a breach of the Contract by the other party will result in damages so immediate, so large or severe, and so incapable of adequate redress that a temporary restraining order or other injunctive relief is the only adequate remedy.

***2.20.4 Continued Performance***

Each party will continue performing its obligations under the Contract while a claim is being resolved, except to the extent the claim precludes performance and without limiting either party's right to terminate the Contract as provided in Section 2.16, Termination by the State or Section 2.17, Termination by the Contractor. A claim involving payment does not preclude performance.

***2.21 Disclosure Responsibilities***

***2.21.1 Disclosure of Litigation***

(a) Within 30 days after receiving notice of any litigation, investigation, arbitration, or other proceeding (collectively, "Proceeding") that arises during the term of this Contract, the Contractor must disclose the following to the Contract Administrator:

(i) A criminal Proceeding involving the Contractor (or any Subcontractor) or any of its officers or directors;

(ii) A parole or probation Proceeding;

(iii) A Proceeding involving the Contractor (or any Subcontractor) or any of its officers or directors under the Sarbanes-Oxley Act; and

(iv) A civil Proceeding to which the Contractor (or, if the Contractor is aware, any Subcontractor) is a party, and which involves (A) a claim that might reasonably be expected to adversely affect the viability or financial stability of the Contractor or any Subcontractor; or (B) a claim or written allegation of fraud against the Contractor (or, if the Contractor is aware, any Subcontractor) by a governmental or public entity arising out of the Contractor's business dealings with governmental or public entities.

(b) Information provided to the State from the Contractor's publicly filed documents will satisfy the requirements of this Section.

(c) If any Proceeding that is disclosed to the State 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 the Contractor (or a Subcontractor) to continue to perform this Contract; or (ii) whether the Contractor (or a

Subcontractor) is engaged in conduct that is similar in nature to the conduct alleged in the Proceeding and would constitute a breach of this Contract or a violation of federal or state law, regulations, or public policy, then the Contractor must provide the State all requested reasonable assurances that the Contractor and its Subcontractors will be able to continue to perform this Contract.

#### ***2.21.2 Other Disclosures***

The Contractor must notify DTMB-Procurement within 30 days of:

(a) becoming aware that a change in the Contractor's ownership or officers has occurred or is certain to occur; or

(b) any changes to company affiliations.

#### ***2.21.3 Call Center Disclosure***

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

### ***2.22 Extended Purchasing***

#### ***2.22.1 MiDEAL Requirements - [Deleted, Not Applicable]***

#### ***2.22.2 State Administrative Fee - [Deleted, Not Applicable]***

#### ***2.22.3 State Employee Purchase Requirements - [Deleted, Not Applicable]***

### ***2.23 Laws***

#### ***2.23.1 Governing Law***

This Contract is 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 another jurisdiction to the extent not inconsistent with or preempted by federal law.

#### ***2.23.2 Compliance with Laws***

The Contractor must comply with all applicable federal, state, and local laws and ordinances in providing the Deliverable(s).

#### ***2.23.3 Jurisdiction***

Any dispute arising from the Contract must be resolved in the State of Michigan. With respect to any claim between the parties, the Contractor consents to venue in Ingham County, Michigan, and irrevocably waives any objections to this venue that it may have, such as lack of personal jurisdiction or *forum non conveniens*. The Contractor must appoint agents in the State of Michigan to receive service of process.

#### ***2.23.4 Nondiscrimination***

In the performance of the Contract, the 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, or physical or mental disability. The Contractor further agrees that every subcontract entered into for the performance of this Contract will contain a provision requiring non-discrimination in employment, as specified here, binding upon each Subcontractor. This covenant is required under the Elliott-Larsen Civil Rights Act, 1976 PA 453, MCL 37.2101, *et seq*., and the Persons with Disabilities Civil Rights Act, 1976 PA 220, MCL 37.1101, *et seq*., and any breach of this provision may be regarded as a material breach of the Contract.

### ***2.23.5 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 MCL 423.322. This information is compiled by the United States National Labor Relations Board. A Contractor of the State, in relation to the Contract, must not enter into a contract with a Subcontractor, manufacturer, or supplier whose name appears in this register. Under MCL 423.324, the State may void any Contract if, after award of the Contract, the name of the Contractor as an employer or the name of the Subcontractor, manufacturer or supplier of the Contractor appears in the register.

### ***2.23.6 Environmental Provision***

For the purposes of this section, "Hazardous Materials" include asbestos, ACBMs, PCBs, petroleum products, construction materials including paint thinners, solvents, gasoline, oil, and any other material the manufacture, use, treatment, storage, transportation or disposal of which is regulated by the federal, state, or local laws governing the protection of the public health, natural resources, or the environment:

(a) The Contractor must use, handle, store, dispose of, process, transport, and transfer any Hazardous Material according to all federal, State, and local laws. The State must immediately advise the Contractor of the presence of any known Hazardous Material at the work site. If the Contractor encounters material reasonably believed to be Hazardous Material that may present a substantial danger, the Contractor must: (i) immediately stop all affected work; (ii) notify the State in accordance with Section 2.3.6, Notices; (iii) notify any entities required by law; and (iv) take appropriate health and safety precautions.

(b) The State may issue a Stop Work Order if the material is a Hazardous Material that may present a substantial danger and the Hazardous Material was not brought to the site by the Contractor, or does not wholly or partially result from any violation by the Contractor of any laws covering the use, handling, storage, disposal of, processing, transport and transfer of Hazardous Materials. The State may remove the Hazardous Material, render it harmless, or terminate the affected work for the State's convenience.

(c) If the Hazardous Material was brought to the site by the Contractor, or wholly or partially results from any violation by the Contractor of any laws covering the use, handling, storage, disposal of, processing, transport and transfer of Hazardous Material, or from any other act or omission within the control of the Contractor, the Contractor must bear its proportionate share of the delay and costs involved in cleaning up the site and removing and rendering harmless the Hazardous Material according to applicable laws.

### ***2.23.7 Freedom of Information***

This Contract and all information submitted to the State by the Contractor is subject to the Michigan Freedom of Information Act (FOIA), 1976 PA 442, MCL 15.231, *et seq*.

### ***2.23.8 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.

### ***2.23.9 Prevailing Wage - [Deleted, Not Applicable]***

### ***2.23.10 Abusive Labor Practices***

The Contractor may not furnish any Deliverable(s) that were produced fully or partially by forced labor, convict labor, forced or indentured child labor, or indentured servitude.

“Forced or indentured child labor” means all work or service (1) exacted from any person under the age of 18 under the menace of any penalty for its nonperformance and for which the worker does not offer himself voluntarily; or (2) performed by any person under the age of 18 under a contract the enforcement of which can be accomplished by process or penalties.

## ***2.24 General Provisions***

***2.24.1 Bankruptcy and Insolvency***

The State may, without prejudice to any other right or remedy, fully or partially terminate this Contract and, at its option, take possession of the work-in-progress and finish the work-in-progress by whatever method the State deems appropriate if:

(a) the Contractor files for bankruptcy protection;
(b) an involuntary petition is filed against the Contractor and not dismissed within 30 days;
(c) the Contractor becomes insolvent or 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 provide the Deliverable(s) under this Contract.

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

***2.24.2 Media Releases***

News releases (including promotional literature and commercial advertisements) pertaining to the RFP and this Contract or the project to which it relates will not be made without prior approval by the State, and only in accordance with the instructions from the State.

***2.24.3 Contract Distribution***

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

***2.24.4 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 Contract.

***2.24.5 Website Incorporation***

The State is not bound by any content on the Contractor's website unless incorporated directly into this Contract.

***2.24.6 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 the RFP development, or as a Vendor offering free assistance) to gain a competitive advantage on the RFP.

***2.24.7 Antitrust Assignment***

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

***2.24.8 Disaster Recovery***

Contractor and the State recognize that the State provides essential services in times of natural or man-made disasters. Therefore, except as mandated by federal disaster response requirements, Contractor personnel dedicated to providing Deliverable(s) under this Contract will provide the State with priority.

***2.24.9 Legal Effect***

The State is not liable for costs incurred by the Contractor or for payment(s) under this Contract until the Contractor is authorized to perform under Section 1.2.4, Ordering.

***2.24.10 Entire Agreement***

This Contract constitutes the entire agreement between the parties and supersedes all prior agreements, whether written or oral, with respect to the subject matter. All attachments referenced in this Contract are incorporated in their entirety and form part of this Contract.

***2.24.11 Order of Precedence***

Any inconsistency in the terms associated with this Contract will be resolved by giving precedence to the terms in the following descending order:

(a) Mandatory sections (2.1.1, Contract Term, 2.24.9, Legal Effect, 2.2.2, Payment Deadlines, 2.14, Insurance, 2.15, Indemnification, 2.16, Termination, 2.23, Governing Law, 2.15.7, Limitation of Liability);

(b) The most recent Statement of Work related to this Contract;

(c) All sections from Article 2 - Terms and Conditions, not listed in subsection (a);

(d) Any attachment or exhibit to the Contract documents;

(e) Any Purchase Order, Direct Voucher, or Procurement Card Order issued under the Contract; and

(f) Contractor Responses contained in any of the RFP documents.

***2.24.12 Headings***

The captions and section headings used in this Contract are for convenience only and may not be used to interpret the scope and intent of this Contract.

***2.24.13 Form, Function and Utility[Deleted, Not Applicable]***

***2.24.14 Reformation and Severability***

Each provision of the Contract is severable from all other provisions of the Contract. If any provision of this Contract is held unenforceable, then the Contract will be modified to reflect the parties' original intent. All remaining provisions of the Contract remain in full force and effect.

***2.24.15 Approval***

Unless otherwise provided in this Contract, approval(s) must be in writing and must not be unreasonably withheld or delayed.

***2.24.16 No Waiver of Default***

Failure by a party to insist upon strict adherence to any term of the Contract does not waive that party's right to later insist upon strict adherence to that term, or any other term, of the Contract.

***2.24.17 Survival***

The provisions of this Contract that impose continuing obligations, including warranties, indemnification, and confidentiality, will survive the expiration or termination of this Contract.

***Attachment A, Price***
**Pest Control Service**

| Item # | Description | Annual Price |
|---|---|---|
| **01.** | **Michigan Reformatory Correctional 1342 W. Main St.**<br>**Ionia, Michigan 48846**<br>Service Area: Rotunda Buildings 1, 3, 4, 5, 8 and Wards C, D, E, F, H. Services include offices, closets, restrooms, classrooms, library, and open areas. Wards A/B/G are cell blocks and the gym, treatment of perimeter and catwalk only **(cells only as needed).**<br>Services shall be performed **two times per month** and also on an as needed basis with the contractor responding within 48 hours of agency request.<br>**Price per service: $32.00** | **$768.00** |
| **02.** | **Michigan Reformatory Correctional 1342 W. Main St.**<br>**Ionia, Michigan 48846**<br>Service Area: Buildings 6 & 7 (J & I Block). Services include perimeter and catwalk base floor treatment **(cells only as needed).**<br>Services shall be performed **two times per month** and also on an as needed basis with the contractor responding within 48 hours of agency request.<br>**Price per service: $24.00** | **$576.00** |
| **03.** | **Michigan Reformatory Correctional 1342 W. Main St.**<br>**Ionia, Michigan 48846**<br>Service Area: Chapel Building 17. Services include perimeter, offices, utility closets, and restrooms. Services shall be performed **two times per month** and also on an as needed basis with the contractor responding within 48 hours of agency request.<br>**Price per service: $ 22.00** | **$528.00** |
| **04.** | **Michigan Reformatory Correctional 1342 W. Main St.**<br>**Ionia, Michigan 48846**<br>Service Area: Food Service Building 24. Services include main dining room, kitchen, commissary, dish room, bakery, mechanical closets, restrooms, offices, staircases, auditorium (2nd floor), mechanical room, basement, basement offices, cage rooms (excluding main sub-station electrical room). Services shall be performed **two times per month** and also on an as needed basis with the contractor responding within 48 hours of agency request.<br>**Price per service: $48.00** | **$1,152.00** |
| **10** | **Michigan Reformatory Correctional 1342 W. Main St.**<br>**Ionia, Michigan 48846**<br>Service Area: Administration Building 26. Services include First floor main lobby, closets, offices, break room, restrooms, bubble area, hallways. Second floor stair and hallways, offices, conference room, restrooms, and closets. Basement including stair and hallways, open areas, caged Areas, arsenal, lock shop, and old record storage areas. Services shall be performed **two times per month** and also on an as needed basis with the contractor responding within 48 hours of agency request.<br>**Price per service: $20.00** | **$480.00** |

**11** **Michigan Reformatory Correctional 1342 W. Main St.**
**Ionia, Michigan 48846**
**Additional Service Areas:** Tunnels, Maintenance Building, Maintenance Garage and Carpenter Shop Tunnels-starting at building, Food Service tunnel to yard tunnel to I Block tunnel to hobby craft tunnel to I.B. tunnel (Approx. 1200 ft.) **on a monthly basis.** Maintenance building, garage and carpenter shop offices, restrooms, and open areas on a **monthly basis**, with Sally Port and guard posts on an as needed basis with the contractor responding within 48 hours of agency requests.
**Price per service: $22.00** **$264.00**

**12** **Michigan Reformatory Correctional 1342 W. Main St.**
**Ionia, Michigan 48846**
Service Area: Power Plant. Services include basement, restrooms, offices, and main floor. Services shall be performed **two times per month** and also on an as needed basis with the contractor responding within 48 hours of agency request.
**Price per service: $ 20.00** **$480.00**

**13** **Michigan Reformatory Correctional 1342 W. Main St.**
**Ionia, Michigan 48846**
Service Area: Regional Warehouse. Services include inmate seating area, break room, receiving area, restrooms and offices. Services shall be performed **two times per month** and also on an as needed basis with the contractor responding within 48 hours of agency request.
**Price per service: $28.00** **$672.00**