# STATE OF MICHIGAN
# ENTERPRISE PROCUREMENT

Department of Technology, Management, and Budget
525 W. ALLEGAN ST., LANSING, MICHIGAN 48913
P.O. BOX 30026 LANSING, MICHIGAN 48909

## CONTRACT CHANGE NOTICE

Change Notice Number **2**
to
Contract Number **071B4300034**

| CONTRACTOR | |
|---|---|
| | GREAT LAKES ENVIRONMENTAL CENTER INC |
| | 739 Hastings Street |
| | Traverse City, MI 49686 |
| | Mick DeGraeve |
| | 231-941-2230 |
| | mick@glec.com |
| | *******7785 |

| STATE | | | |
|---|---|---|---|
| | Program Manager | Dawn Roush | DEQ |
| | | (517) 335-3307 | |
| | | roushd@michigan.gov | |
| | Contract Administrator | Dan Stevens | DTMB |
| | | (517) 284-7049 | |
| | | StevensD6@michigan.gov | |

**CONTRACT SUMMARY**

**DESCRIPTION:** Water Quality Monitoring Services - DEQ

| INITIAL EFFECTIVE DATE | INITIAL EXPIRATION DATE | INITIAL AVAILABLE OPTIONS | EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW |
|---|---|---|---|
| January 1, 2014 | December 31, 2016 | 2 - 1 Year | December 31, 2016 |

| PAYMENT TERMS | DELIVERY TIMEFRAME |
|---|---|
| 1% 30 days | N/A |

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

**MINIMUM DELIVERY REQUIREMENTS**

N/A

**DESCRIPTION OF CHANGE NOTICE**

| OPTION | LENGTH OF OPTION | EXTENSION | LENGTH OF EXTENSION | REVISED EXP. DATE |
|---|---|---|---|---|
| ☒ | 1 year | ☐ | | December 31, 2018 |

| CURRENT VALUE | VALUE OF CHANGE NOTICE | ESTIMATED AGGREGATE CONTRACT VALUE |
|---|---|---|
| $4,000,000.00 | $ 0.00 | $4,000,000.00 |

**DESCRIPTION:** Effective September 14, 2016, both option years are hereby exercised and the revised Contract expiration date is December 31, 2018 per (Section 2.002) Options to Renew. Please note the Contract Administrator has changed to Dan Stevens per (Section 2.020) Contract Administration. All other terms, conditions, specifications, and pricing remain the same. Per vendor, agency agreement and DTMB Procurement approval.

(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. 071B4300034
**between**
# THE STATE OF MICHIGAN
**and**

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

| STATE CONTACTS | AGENCY | NAME | PHONE | EMAIL |
|---|---|---|---|---|
| CONTRACT COMPLIANCE INSPECTOR: | DEQ | Dawn Roush | 517-335-3307 | roushd@michigan.gov |
| BUYER: | DTMB | Brandon Samuel | 517-241-1218 | samuelb@michigan.gov |

## CONTRACT SUMMARY:

**DESCRIPTION: Descriptive Contract Title (Not always the same language as provided in MAIN)**

**Water Quality Monitoring Services - DEQ**

| INITIAL TERM | EFFECTIVE DATE | INITIAL EXPIRATION DATE | AVAILABLE OPTIONS |
|---|---|---|---|
| 3 years | 1/1/14 | 12/31/16 | Two-one year options |
| **PAYMENT TERMS** | **F.O.B** | **SHIPPED** | **SHIPPED FROM** |
| 1% 30 days | N/A | N/A | N/A |

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

**MINIMUM DELIVERY REQUIREMENTS:**

N/A

**MISCELLANEOUS INFORMATION:**

N/A

| ESTIMATED CONTRACT VALUE AT TIME OF EXECUTION: | $4,000,000.00 |
|---|---|

(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. 071B4300034
**between**
# THE STATE OF MICHIGAN
**and**

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

| STATE CONTACTS | AGENCY | NAME | PHONE | EMAIL |
|---|---|---|---|---|
| CONTRACT COMPLIANCE INSPECTOR: | DEQ | Dawn Roush | 517-335-3307 | roushd@michigan.gov |
| BUYER: | DTMB | Brandon Samuel | 517-241-1218 | samuelb@michigan.gov |

## CONTRACT SUMMARY:

**DESCRIPTION: Descriptive Contract Title (Not always the same language as provided in MAIN)**

**Water Quality Monitoring Services - DEQ**

| INITIAL TERM | EFFECTIVE DATE | INITIAL EXPIRATION DATE | AVAILABLE OPTIONS |
|---|---|---|---|
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| **PAYMENT TERMS** | **F.O.B** | **SHIPPED** | **SHIPPED FROM** |
| 1% 30 days | N/A | N/A | N/A |

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

**MINIMUM DELIVERY REQUIREMENTS:**

N/A

**MISCELLANEOUS INFORMATION:**

N/A

| ESTIMATED CONTRACT VALUE AT TIME OF EXECUTION: | $4,000,000.00 |
|---|---|

**THIS IS NOT AN ORDER: This Contract Agreement is awarded on the basis of our inquiry bearing the solicitation #0071141113B0000350. Orders for delivery will be issued directly by the Department of Technology, Management & Budget through the issuance of a Purchase Order Form.**

**Notice of Contract #:** 071B4300034

| **FOR THE CONTRACTOR:** | **FOR THE STATE:** |
|---|---|
| Great Lakes Environmental Center, Inc. | |
| Firm Name | Signature |
| | Jeff Brownlee, Chief Procurement Officer |
| Authorized Agent Signature | Name/Title |
| | DTMB Procurement |
| Authorized Agent (Print or Type) | Enter Name of Agency |
| Date | Date |

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

Contract No. 071B4300034
Water Quality Monitoring Services for Michigan Department of Environmental Quality

Buyer Name: Brandon Samuel
Telephone Number: 517-241-1218
E-Mail Address: samuelb@michigan.gov

## Table of Contents


***DEFINITIONS*** ..... ***10***
***Article 1 – Statement of Work (SOW)*** ..... ***12***
**1.010 Project Identification** ..... 12
1.011 Project ..... 12
1.012 Background ..... 12
**1.020 Scope of Work and Deliverables** ..... 12
1.021 In Scope ..... 12
1.022 Work and Deliverable ..... 13
**1.030 Roles and Responsibilities** ..... 14
1.031 Contractor Staff, Roles, and Responsibilities ..... 14
**1.040 Project Plan** ..... 17
1.041 Project Plan Management ..... 17
1.042 Reports ..... 17
**1.050 Acceptance** ..... 17
1.051 Criteria ..... 17
1.052 Final Acceptance ..... 17
**1.060 Proposal Pricing** ..... 17
1.061 Pricing ..... 17
1.062 Price Term ..... 18
1.063 Tax Excluded from Price ..... 18
1.064 Holdback ..... 18
**1.070 Additional Requirements – Deleted / Not Applicable** ..... 18
***Article 2, Terms and Conditions*** ..... ***19***
**2.000 Contract Structure and Term** ..... 19
2.001 Contract Term ..... 19
2.002 Options to Renew ..... 19
2.003 Legal Effect ..... 19
2.004 Attachments & Exhibits ..... 19
2.005 Ordering ..... 19
2.006 Order of Precedence ..... 19
2.007 Headings ..... 20
2.008 Form, Function & Utility ..... 20
2.009 Reformation and Severability ..... 20
2.010 Consents and Approvals ..... 20
2.011 No Waiver of Default ..... 20
2.012 Survival ..... 20
**2.020 Contract Administration** ..... 20
2.021 Issuing Office ..... 20
2.022 Contract Compliance Inspector ..... 20
2.023 Project Manager ..... 21
2.024 Change Requests ..... 21
2.025 Notices ..... 21
2.026 Binding Commitments ..... 22
2.027 Relationship of the Parties ..... 22
2.028 Covenant of Good Faith ..... 22
2.029 Assignments ..... 22
**2.030 General Provisions** ..... 22
2.031 Administrative Fee And Reporting – Deleted / Not Applicable ..... 22
2.032 Media Releases ..... 22
2.033 Contract Distribution ..... 22
2.034 Permits ..... 23
2.035 Website Incorporation ..... 23
2.036 Future Bidding Preclusion ..... 23

2.037 Freedom of Information ... 23
2.038 Disaster Recovery ... 23
**2.040 Financial Provisions** ... 23
2.041 Fixed Prices for Services/Deliverables ... 23
2.042 Adjustments for Reductions in Scope of Services/Deliverables ... 23
2.043 Services/Deliverables Covered ... 23
2.044 Invoicing and Payment – In General ... 23
2.045 Pro-ration ... 24
2.046 Antitrust Assignment ... 24
2.047 Final Payment ... 24
2.048 Electronic Payment Requirement ... 24
**2.050 Taxes** ... 24
2.051 Employment Taxes ... 24
2.052 Sales and Use Taxes ... 24
**2.060 Contract Management** ... 25
2.061 Contractor Personnel Qualifications ... 25
2.062 Contractor Key Personnel ... 25
2.063 Re-assignment of Personnel at the State's Request ... 25
2.064 Contractor Personnel Location ... 26
2.065 Contractor Identification ... 26
2.066 Cooperation with Third Parties ... 26
2.067 Contractor Return of State Equipment/Resources ... 26
2.068 Contract Management Responsibilities ... 26
**2.070 Subcontracting by Contractor** ... 26
2.071 Contractor Full Responsibility ... 26
2.072 State Consent to Delegation ... 27
2.073 Subcontractor Bound to Contract ... 27
2.074 Flow Down ... 27
2.075 Competitive Selection ... 27
**2.080 State Responsibilities** ... 27
2.081 Equipment ... 27
2.082 Facilities ... 27
**2.090 Security** ... 28
2.091 Background Checks ... 28
2.092 Security Breach Notification ... 28
2.093 PCI Data Security Standard – Deleted / Not Applicable ... 28
**2.100 Confidentiality** ... 28
2.101 Confidentiality ... 28
2.102 Protection and Destruction of Confidential Information ... 28
2.103 Exclusions ... 29
2.104 No Implied Rights ... 29
2.105 Respective Obligations ... 29
**2.110 Records and Inspections** ... 29
2.111 Inspection of Work Performed ... 29
2.112 Examination of Records ... 29
2.113 Retention of Records ... 29
2.114 Audit Resolution ... 30
2.115 Errors ... 30
**2.120 Warranties** ... 30
2.121 Warranties and Representations ... 30
2.122 Warranty of Merchantability – Deleted / Not Applicable ... 31
2.123 Warranty of Fitness for a Particular Purpose – Deleted / Not Applicable 31
2.124 Warranty of Title – Deleted / Not Applicable ... 31
2.125 Equipment Warranty ... 31

2.126 Equipment to be New ... 31
2.127 Prohibited Products ... 31
2.128 Consequences For Breach ... 31
**2.130 Insurance** ... 31
2.131 Liability Insurance ... 31
2.132 Subcontractor Insurance Coverage ... 33
2.133 Certificates of Insurance and Other Requirements ... 33
**2.140 Indemnification** ... 34
2.141 General Indemnification ... 34
2.142 Code Indemnification ... 34
2.143 Employee Indemnification ... 34
2.144 Patent/Copyright Infringement Indemnification ... 34
2.145 Continuation of Indemnification Obligations ... 35
2.146 Indemnification Procedures ... 35
**2.150 Termination/Cancellation** ... 35
2.151 Notice and Right to Cure ... 36
2.152 Termination for Cause ... 36
2.153 Termination for Convenience ... 36
2.154 Termination for Non-Appropriation ... 36
2.155 Termination for Criminal Conviction ... 37
2.156 Termination for Approvals Rescinded ... 37
2.157 Rights and Obligations upon Termination ... 37
2.158 Reservation of Rights ... 38
**2.160 Termination by Contractor – Deleted / Not Applicable** ... 38
**2.170 Transition Responsibilities** ... 38
2.171 Contractor Transition Responsibilities ... 38
2.172 Contractor Personnel Transition ... 38
2.173 Contractor Information Transition ... 38
2.174 Contractor Software Transition ... 38
2.175 Transition Payments ... 38
2.176 State Transition Responsibilities – Deleted / Not Applicable ... 38
**2.180 Stop Work** ... 38
2.181 Stop Work Orders ... 39
2.182 Cancellation or Expiration of Stop Work Order ... 39
2.183 Allowance of Contractor Costs ... 39
**2.190 Dispute Resolution** ... 39
2.191 In General ... 39
2.192 Informal Dispute Resolution ... 39
2.193 Injunctive Relief ... 40
2.194 Continued Performance ... 40
**2.200 Federal and State Contract Requirements** ... 40
2.201 Nondiscrimination ... 40
2.202 Unfair Labor Practices ... 40
2.203 Workplace Safety and Discriminatory Harassment ... 40
2.204 E-Verify – Deleted / Not Applicable ... 40
2.205 Prevailing Wage – Deleted / Not Applicable ... 41
**2.210 Governing Law** ... 41
2.211 Governing Law ... 41
2.212 Compliance with Laws ... 41
2.213 Jurisdiction ... 41
**2.220 Limitation of Liability** ... 41
2.221 Limitation of Liability ... 41
**2.230 Disclosure Responsibilities** ... 41
2.231 Disclosure of Litigation ... 41

2.232 Call Center Disclosure ..... 42
2.233 Bankruptcy ..... 42
**2.240 Performance** ..... 42
2.241 Time of Performance ..... 42
2.242 Service Level Agreements (SLAs) – Deleted / Not Applicable ..... 42
2.243 Liquidated Damages ..... 43
2.244 Excusable Failure ..... 43
**2.250 Approval of Deliverables – Deleted / Not Applicable** ..... 44
**2.260 Ownership** ..... 44
2.261 Ownership of Work Product by State ..... 44
2.262 Vesting of Rights ..... 44
2.263 Rights in Data ..... 44
2.264 Ownership of Materials ..... 45
**2.270 State Standards** ..... 45
2.271 Existing Technology Standards ..... 45
2.272 Acceptable Use Policy ..... 45
2.273 Systems Changes ..... 45
**2.280 Extended Purchasing – Deleted / Not Applicable** ..... 45
**2.290 Environmental Provision** ..... 45
2.291 Environmental Provision ..... 45
**2.300 Other Provisions – Deleted / Not Applicable** ..... 46
Attachment A, Pricing (Key Personnel and Equipment)

## DEFINITIONS

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

**Additional Service** means any Services within the scope of the Contract, but not specifically provided under any Statement of Work.

**Audit Period** means the seven year period following Contractor's provision of any work under the Contract.

**Bidder(s)** are those companies that submit a proposal in response to this RFP.

**Business Day** means any day other than a Saturday, Sunday or State-recognized legal holiday from 8:00am EST through 5:00pm EST unless otherwise stated.

**Blanket Purchase Order** is an alternate term for Contract and is used in the Plan Sponsors' computer system.

**CCI** means Contract Compliance Inspector.

**CMI** means Clean Michigan Initiative.

**Days** mean calendar days unless otherwise specified.

**Deleted – Not Applicable** means that section is not applicable or included in this RFP. This is used as a placeholder to maintain consistent numbering.

**Deliverable** means physical goods and/or services required or identified in a Statement of Work.

**DTMB** means the Michigan Department of Technology Management and Budget.

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

**GIS** means Geographic Information System.

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

**Incident** means any interruption in any function performed for the benefit of a Plan Sponsor.

**Key Personnel** means any personnel identified in **Section 1.031** as Key Personnel.

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

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

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

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

**QAPP** means Quality Assurance Project Plan.

**QA/QC** means Quality Assurance/Quality Control.

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

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

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

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

**SLA** means Service Level Agreement.

**SOP** means Standard Operating Procedure.

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

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

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

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

**Waste Prevention** means source reduction and reuse, but not recycling.

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

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

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

# Article 1 – Statement of Work (SOW)

## *1.010 Project Identification*

### 1.011 Project
This Contract is to secure technical support to assist with the implementation of all aspects of the water quality monitoring program for the Michigan Department of Environmental Quality (MDEQ).

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

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

## *1.020 Scope of Work and Deliverables*

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

- Contractor and or subcontractors must have certification for the analysis of nutrients (e.g. phosphorus, nitrogen), conventional parameters (e.g. total suspended solids, total organic carbon, biological oxygen demand), and E. coli.
- Subcontracted analytical samples must be completed by a laboratory certified for the necessary analyses and with the capability to analyze the samples within holding times and deliver results within the time constraints of the project(s).
- Assistance with the design of water quality monitoring studies;
- Collection of water, sediment, fish and wildlife contaminant, and biological community samples. The contractor must be knowledgeable in the use of clean techniques for water sample collection, as well as fish, invertebrate, algae, cyanobacteria, aquatic vegetation, and other aquatic organismal identification. Sampling locations may include streams, rivers, inland lakes, wetlands, Saginaw and Grand Traverse Bay, the Great Lakes, and the Great Lakes connecting channels;
- Provision of staff to work at MDEQ office in Lansing as necessary;
- Detailed assessment of stream habitat and geomorphology conditions to evaluate the effectiveness of various programs such as non-point source and the Conservation Reserve Enhancement Program.
- Laboratory analysis of water and sediment samples, primarily for nutrients, conventional parameters, bacteria, and metals. Other parameters may be needed on a case-by-case basis;
- Statistical data analysis (especially trends) using parametric and nonparametric methods, and demonstrated ability to conduct toxicological studies. Water quality modeling experience/ability is required;

- Evaluation of sampling results, preparation of selected reports and assisting MDEQ with reports and presentations, including the production of graphs, tables, and maps as necessary; and,
- Data management support, such as entering data into databases and making data available in a user-friendly Geographic Information Systems (GIS) format.

**1.022 Work and Deliverable**

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:

The following is a preliminary analysis of the major tasks involved for this Contract. The Contractor is not, however, constrained from supplementing this listing with additional steps, subtasks, or elements deemed necessary to permit the development of alternative approaches or the application of proprietary analytical techniques. During each year of the Contract, the MDEQ and the Contractor will determine the number of hours devoted to each task. The number of hours will vary each year based on funding levels and specific work plans. The Contractor will be reimbursed for actual services.

**Task 1: Work Plan Development**

The Contractor must prepare work plans for specific tasks as requested by the MDEQ. Work plans must include detailed field methods with cost estimates as described, but not limited to, the attached Pricing Sheet. Work plans must follow QAPPs as appropriate. This duty may be extended to include developing QAPPs or SOPs for specific projects.

**Task 2: Sample Collection/Field Measurements**

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

**Task 3: Study design and statistical data analysis/review**

The Contractor must help design monitoring studies as necessary to meet objectives defined by the MDEQ. This may include determination of the number and location of sampling sites and sampling frequency to yield statistically meaningful results. The Contractor must perform rigorous statistical analysis on the data resulting from Task 1. Because comparable data will be collected at many locations, the Contractor must determine whether statistically significant differences exist among sites, and can these differences be correlated with other key variables such as population density, land use, impervious area, etc. In addition, because many locations will be sampled every year, evaluations for temporal trends may be required. Other statistical tests also may be necessary. The MDEQ, in consultation with the Contractor, will determine the type and format of the output.

**Task 4: Sample Analysis**

The majority of water and sediment samples collected for water quality monitoring are sent to the MDEQ Environmental Laboratory or other contract laboratories for parameter analysis. However, sometimes samples have to be analyzed by the Contractor either because of short holding times or lack of capacity at the MDEQ laboratory. Therefore, the Contractor must have certification for the analysis of nutrients (e.g. phosphorus, nitrogen), conventional parameters (e.g. total suspended solids, total organic carbon, biological oxygen demand), and E. coli. Additional analytical capability (e.g. metals (including mercury), volatile organic compounds, PCBs) is desirable. Alternatively, the Contractor must subcontract this service from a laboratory certified for the necessary analyses and with the capability to analyze the samples within holding times and deliver results within the time constraints of the project(s).

**Task 5: Report preparation**
The Contractor must prepare reports on water quality data to summarize key findings (as determined by the MDEQ in cooperation with the Contractor), with the raw data included in appendices. These reports must make effective use of graphs and tables to synthesize data and communicate major findings to technical and non-technical audiences. The MDEQ also may require some assistance with the preparation of reports for which MDEQ is responsible. This assistance primarily will include preparation of tables, graphics, and spreadsheets. The Contractor must make reports and other outputs available to MDEQ electronically and by hard copy, as necessary. Materials in electronic format must be compatible with MDEQ software, primarily Microsoft products (Word, Excel, and Access), and in a format approved by MDEQ.

**Task 6: Data Management**
The Contractor must provide all data collected per Task 1 in electronic format, as specified by the MDEQ, or enter data into approved data management systems. The Contractor must have the ability to integrate monitoring data into ArcGIS, a GIS, in a format that allows users to retrieve data by watershed, media, and/or chemical/biological specific parameter. The full range of data could increase over time.

The Contractor must have the ability to quickly develop and administer subcontracts as necessary because some projects may require the assistance of specialized subcontractors. Additionally, the MDEQ has a need for the use of in-house Contractor staff to assist with tasks listed above. Duties of in-house Contractor staff include, but are not limited to, aquatic macroinvertebrate identification, data management using GIS, data entry and quality assurance, and database management. In-house Contractor staff will also participate with field work as needed.

For all tasks the Contractor is expected to follow strict QA/AC procedures, including QAPP guidelines as appropriate, for all work including but not limited to sampling, lab analysis of samples, data analysis, and modeling.

## ***1.030 Roles and Responsibilities***

### 1.031 Contractor Staff, Roles, and Responsibilities

The Contractor must have available technical staff with a diverse array of expertise and experience in water quality monitoring in order to ensure successful completions of tasks. Staff experience/qualifications to be categorized as P4, P3, P2, or P1, as described below. Specific staff requirements include expertise in sample collection (chemical, biological, physical), sample analysis, data analysis, data management/geographic information management, and report writing.

**P-4 –** Someone who has management authority, and usually has 10 or more years of experience coupled with an advanced degree of a Master's. Contract managers, senior level engineers and scientists, economists, and other experts are examples of this category. These people operate with wide latitude and have final decision authority. The person may oversee the daily activities of this Contract.

**P-3 –** Someone who operates under the general supervision of the project or contract manager or P-4 leader. This person may oversee daily activities of this Contract and other assignments of less senior staff. This level typically has a Master's degree or a combination of education and experience that equals that degree. These individuals also have six years or more of experience.

**P-2 –** Someone with a four year college degree and three or more years of experience who works under the supervision of a senior manager or P-3 leader and may coordinate the activities of P-1s.

**P-1 –** This is a junior individual with a four year college degree and no experience, or less than a four year college degree but experience to make up the difference. The P-1 usually is an entry-level technician who gathers information, works on simpler tasks, and does routine analysis.

The Contractor must have available administrative staff with contract/financial management expertise. This person may have skills and an education background that cannot be categorized using P-4, P-3, P-2, or P-1 type position descriptions.

**The following are Key Personnel:**

| GLEC | Classification | Location |
|---|---|---|
| G.M. (Mick) DeGraeve | P-4 | Traverse City, MI |
| Dennis McCauley | P-4 | Traverse City, MI |
| Robin Silva-Wilkinson | P-4 | Traverse City, MI |
| Dennis McIntyre | P-4 | Columbus, OH |
| Greg Smith | P-4 | Columbus, OH |
| Doug Endicott | P-4 | Traverse City, MI |
| Pat McCool | P-4 | Traverse City, MI |
| John Bachman | P-4 | Traverse City, MI |
| Tyler Linton | P-4 | Columbus, OH |
| Wm. (Bill) Arnold | P-4 | Traverse City, MI |
| John Barkach | P-4 | Farmington Hills, MI |
| Jamie Saxton | P-4 | Traverse City, MI |
| Keith Taulbee | P-4 | Columbus, OH |
| Bill McCracken | P-4 | Lansing, MI |
| Jim Grant | P-4 | Lansing, MI |
| Alan Hais | P-4 | Lansing, MI |
| Michelle Moore | P-3 | Traverse City, MI |
| Jennifer Hansen | P-3 | Traverse City, MI |
| Jim Stricko | P-3 | Traverse City, MI |
| Chris Turner | P-3 | Eau Claire, WI |
| Chris Tarr | P-3 | Columbus, OH |
| Mailee Garton | P-3 | Traverse City, MI |
| Craig Voros | P-3 | Columbus, OH |
| Michelle VanDenBrand | P-3 | Traverse City, MI |
| Mike Sergeant | P-3 | Traverse City, MI |
| Chris Young | P-3 | Traverse City, MI |
| Frank Lepera | P-3 | Chicago, IL |
| Don McNew | P-3 | Traverse City, MI |
| Dave Johns | P-2 | Traverse City, MI |
| Jennifer Bourion | P-2 | Traverse City, MI |
| Dan Smith | P-2 | Traverse City, MI |
| David Rosier | P-2 | Ann Arbor, MI |
| Ben Cook | P-2 | Traverse City, MI |
| Craig Davis | P-2 | Columbus, OH |
| Erica Schneider | P-2 | Traverse City, MI |

| | | |
|---|---|---|
| Natalie Sutherland | P-2 | Traverse City, MI |
| Mike McCauley | P-2 | Lansing, MI |
| Seth Wright | P-2 | Lansing, MI |
| Amanda Sage | P-2 | Columbus, OH |
| Kim McDonald | P-2 | Columbus, OH |
| Adam Reitz | P-2 | Traverse City, MI |

| LimnoTech | Classification | Location |
|---|---|---|
| Cathy Whiting | P-4 | Ann Arbor, MI |
| Joyce Dunkin | P-4 | Ann Arbor, MI |
| Tim Dekker | P-4 | Ann Arbor, MI |
| Todd Redder | P-4 | Ann Arbor, MI |
| Bob Betz | P-3 | Ann Arbor, MI |
| Ric McCulloch | P-3 | Ann Arbor, MI |
| Chris Cieciek | P-3 | Ann Arbor, MI |
| Doug Bradley | P-3 | Ann Arbor, MI |
| Chris Behnke | P-2 | Ann Arbor, MI |
| Brian Lord | P-2 | Ann Arbor, MI |
| Jason Rutyna | P-2 | Ann Arbor, MI |
| Ed Verhamme | P-2 | Ann Arbor, MI |
| Justin Ibershoff | P-2 | Ann Arbor, MI |

| White Water | Classification | Location |
|---|---|---|
| Dean Premo | P-4 | Amasa, MI |
| Bette Premo | P-4 | Amasa, MI |
| Robert Huggett | P-4 | Amasa, MI |
| Kent Premo | P-4 | Amasa, MI |
| Tony Haag | P-3 | Amasa, MI |
| Caitlin Clark | P-3 | Amasa, MI |
| Garyck Hoenig | P-3 | Amasa, MI |
| Angie Stine | P-3 | Amasa, MI |
| Carol Azan | P-3 | Amasa, MI |
| Bruce Morstad | P-3 | Amasa, MI |
| Michael Carlson | P-3 | Ironwood, MI |
| Robert Truax | P-3 | Marquette, MI |
| Tom Plummer | P-2 | Amasa, MI |
| Jim Butler | P-2 | Amasa, MI |
| Mike Lewis | P-2 | Amasa, MI |
| Sue Ballo | P-2 | Amasa, MI |
| Nichole Kuzak | P-2 | Amasa, MI |

The primary contact for this Contract that must provide overall oversight and serve as a central conduit for information is Jamie Saxton.

Jamie Saxton
Principal Research Scientist
Great Lakes Environmental Center, Inc.
231-941-2230 (phone)
231-941-2240 (fax)
jsaxton@glec.com (email)
www.glec.com

## ***1.040 Project Plan***

### 1.041 Project Plan Management

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

### 1.042 Reports

The Contractor must submit monthly progress reports and invoices. The progress reports must describe the activities that occurred for each project during the month, as well as any problems that arose. Any deviation from the required reporting must be identified and explained. Additional Contractor reporting requirements will be defined in the individual project work plans. In some cases, the report may consist only of a table of monitoring locations and dates. Other projects may require a detailed final report including monitoring procedures, statistical data analysis, and conclusions and recommendations. Long-term monitoring projects may require annual reports summarizing activities and results for the previous year.

## ***1.050 Acceptance***

### 1.051 Criteria

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

- Adherence to sampling plan and methods identified in project work plans;
- Adherence to quality assurance requirements identified in a QAPP, SOP or other QA documents, if applicable;
- Costs are to be in line with industry standards; and
- Production of interim and final reports consistent with MDEQ guidance for format and content.
- Quality of data and work products

### 1.052 Final Acceptance

The MDEQ project manager has final authority to approve/disapprove services and deliverables, and to ensure that work plan and reporting requirements, including quality assurance measures (e.g., QAPP) are followed satisfactorily.

## ***1.060 Proposal Pricing***

### 1.061 Pricing

State shall pay Contractor an amount not to exceed four million dollars (maximum dollar amount) for the performance of all activities necessary for or incidental to the performance of work as set forth in this Contract. Authorized Services and final pricing will be determined on a project-specific basis, all of which cannot be defined at this time. For each individual project, the Contractor must itemize costs by labor (# of hours times

hourly rates), travel, equipment and supplies, and other categories as appropriate and defined in individual work plans. Although project-specific pricing will be established, such elements as personnel hourly rates and equipment rates identified by the Contractor must not exceed Attachment A pricing when submitting project-specific pricing to MDEQ. Hourly rates and equipment rates quoted in Attachment A are fixed for the entire length of the Contract. Cost of supplies, shipping, and travel are reimbursable. Travel will be reimbursed based on actual cost not to exceed Standard State of Michigan rates. For current rates go to http://www.michigan.gov/documents/dmb/Travel_Rates_Jan2013_405569_7.pdf?20130820163930. Project-specific invoices must be submitted monthly. Invoices must be on a project-specific basis, listing monthly costs associated with personnel, travel, equipment, supplies, and subcontractors (if applicable). Receipts for purchases must be included. A narrative progress report must accompany each invoice, describing the relevant tasks accomplished during the month.

Contractor gives 1% discount off invoices paid within 30 days.

Contractor's out-of-pocket expenses are not separately reimbursable by the State unless, on a case-by-case basis for unusual expenses, the State has agreed in advance and in writing to reimburse Contractor for the expense at the State's current travel reimbursement rates. For current rates go to http://www.michigan.gov/documents/dmb/Travel_Rates_Jan2013_405569_7.pdf?20130820163930

**1.062 Price Term**
Prices quoted are firm for the entire length of the Contract.

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

(b) Federal Excise Tax: The State may be exempt from Federal Excise Tax, or the taxes may be reimbursable, if articles purchased under 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, prices must not include the Federal Excise Tax.

**1.064 Holdback**
The State has the right to hold back, as a retainage, an amount equal to 10 % of all amounts invoiced by Contractor for Services/Deliverables. The amounts held back must be released to Contractor after the State has granted Final Acceptance.

***1.070 Additional Requirements – Deleted / Not Applicable***

## Article 2, Terms and Conditions

### *2.000 Contract Structure and Term*

**2.001 Contract Term**
The Contract is for a period of three years beginning 1/1/2014 through 12/31/16. All outstanding Purchase Orders must also expire upon the termination (cancellation for any of the reasons listed in **Section 2.150**) of the Contract, unless otherwise extended under the Contract. Absent an early termination for any reason, Purchase Orders issued but not expired, by the end of the Contract's stated term, will remain in effect for the balance of the fiscal year for which they were issued.

**2.002 Options to Renew**
The Contract may be renewed in writing by mutual agreement of the parties not less than 30 days before its expiration. The Contract may be renewed for up to two additional one-year periods.

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

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

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

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

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

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

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

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

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

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

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

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

***2.020 Contract Administration***

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

Brandon Samuel, Buyer Specialist
Procurement
Department of Technology Management and Budget
Mason Bldg., 2nd Floor
PO Box 30026
Lansing, MI 48909
samuelb@michigan.gov
517-241-1218

**2.022 Contract Compliance Inspector**
After DTMB-Procurement receives the properly executed Contract, it is anticipated that the Chief Procurement Officer of DTMB-Procurement, in consultation with the MDEQ, Water Resource Division, will direct the person named below, or any other person so designated, to monitor and coordinate the activities for the Contract on a day-to-day basis during its term. However, monitoring of the Contract implies **no authority to change, modify, clarify, amend, or otherwise alter the prices, terms, conditions and specifications of the Contract as that authority is retained by DTMB-Procurement**. The CCI for the Contract is:

Dawn Roush, Aquatic Biology Specialist
Lakes Superior, Huron, and Erie Unit
Michigan Department of Environmental Quality
PO Box 30458, Lansing, MI 48909
Email: roushd@michigan.gov
Phone: 517-335-3307
Fax: 517-373-9958

**2.023 Project Manager**
The following individual will oversee the project:

Dawn Roush, Aquatic Biology Specialist
Lakes Superior, Huron, and Erie Unit
Michigan Department of Environmental Quality
PO Box 30458, Lansing, MI 48909
Email: roushd@michigan.gov
Phone: 517-335-3307
Fax: 517-373-9958

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

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

Change Requests:

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

(b) No proposed Change may be performed until the proposed Change has been specified in a duly executed Contract Change Notice issued by the DTMB-Procurement.

(c) If the State requests or directs the Contractor to perform any activities that Contractor believes constitute a Change, the Contractor must notify the State that it believes the requested activities are a Change before beginning to work on the requested activities. If the Contractor fails to notify the State before beginning to work on the requested activities, then the Contractor waives any right to assert any claim for additional compensation or time for performing the requested activities. If the Contractor commences performing work outside the scope of 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.

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

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

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

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

**2.028 Covenant of Good Faith**
Each party must act reasonably and in good faith. Unless stated otherwise in the Contract, the parties must not unreasonably delay, condition, or withhold the giving of any consent, decision, or approval that is either requested or reasonably required of them in order for the other party to perform its responsibilities under the Contract.

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

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

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

***2.030 General Provisions***

**2.031 Administrative Fee And Reporting – Deleted / Not Applicable**

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

**2.033 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.

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

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

**2.036 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

**2.037 Freedom of Information**
All information in any proposal submitted to the State by Contractor and the Contract is subject to the provisions of the Michigan Freedom of Information Act, 1976 PA 442, MCL 15.231, et seq (the "FOIA").

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

***2.040 Financial Provisions***

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

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

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

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

(b) Each Contractor invoice must show details as to charges by Service/Deliverable component and location at a level of detail reasonably necessary to satisfy the State's accounting and charge-back requirements. Invoices for Services performed on a time and materials basis must show, for each individual, the number of hours of Services performed during the billing period, the billable skill/labor category for such

person and the applicable hourly billing rate. Prompt payment by the State is contingent on the Contractor's invoices showing the amount owed by the State minus any holdback amount to be retained by the State in accordance with **Section 1.064**.

(c) Correct invoices will be due and payable by the State, in accordance with the State's standard payment procedure as specified in 1984 PA 279, MCL 17.51 et seq., within 45 days after receipt, provided the State determines that the invoice was properly rendered.

(d) All invoices should reflect actual work done. Specific details of invoices and payments will be agreed upon between the project manager-and the Contractor.

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

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

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

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

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

**2.048 Electronic Payment Requirement**
Electronic transfer of funds is required for payments on State contracts. The Contractor must register with the State electronically at http://www.cpexpress.state.mi.us. As stated in 1984 PA 431, all contracts that the State enters into for the purchase of goods and services must provide that payment will be made by Electronic Fund Transfer (EFT).

***2.050 Taxes***

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

**2.052 Sales and Use Taxes**
Contractors are required to be registered and to remit sales and use taxes on taxable sales of tangible personal property or services delivered into the State. Contractors that lack sufficient presence in Michigan to be required to register and pay tax must do so as a volunteer. This requirement extends to: all members of any controlled group as defined in § 1563(a) of the Internal Revenue Code and applicable regulations of which

the company is a member, and (2) all organizations under common control as defined in § 414(c) of the Internal Revenue Code and applicable regulations of which the company is a member that make sales at retail for delivery into the State are registered with the State for the collection and remittance of sales and use taxes. In applying treasury regulations defining "two or more trades or businesses under common control" the term "organization" means sole proprietorship, a partnership (as defined in § 701(a)(2) of the Internal Revenue Code), a trust, an estate, a corporation, or a limited liability company.

## ***2.060 Contract Management***

### 2.061 Contractor Personnel Qualifications

All persons assigned by Contractor to the performance of Services under the 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 the 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 the Contract only; however, the State understands that the relationship between Contractor and Subcontractor is an independent contractor relationship.

### 2.062 Contractor Key Personnel

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

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

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

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

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

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

The State reserves the right to require the removal from the Project of Contractor personnel found, in the judgment of the State, to be unacceptable. The State's request must be written with reasonable detail outlining

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

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

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

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

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

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

***2.070 Subcontracting by Contractor***

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

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

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

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

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

***2.080 State Responsibilities***

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

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

## *2.090 Security*

### 2.091 Background Checks

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

### 2.092 Security Breach Notification

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

### 2.093 PCI Data Security Standard – Deleted / Not Applicable

## *2.100 Confidentiality*

### 2.101 Confidentiality

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

### 2.102 Protection and Destruction of Confidential Information

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

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

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

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

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

***2.110 Records and Inspections***

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

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

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

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

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

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

***2.120 Warranties***

**2.121 Warranties and Representations**
The Contractor represents and warrants:

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

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

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

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

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

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

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

(h) If any of the certifications, representations, or disclosures made in the Contractor's original bid response change after the Contract start date, the Contractor must report those changes immediately to DTMB-Procurement.

**2.122 Warranty of Merchantability – Deleted / Not Applicable**

**2.123 Warranty of Fitness for a Particular Purpose – Deleted / Not Applicable**

**2.124 Warranty of Title – Deleted / Not Applicable**

**2.125 Equipment Warranty**
To the extent Contractor is responsible under the Contract for maintaining equipment/system(s). Contractor must maintain the equipment/system(s) in good operating condition and must undertake all repairs and preventive maintenance according to the applicable manufacturer's recommendations for the period specified in the Contract.

The Contractor represents and warrants that the equipment/system(s) are in good operating condition and operate and perform to the requirements and other standards of performance contained in the Contract, when installed, at the time of Final Acceptance by the State, and for a period of one year commencing upon the first day following Final Acceptance.

Within **30** business days of notification from the State, the Contractor must adjust, repair or replace all equipment that is defective or not performing in compliance with the Contract. The Contractor must assume all costs for replacing parts or units and their installation including transportation and delivery fees, if any.

The Contractor agrees that all warranty service it provides under the Contract must be performed by Original Equipment Manufacturer (OEM) trained, certified and authorized technicians.

The Contractor is the sole point of contact for warranty service. The Contractor warrants that it will pass through to the State any warranties obtained or available from the original equipment manufacturer, including any replacement, upgraded, or additional equipment warranties.

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

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

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

***2.130 Insurance***

**2.131 Liability Insurance**

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

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

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

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

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

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

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

☑ 1. Commercial General Liability with the following minimum coverage:
$2,000,000 General Aggregate Limit other than Products/Completed Operations
$2,000,000 Products/Completed Operations Aggregate Limit
$1,000,000 Personal & Advertising Injury Limit
$1,000,000 Each Occurrence Limit

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

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

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

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

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

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

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

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

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

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

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

**2.132 Subcontractor Insurance Coverage**

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

**2.133 Certificates of Insurance and Other Requirements**

Contractor must furnish to DTMB-Procurement, certificate(s) of insurance verifying insurance coverage or providing satisfactory evidence of self-insurance as required in this Section (the "Certificates"). The Certificate must be on the standard "accord" form or equivalent. **THE CONTRACT OR PURCHASE ORDER NO. MUST BE SHOWN ON THE CERTIFICATE OF INSURANCE TO ASSURE CORRECT FILING.** All Certificate(s) are to be prepared and submitted by the Insurance Provider. All Certificate(s) must contain a provision indicating that coverages afforded under the policies MUST NOT BE CANCELLED, MATERIALLY CHANGED, OR NOT RENEWED without 30 days prior written notice, except for 10 days for non-payment of premium, having been given to the Chief Procurement Officer, DTMB. The notice must include the Contract or Purchase Order number affected. 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. In the event the State approves the representation of the State by the insurer's attorney, the attorney may be required to be designated as a Special Assistant Attorney General by the Attorney General of the State of Michigan.

The Contractor must maintain all required insurance coverage throughout the term of the Contract and any extensions and, in the case of claims-made Commercial General Liability policies, must secure tail coverage

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

## ***2.140 Indemnification***

### 2.141 General Indemnification

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

### 2.142 Code Indemnification

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

### 2.143 Employee Indemnification

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

### 2.144 Patent/Copyright Infringement Indemnification

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

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

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

**2.145 Continuation of Indemnification Obligations**

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

**2.146 Indemnification Procedures**

The procedures set forth below must apply to all indemnity obligations under the Contract.

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

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

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

***2.150 Termination/Cancellation***

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

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

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

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

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

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

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

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

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

**2.155 Termination for Criminal Conviction**

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

**2.156 Termination for Approvals Rescinded**

The State may terminate the 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 must pay the Contractor for only the work completed to that point under the Contract. Termination may be in whole or in part and may be immediate as of the date of the written notice to Contractor or may be effective as of the date stated in the written notice.

**2.157 Rights and Obligations upon Termination**

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

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

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

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

***2.160 Termination by Contractor – Deleted / Not Applicable***

***2.170 Transition Responsibilities***

**2.171 Contractor Transition Responsibilities**
If the State terminates the Contract, for convenience or cause, or if the Contract is otherwise dissolved, voided, rescinded, nullified, expires or rendered unenforceable, the Contractor agrees to comply with direction provided by the State to assist in the orderly transition of equipment, services, software, leases, etc. to the State or a third party designated by the State. If the Contract expires or terminates, the Contractor agrees to make all reasonable efforts to effect an orderly transition of services within a reasonable period of time that in no event will exceed **90** days. These efforts must include, but are not limited to, those listed in **Sections 2.171, 2.172, 2.173, 2.174, and 2.175.**

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

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

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

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

**2.176 State Transition Responsibilities – Deleted / Not Applicable**

***2.180 Stop Work***

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

**2.182 Cancellation or Expiration of Stop Work Order**
The Contractor must resume work if the State cancels a Stop Work Order or if it expires. The parties will agree upon an equitable adjustment in the delivery schedule, the Contract price, or both, and the 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 the Contract; and (b) Contractor asserts its right to an equitable adjustment within 30 calendar days after the end of the period of work stoppage; provided that, if the State decides the facts justify the action, the State may receive and act upon a Contractor proposal submitted at any time before final payment under the Contract. Any adjustment must conform to the requirements of **Section 2.024**.

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

***2.190 Dispute Resolution***

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

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

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

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

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

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

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

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

**2.193 Injunctive Relief**

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

**2.194 Continued Performance**

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

***2.200 Federal and State Contract Requirements***

**2.201 Nondiscrimination**

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

**2.202 Unfair Labor Practices**

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

**2.203 Workplace Safety and Discriminatory Harassment**

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

**2.204 E-Verify – Deleted / Not Applicable**

**2.205 Prevailing Wage – Deleted / Not Applicable**

***2.210 Governing Law***

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

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

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

***2.220 Limitation of Liability***

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

***2.230 Disclosure Responsibilities***

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

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

(i) the ability of Contractor (or a Subcontractor) to continue to perform the Contract according to its terms and conditions, or
(ii) whether Contractor (or a Subcontractor) in performing Services for the State is engaged in conduct which is similar in nature to conduct alleged in the Proceeding, which conduct would constitute

a breach of the Contract or a violation of Michigan law, regulations or public policy, then the Contractor must provide the State all reasonable assurances requested by the State to demonstrate that:

(a) Contractor and its Subcontractors must be able to continue to perform the Contract and any Statements of Work according to its terms and conditions, and

(b) Contractor and its Subcontractors have not and will not engage in conduct in performing the Services which is similar in nature to the conduct alleged in the Proceeding.

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

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

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

(3) Contractor must also notify DTMB Procurement within 30 days whenever changes to company affiliations occur.

**2.232 Call Center Disclosure**

Contractor and/or all Subcontractors involved in the performance of the 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 the Contract.

**2.233 Bankruptcy**

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

(a) the Contractor files for protection under the bankruptcy laws;

(b) an involuntary petition is filed against the Contractor and not removed within 30 days;

(c) the Contractor becomes insolvent or if a receiver is appointed due to the Contractor's insolvency;

(d) the Contractor makes a general assignment for the benefit of creditors; or

(e) the Contractor or its affiliates are unable to provide reasonable assurances that the Contractor or its affiliates can deliver the services under the Contract.

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

***2.240 Performance***

**2.241 Time of Performance**

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

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

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

**2.242 Service Level Agreements (SLAs) – Deleted / Not Applicable**

**2.243 Liquidated Damages**

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

It is acknowledged that an Unauthorized Removal will interfere with the timely and proper completion of the Contract, to the loss and damage of the State, and that it would be impracticable and extremely difficult to fix the actual damage sustained by the State as a result of any Unauthorized Removal. Therefore, Contractor and the State agree that in the case of any Unauthorized Removal in respect of which the State does not elect to exercise its rights under **Section 2.152**, the State may assess liquidated damages against Contractor as specified below.

For the Unauthorized Removal of any Key Personnel designated in the applicable Statement of Work, the liquidated damages amount is $25,000.00 per individual if the Contractor identifies a replacement approved by the State under **Section 2.060** and assigns the replacement to the Project to shadow the Key Personnel who is leaving for a period of at least 30 days before the Key Personnel's removal.

If Contractor fails to assign a replacement to shadow the removed Key Personnel for at least 30 days, in addition to the $25,000.00 liquidated damages for an Unauthorized Removal, Contractor must pay the amount of $833.33 per day for each day of the 30 day shadow period that the replacement Key Personnel does not shadow the removed Key Personnel, up to $25,000.00 maximum per individual. The total liquidated damages that may be assessed per Unauthorized Removal and failure to provide 30 days of shadowing must not exceed $50,000.00 per individual.

**2.244 Excusable Failure**

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

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

If any of the above-enumerated circumstances substantially prevent, hinder, or delay the Contractor's performance of the Services/provision of Deliverables for more than 10 Business Days, and the State determines that performance is not likely to be resumed within a period of time that is satisfactory to the State in its reasonable discretion, then at the State's option: (a) the State may procure the affected Services/Deliverables from an alternate source, and the State is not be liable for payment for the unperformed Services/ Deliverables not provided under the Contract for so long as the delay in performance continues; (b) the State may terminate any portion of the Contract so affected and the charges payable will be equitably

adjusted to reflect those Services/Deliverables terminated; or (c) the State may terminate the affected Statement of Work without liability to Contractor as of a date specified by the State in a written notice of termination to the Contractor, except to the extent that the State must pay for Services/Deliverables provided through the date of termination.

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

### ***2.250 Approval of Deliverables – Deleted / Not Applicable***

### ***2.260 Ownership***

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

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

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

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

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

***2.270 State Standards***

**2.271 Existing Technology Standards**
The Contractor must adhere to all existing standards as described within the comprehensive listing of the State's existing technology standards at http://www.michigan.gov/dmb/0,4568,7-150-56355-108233--,00.html.

**2.272 Acceptable Use Policy**
To the extent that Contractor has access to the State computer system, Contractor must comply with the State's Acceptable Use Policy, see http://www.michigan.gov/cybersecurity/0,1607,7-217-34395_34476---,00.html. All Contractor employees must be required, in writing, to agree to the State's Acceptable Use Policy before accessing the State system. The State reserves the right to terminate Contractor's access to the State system if a violation occurs.

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

***2.280 Extended Purchasing – Deleted / Not Applicable***

***2.290 Environmental Provision***

**2.291 Environmental Provision**
Hazardous Materials:
For the purposes of this Section, "Hazardous Materials" is a generic term used to describe 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. This includes, but is not limited to, materials such as batteries and circuit packs, and other materials that are regulated as (1) "Hazardous Materials" under the Hazardous Materials Transportation Act, (2) "chemical hazards" under the Occupational Safety and Health Administration standards, (3) "chemical substances or mixtures" under the Toxic Substances Control Act, (4) "pesticides" under the Federal Insecticide Fungicide and Rodenticide Act, and (5) "hazardous wastes" as defined or listed under the Resource Conservation and Recovery Act.

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

(b) Upon receipt of a written notice, the State will investigate the conditions. If (a) the material is a Hazardous Material that may present a substantial danger, and (b) the Hazardous Material was not brought to the site by the Contractor, or does not result in whole or in part from any violation by the Contractor of any laws

covering the use, handling, storage, disposal of, processing, transport and transfer of Hazardous Materials, the State must order a suspension of Work in writing. The State must proceed to have the Hazardous Material removed or rendered harmless. In the alternative, the State must terminate the affected Work for the State's convenience.

(c) Once the Hazardous Material has been removed or rendered harmless by the State, the Contractor must resume Work as directed in writing by the State. Any determination by the Michigan Department of Community Health or the Michigan Department of Environmental Quality that the Hazardous Material has either been removed or rendered harmless is binding upon the State and Contractor for the purposes of resuming the Work. If any incident with Hazardous Material results in delay not reasonable anticipatable under the circumstances and which is attributable to the State, the applicable SLAs for the affected Work will not be counted in **Section 2.242** for a time as mutually agreed by the parties.

(d) If the Hazardous Material was brought to the site by the Contractor, or results in whole or in part from any violation by the Contractor of any laws covering the use, handling, storage, disposal of, processing, transport and transfer of Hazardous Material, or from any other act or omission within the control of the Contractor, the Contractor 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 to the condition approved by applicable regulatory agency(ies).

Michigan has a Consumer Products Rule pertaining to labeling of certain products containing volatile organic compounds. For specific details visit http://www.michigan.gov/MDEQ/0,1607,7-135-3310_4108-173523--,00.html

Refrigeration and Air Conditioning:
The Contractor must comply with the applicable requirements of Sections 608 and 609 of the Clean Air Act (42 U.S.C. 7671g and 7671h) as each or both apply to the Contract.

Environmental Performance:
Waste Reduction Program: Contractor must establish a program to promote cost-effective waste reduction in all operations and facilities covered by the Contract. The Contractor's programs must comply with applicable Federal, State, and local requirements, specifically including Section 6002 of the Resource Conservation and Recovery Act (42 U.S.C. 6962, et seq.).

### ***2.300 Other Provisions – Deleted / Not Applicable***

## Attachment A – Pricing

| NAME | CLASSIFICATION | FULLY LOADED HOURLY RATE |
|---|---|---|
| **GLEC** | | |
| G. M. DeGraeve | P-4 | $100.00 |
| Dennis McCauley | P-4 | $100.00 |
| Robin Silva-Wilkinson | P-4 | $100.00 |
| Dennis McIntyre | P-4 | $100.00 |
| Greg Smith | P-4 | $100.00 |
| Douglas Endicott | P-4 | $100.00 |
| Patrick McCool | P-4 | $95.00 |
| John Bachman | P-4 | $100.00 |
| Tyler Linton | P-4 | $100.00 |
| James Saxton | P-4 | $75.00 |
| William Arnold | P-4 | $90.00 |
| John Barkach | P-4 | $100.00 |
| Keith Taulbee | P-4 | $95.00 |
| Bill McCracken | P-4 | $100.00 |
| Jim Grant | P-4 | $100.00 |
| Alan Hais | P-4 | $100.00 |
| Michelle Moore | P-3 | $70.00 |
| Jennifer Hansen | P-3 | $60.00 |
| James Stricko | P-3 | $70.00 |
| Chris Turner | P-3 | $75.00 |
| Chris Tarr | P-3 | $70.00 |
| Mailee Garton | P-3 | $60.00 |
| Craig Voros | P-3 | $60.00 |
| Michelle VandenBrand | P-3 | $55.00 |
| Michael Sergeant | P-3 | $50.00 |
| Chris Young | P-3 | $60.00 |
| Frank Lepera | P-3 | $60.00 |
| Don McNew | P-3 | $70.00 |
| David Johns | P-2 | $45.00 |
| Jennifer Bourion | P-2 | $45.00 |
| Daniel Smith | P-2 | $45.00 |
| David Rosier | P-2 | $45.00 |
| Ben Cook | P-2 | $50.00 |
| Craig Davis | P-2 | $45.00 |
| Erica Schneider | P-2 | $45.00 |
| Natalie Sutherland | P-2 | $30.00 |
| Michael McCauley | P-2 | $55.00 |
| Seth Wright | P-2 | $55.00 |
| Amanda Sage | P-2 | $40.00 |
| Kim McDonald | P-2 | $40.00 |
| Adam Reitz | P-2 | $30.00 |
| Kelly Stratton | P-1 | $30.00 |
| Kim Bell | Administrative/Clerical | $55.00 |
| Linda Hays | Administrative/Clerical | $55.00 |
| Jane Wightman | Administrative/Clerical | $55.00 |
| Melani Filipowski | Administrative/Clerical | $40.00 |
| Gina Anderson | Administrative/Clerical | $35.00 |
| Amelia Howard | Administrative/Clerical | $30.00 |
| | | |

| | | |
|---|---|---|
| **LimnoTech** | | |
| Cathy Whiting | P-4 | $115.00 |
| Joyce Dunkin | P-4 | $115.00 |
| Tim Dekker | P-4 | $115.00 |
| Todd Redder | P-4 | $115.00 |
| Bob Betz | P-3 | $100.00 |
| Ric McCulloch | P-3 | $100.00 |
| Chris Cieciek | P-3 | $100.00 |
| Doug Bradley | P-3 | $100.00 |
| Chris Behnke | P-2 | $82.00 |
| Brian Lord | P-2 | $82.00 |
| Jason Rutyna | P-2 | $82.00 |
| Ed Verhamme | P-2 | $82.00 |
| Justin Ibershoff | P-2 | $82.00 |
| Cullen O'Brien | P-1 | $70.00 |
| Brandon Ellefson | P-1 | $70.00 |
| Derek Schlea | P-1 | $70.00 |
| Renn Lambert | P-1 | $70.00 |
| To Be Determined | Clerical | $50.00 |
| | | |
| **White Water Associates** | | |
| Dean Premo | P-4 | $75.00 |
| Bette Premo | P-4 | $75.00 |
| Robert Huggett | P-4 | $75.00 |
| Kent Premo | P-4 | $75.00 |
| Tony Hagg | P-3 | $50.00 |
| Caitlin Clarke | P-3 | $50.00 |
| Garyck Hoenig | P-3 | $50.00 |
| Carol Azan | P-3 | $50.00 |
| Angie Stine | P-3 | $50.00 |
| Michael Carlson | P-3 | $50.00 |
| Rob Truax | P-3 | $50.00 |
| Bruce Morstad | P-3 | $50.00 |
| Jim Butler | P-2 | $40.00 |
| Mike Lewis | P-2 | $40.00 |
| Sue Ballo | P-2 | $40.00 |
| Nichole Kuzak | P-2 | $40.00 |
| Tom Plummer | P-2 | $40.00 |
| Elke Rafferty | P-1 | $30.00 |
| Al Niemela | P-1 | $30.00 |
| Jeanne Johnson | P-1 | $30.00 |
| Jill Feldhausen | Clerical | $35.00 |
| Linda Besiak | Clerical | $25.00 |

## Continued: Attachment A – Pricing

| Equipment Description | Rental Charge (per Day) | Rental Charge (per Month) | Comments |
|---|---|---|---|
| Auto Samplers | $50 | $250 | |
| Boat, Great Lakes Vessel/Trailer | $175 | Not Applicable | Daily rental excludes the costs of fuel and oil. |
| Boat, non-motorized | $30 | Not Applicable | |
| Boat, other motorized/Trailer | $75 | Not Applicable | Daily rental excludes the costs of fuel and oil. |
| Camera[1] | No Charge | No Charge | |
| Eckman Dredge[1] | No Charge | No Charge | |
| Electrofishing, Backpack | $75 | Not Applicable | |
| Wadeable Stream Electrofishing Pram | $75 | Not Applicable | Daily rental excludes the costs of fuel and oil. |
| Electrofishing, Boat/Trailer | $250 | Not Applicable | Daily rental excludes the costs of fuel and oil. |
| Flow Meter | $15 | Not Applicable | |
| Four Wheel Drive ATV | $75 | Not Applicable | Daily rental excludes the costs of fuel and oil. |
| Fyke/Trap Net[1] | No Charge | No Charge | |
| Gill Net[1] | No Charge | No Charge | |
| GPS Unit[1] | No Charge | No Charge | |
| Hester Dendy Sampler[1] | No Charge | No Charge | |
| HOBO Temperature Recording Devices | $4 | $60 | |
| Hydrolab - Water Chemistry Meter, multiparameter | $50 | Not Applicable | |
| Kemmerer Water Sampler[1] | No Charge | No Charge | |
| Peristaltic Pump[1] | No Charge | No Charge | |
| Petite Ponar Dredge[1] | No Charge | No Charge | |
| Plankton Net[1] | No Charge | No Charge | |
| Ponar Dredge[1] | No Charge | No Charge | |
| Range Finder[1] | No Charge | No Charge | |
| Seine Net[1] | No Charge | No Charge | |
| Surber Sampler[1] | No Charge | No Charge | |
| Survey Equipment[1] | No Charge | No Charge | |
| Tipping/Recording Rain Gauge | $7 | $105 | |
| Trawl Net[1] | No Charge | No Charge | |
| Van Dorn Water Sampler[1] | No Charge | No Charge | |
| Water Chemistry Meter, Auto sampler | $50 | $250 | |
| Water Chemistry Meter, conductivity/pH | $15 | Not Applicable | |
| Water Chemistry Meter, dissolved oxygen | $15 | Not Applicable | |

[1] GLEC provides this common sampling equipment to projects without charge.