

STATE OF MICHIGAN  
 DEPARTMENT OF MILITARY & VETERANS AFFAIRS  
 STATE OPERATIONS-PURCHASING & CONTRACTS  
 3423 N. MARTIN LUTHER KING JR BLVD, SUITE 320  
 LANSING, MI 48906

**NOTICE OF CONTRACT NO. 511B3200044**  
 between  
**THE STATE OF MICHIGAN**  
 and

NAME & ADDRESS OF CONTRACTOR:	PRIMARY CONTACT	EMAIL
Grayling Fire Department 1041 City Blvd. Grayling, MI 49738	Doug Baum	<a href="mailto:dbaum@cityofgrayling.com">dbaum@cityofgrayling.com</a>
	TELEPHONE	CONTRACTOR #, MAIL CODE
	989-348-2131	<input type="text"/>

STATE CONTACTS	AGENCY	NAME	PHONE	EMAIL
CONTRACT COMPLIANCE INSPECTOR:	DMVA	DAVE GOLNICK	989 344-6187	DAVID.M.GOLNICK.NFG@MAIL.MIL
BUYER:	DMVA	ELIZABETH NOFFSINGER	989 344-6190	NOFFSINGERE@MICHIGAN.GOV

CONTRACT SUMMARY:			
DESCRIPTION: To provide all structural fire protection and crash rescue services at all facilities located in the geographical jurisdiction of the Grayling Fire Department.			
INITIAL TERM	EFFECTIVE DATE	INITIAL EXPIRATION DATE	AVAILABLE OPTIONS
6 months	9/30/2013	3/30/2014	One year extension
PAYMENT TERMS	F.O.B	SHIPPED	SHIPPED FROM
Net 30	CAMP GRAYLING	CAMP GRAYLING	N/A
ALTERNATE PAYMENT OPTIONS:			AVAILABLE TO MIDEAL PARTICIPANTS
<input type="checkbox"/> P-card <input type="checkbox"/> Direct Voucher (DV) <input type="checkbox"/> Other			<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO
MINIMUM DELIVERY REQUIREMENTS: None			
NONE			
MISCELLANEOUS INFORMATION:			
The terms and conditions of this Contract are those of solicitation #RFP-EN-511B3200044 and this Contract Agreement. In the event of any conflicts between the specifications, and terms and conditions, indicated by the State and those indicated by the vendor, those of the State take precedence.			
ESTIMATED CONTRACT VALUE AT TIME OF EXECUTION:			\$450,000.00

**THIS IS NOT AN ORDER:** This Contract Agreement is awarded on the basis of our inquiry bearing the solicitation # RFP-EN-511B3200044. Orders for delivery will be issued directly by the Department of Military & Veterans Affairs through the issuance of a Purchase Order Form.

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

Form No. DTMB-3522 (Rev. 4/2012)  
Notice of Contract #:

<b>FOR THE CONTRACTOR:</b>	<b>FOR THE STATE:</b>
_____ Firm Name	_____ Signature
_____ Authorized Agent Signature	<b>Kimberly Graham Buyer Manager CPPB</b> Name/Title
_____ Authorized Agent (Print or Type)	<b>DMVA</b> Enter Name of Agency
_____ Date	_____ Date

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Attachment A, Pricing

**Attachment B: Bidder Response to Task**

## 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.

**ART** means Aggregate Response Time, total of dispatch time, turnout time, and travel time. Time leapsed from receipt of the emergency alarm to when the units arrive on scene.

**ARRF** means Aircraft Rescue and Fire Fighting. The fire-fighting actions taken to rescue persons and to control or extinguish fire involving or adjacent to aircraft on the ground.

**ARFF Vehicle** means a vehicle intended to carry rescue and fire-fighting equipment for the rescuing of occupants and combating fires in aircraft at, or in the vicinity of an airport.

**ALS** means advanced Life Support.

**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.

**BLS** means Basic Life Support. Functional provision of patient assessment, including basic airway management; oxygen therapy; stabilization of spinal, musculoskeletal, soft tissue and shor injuries, stabilization of bleeding, etc.

**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.

**CG** means Camp Grayling Joint Maneuver Training Center

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

**Deleted – N/A** 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.

**DMVA** means Department of Military and Veterans Affairs.

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

**EMS** means Emergency Medical Care.

**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.

**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.

**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.

**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.

#### **Additional Definitions in Attachment C-E2. Definitions**

## **1.010 Project Identification**

### **1.011 Project Request**

This is a Contract for the Grayling Fire Department to provide all structural fire protection and crash rescue services at all facilities located in the geographical jurisdiction of the Grayling Fire Department according to but not limited to Department of Defense Fire and Emergency Services Program DoDI 605.06

[www.dtic.mil/whs/directives/corres/pdf/605506p.pdf](http://www.dtic.mil/whs/directives/corres/pdf/605506p.pdf) for the Department of Military and Veterans Affairs (DMVA) as stated in the attached contract and attachments, which has resulted in an awarded Contractual agreement between the State of Michigan, Department of Technology, Management & Budget (DTMB), Purchasing Operations and the DMVA for 8 hours day, 365 days a year over the term of September 30, 2013 to March 31, 2014 . The crucial hours of daily coverage will be determined by City of Grayling Fire Chief in coordination with the contract CC which may fluctuate.

Any awarded Contract(s) between the State and any awarded Contractor(s) is a separate document, whose terms are limited by Article 2.

### **1.012 Background**

The Department of Military and Veterans Affairs, Michigan National Guard Camp Grayling-Joint Maneuver Training Center (CG-JMTC) requires structural fire protection and crash rescue services at all of the DMVA -Guard Camp Grayling-Joint Maneuver Training Center (CG-JMTC) facilities located in the geographical jurisdiction of the Grayling Fire Department. The services need to be provided within a 7 minute response time and must comply with Department of Defense (DoD) Fire and Emergency Services Program Number 6055.06, local protocols and any work and deliverables as defined in this contract during the hours and term specified in this contract. Wildfire protection is not required under this project except as it relates to any existing wild land fire Memo of Understandings or mutual aid agreements.

Additionally, this contract is not meant to reduce the financial responsibility of the City of Grayling nor the Township of Grayling to the Grayling Fire Department. The work and deliverables detailed in this contract are IN ADDITION TO the standard operations currently in place at the Grayling Fire Department.

## **1.020 Scope of Work and Deliverables**

### **1.021 In Scope**

The Grayling Fire Department is to provide all services, equipment and trained labor to provide fire protection and crash rescue services at all of the DMVA Guard Camp Grayling-Joint Maneuver Training Center (CG-JMTC) facilities and or installations located in the geographical jurisdiction of the Grayling Fire Department eight (8) consecutive hours each day, seven days a week, 365 days a year for the time frame of September 30, 2013 thru March 30, 2014. The crucial hours of daily coverage will be determined by the City of Grayling Fire Chief in coordination with the contract CCI.

These services will include but are not limited to, structural fire response, first response to Hazmat incidents including CBRNE and WMD, EMS, fire suppression, response to ARFF emergencies, response to natural as well as man-made catastrophic events (e.g. hurricanes and floods), confined space and technical rescue according to the requirements listed in this contract.

**Staffing levels and equipment must be maintained so that Grayling Fire Department is able to provide the specified coverage by trained, qualified personnel during the specified times and term duration.**

### **1.022 Work and Deliverable**

The Grayling Fire Department shall provide all services, equipment and trained, certified personnel to provide structural fire protection and crash rescue services with seven (7) minute response times at all of the DMVA facilities and/or installations located in the geographical jurisdiction of the Grayling Fire Department according to the requirements in Section 1.0221 and activities as directed at the discretion of the DMVA Contract person (POC) or contract compliance inspector (CCI) in addition to the services below:

- 1) Fire hydrant inspection
- 2) Building inspections (code type issues)

**1.022.1 Scope of Individual Services/Service Level Objectives:** Below is a list of the minimum requirements that each service must provide. In addition to these requirements, all services in this CONTRACT must be provided according to established local and governmental protocols.

**a) Structural Fire Response**

- 1) Plan for and respond to structural fire using standards in Table E3.T1 (Attachment B- Table E3.T1 Minimum Level of Service Objectives)
- 2) Consider local risk conditions.
- 3) Provide service per local and governmental protocol for this type service.
- 4) Conduct annual fire drills on Camp Grayling-JMTC property which include structural and EMS response activities coordinated with contract Project Manager or designee.

**b) ARFF (Aircraft Rescue and Fire Fighting) Response**

- 1) Services shall be provided 24 hours per day when aircraft are present, even when no aircraft movement or maintenance activities are in progress. Use operations risk assessment procedures to determine the appropriate amount of resources needed during periods of inactivity.
- 2) When available, include structural fire suppression forces to provide additional rescue and fire suppression personnel to establish agent resupply for sustained operations.
- 3) Provide service per local and governmental protocol for this type service.

**c) Emergency Medical Services Response**

- 1) Plan for situations requiring EMS using standards in Table E3T1 (Attachment B- Table E3.T1 Minimum Level of Service Objectives).
- 2) Where fire departments provide first responder or higher level EMS, establish and maintain emergency medical response programs that are staffed with the appropriately certified emergency medical personnel and equipment.
- 3) EMS shall be provided in accordance with local medical protocol.

**d) Rescue Response**

- 1) Plan for and respond to situations requiring rescue using local protocol and **OSHA regulation OSHA CRF 29Part 1910.146.**

**e) Disaster Response**

- 1) Plan for and respond to natural and man-made disasters including acts of terrorism using established standards, local conditions' risk considering and the following:
  - a. Establish and maintain Disaster Preparedness Plans for Fire and Emergency Services response to natural and man-made disaster, including acts of terrorism.
  - b. Appoint an officer to maintain the Preparedness Plan.
  - c. Test or exercise the Camp Grayling-JMTC Disaster Preparedness Plan at least once a fiscal year with contract Project Manager.

**f) HAZMAT/CBRNE Response Capability**

- 1) Plan for and respond to HAZMAT/CBRNE incidents using established standards, local conditions' risk considerations and the following:
  - a. Perform initial risk assessment, perform limited rescues, select and provide decontamination procedures, and mitigate releases of HAZMAT/CBRNE incidents that require enter into the hot zones.
  - b. Ensure personnel are trained and certified to the HAZMAT technician level.
  - c. During a HAZMAT/CBRNE Offensive response a minimum of 15 individuals are required to be on scene. Of the fifteen 15 people, 7 are to be trained and certified to the HAZMAT technician level, one individual must be trained and certified to the HAZMAT Incident Commander level, five shall be trained and certified to at least the

HAZMAT Operations level and two shall be trained and certified to at least the EMT BLS level and shall have on-scene medical transport capability. The State of Michigan understand that CBRNE terrorist incidents may be well beyond the minimum response requirements in this CONTRACT which will significantly limit the ability of the bidder to perform offensive operations until additional resources are available.

- d. During a HAZMAT/CBRNE Defense response a minimum of a single engine company consisting of four personnel trained and certified to at a HAZMAT Operations Level is required.
- e. HAZMAT/CBRNE Defense response services may not be performed when risks of intervening are greater than the risks of allowing the incident to conclude naturally.

#### **1.022.2 Minimum Level of Service Objectives:**

All services listed within this CONTRACT must meet a minimum level service objective or time frame of performance. The minimum level of service objective time frames for each of the services is detailed on Attachment C-Table E3.T1 Minimum Level of Service Objectives-Operations Tables.

#### **1.022.3 Staffing Requirements:**

Bidder must be able to provide at minimum sufficient staff to support service level objectives listed in this CONTRACT. The number of and type of personnel required is:

- 1) General Staffing- Bidder must have daily staffing quantities necessary to meet most demanding service level objectives to provide complete coverage 24 hours per day, 365 days per year.
- 2) Supervisor Staff- Bidder must have supervisory staff as follows:
  - a. One (1) Fire Chief for departments with 10 or more personnel.
  - b. One (1) One Deputy Fire Chief if department has 40 or more personnel.
  - c. Two (2) Assistant Fire Chiefs (Shift Supervisor and Fire Prevention Officer) if department has more than 20 personnel.
  - c. One Assistant Fire Chief (Training) if fire department has 30 or more personnel.
- 3) Telecommunications-must maintain around-the-clock capability to conduct essential F&ES Communications.

#### **1.022.4 Minimum Equipment/Apparatus Requirements:**

Bidder must have sufficient equipment/apparatus to meet the ART listed in **Table E3T.1 (Attachment B)**. Additionally, ARFF Vehicles must comply with regulation NFPA 414. And Ambulances when provided by fire department, must comply with provisions of General Service Administrations Specifications KKK-A-1822E <http://apps.fas.gsa.gov/pub/fedspecs/>

#### **1.022.5 Reports Required:**

- 1) Upon request by DMVA-Compliance Officer or other DMVA supervisor/s, the Grayling Fire Department shall provide to the DMVA an accounting of services provided.
- 2) Fire Department will provide any report regarding the cause and origin of a DMVA fire and or crash rescue incident that it responded to, and or shall cooperate in any DMVA investigation of any such fire and or crash rescue. Report will include at a minimum the point of origin for fires and cause determination for all other events.

- 3) Provide DMVA Project Manager the annual report on outcome/results of Disaster Preparedness Plan exercise.

Compliance will be based on the State's overall evaluation and interpretation in accordance with method of performance, frequencies and method of performance, as set forth in this document.

Contractor must state how they intend to accomplish the work and deliverables for which they are submitting a proposal for consideration for each section.

**Bidder Response to Task:**

The Grayling Fire Department will increase full time staffing to create one (1) eight hour shift along with administration to provide one engine company consisting of a supervisor and (4) firefighter/EMT's, with a minimum shift coverage of a supervisor and three (3) firefighter/EMT's, eight (8) hours a day, seven (7) days per week, 52 weeks a year for six months beginning September 30, 2013. Additional personnel needs will be secured through the use of call-in for part paid members and call-back for off duty full time (call-in/call-back).

Fire hydrant and building inspections will be managed by the fire departments Department of Fire Preventions and performed as aspect of daily shift operations. Reports and statistics will be generated and provided to the fire chief pursuant to program design.

Structural Fire Response:

The Grayling Fire Department will continue to Structural Fire Protection to all properties within its jurisdiction. Response consistent with Table E3.T1 requirements will be accomplished during the length of the contract term during the hours specified in the contract through the use of on duty personnel for through the use of on duty personnel for initial response staff and call-in/call-back for full alarm situation.

ARFF (Aircraft Rescue and Fire Fighting) Response:

The Grayling Fire Department will continue to provide A.R.F.F. response with improvements to service to ensure regulatory compliance with regard to response times and training. Over time costs present, in part, expected staffing adjustment to accomplish this goal. Response performance to meet expectations outlined in Table E3.T1 for the term of the contract and during the hours of service specified by the contract.

Grayling Fire currently provides ARFF services to the area through the use of Structure firefighting apparatus and modified response tactics. Where mission specific expectations exist, additional ARFF apparatus will need to be acquired. Expected costs associated with purchasing this type vehicle are approximately \$1,000,000.00

Emergency Medical Response:

The Grayling Fire Department is unable to meet the requirement of non-transport Emergency Medical Services (BLS with AED) outlined in E3.T1 due to limited staffing. Emergency Medical response requires licensure. To obtain licensure, the requirement is to have a full staff 24 hours a day 365 days a year. However, the firefighters on shift for this contract will at a minimum be EMT basic licensed. This contract is for 8 hours a day, 7 days a week. Transport is expected to continue to be provided by Mobile Medical Response.

Rescue Response:

The Grayling Fire Department will continue to provide Rescue services through the use of on-duty shift personnel, and call-in/call-back as required to accomplish incident objectives through the term of the contract during the hours specified. Response performance to meet expectations outlined in Table E3. T1 through the use of on duty personnel for first arriving company, and call-in/call-back practices through the terms of the contract during the hours specified by the contract.

Disaster Response:

The Grayling Fire Department will continue to provide emergency response to disasters through the use of increased on duty personnel and call-in/call-back practices through the term of the contract during the hours specified by the contract.

HAZMAT/CBRNE Response Capability:

The Grayling Fire Department is unable to meet the requirement of HAZMAT/CBRNE Response capability outlined in E3.T1 due to limited staffing. Hazmat/CBRNE outlined in Table E3.T.1. That requirement requires 15 people and contract only has coverage of seven (7).

Minimum level of Service Objectives:

Incident reports, including response times will continue to be generated and compiled to ensure compliance with this program through the term of the contract during the hours specified in the contract, for the activities specifically agreed to.. Reports will be available through the fire chief's office.

Staffing requirement:

See attached Attachment D Bidder Response to Task.

Telecommunications: Emergency telecommunications will continue to be provided by Crawford County Central Dispatch. Non-emergency communications will be available via land-line and cell phone with duty crews, along with 2-way radio systems already in operation.

Minimum Equipment/Apparatus Requirements

The Grayling Fire Department currently operates 7 apparatus; 2 type I engines, 1 type I ladder truck, 1 pumper tanker, 1 tanker, 1 light rescue and 1 non-specified staff/remote water point vehicle. The apparatus serves the departments current needs within the community.

Mission specific equipment not currently in use or budgeted for acquisition by the Grayling Fire Department includes: ARFF vehicles, capable of rapid response and suppression operations for Aircraft emergencies.

Preliminary estimates for ARFF apparatus appropriate to the missions \$1,000,000.00 HazMat/CBNRe, Rescue Vehicle, capable of housing, transporting, and supporting the equipment necessary to mitigate these type incidents. Estimated cost for heavy Rescue apparatus appropriate to the mission is \$600,000.00.

Reports: See Section 1.042

**1.30 Roles and Responsibilities**

**1.031 Contractor Staff, Roles, and Responsibilities**

1. The Bidder must be able to provide appropriate staff to properly service the requirements of this Contract. **Staffing levels must be maintained so that the contractually specified coverage is provided by qualified, trained fire personnel as specified in Section 1.022.**
2. The Grayling Fire Departments Chief Operating Director or its designee shall have exclusive jurisdiction over all Grayling fire Department equipment, vehicles and personnel while responding to any DMVA fire protection and or crash rescue service.
3. The Grayling Fire Departments Chief Operating Director, or its designee shall have exclusive decision making authority for the staff under its direction while responding to a DMVA fire protection or crash rescue service located within the geographical jurisdiction of the Grayling Fire Department.
4. Bidder must identify personnel requirements by number and skill including names and proposed physical location of executive and professional personnel who would be employed in this Contract (and shall indicate through the use of organizational diagrams and/or narrative statements, the specific functions of each assigned individual with detailed qualifications of employees assigned to this Contract), for at least the following:
  - Grayling Fire Departments Chief Operating Director  
Staff Support
5. Bidder or responsible for repair, replacement or cleanup, as necessary, due to carelessness or negligence on the part of the Bidder or and its personnel.
6. The Bidder or shall have accessible customer service staff with an individual(s) specifically assigned to DMVA Contract. The Bidder or shall have experienced staff that make scheduled timely personal visits to DMVA locations. The Bidder's customer service representative must respond to all State agency inquiries promptly.
7. The Bidder to test and exercise the Camp Grayling-JMTC Disaster Preparedness Plan at least once a fiscal year with contract Project Manager.
8. Conduct annual fire drills on Camp Grayling-JMTC property which include structural and EMS response activities coordinated with contract Project Manager or designee.

9. Bidder is required to provide Camp Grayling-JMTC Project Manager semi-annual accounting reports of services provided (including but not limited to; training, inspections, plan preparation, etc.)
10. Bidder is required to provide the Camp Grayling Project Manager or designee after action reports according to FEMA regulations <http://www.fema.gov/library/view>.
11. Bidder will review and discuss the after action report with the Camp Grayling Project Manager or designee to review determine lessons learned and to offer recommendations for future disasters or action.

**1.31 Agency Staff, Roles, and Responsibilities**

1. The agency CCI may require that Contractor immediately remove any contractual employee(s) from the agency's premises for just cause. The Contractor will assume any, and all, responsibilities relating to this removal. Any employee so removed may not be placed in another state agency.
2. Annually the Camp Grayling Project Manager or designee will work in conjunction and cooperation with the Contractor to test and exercise the Camp Grayling-JMTC Disaster Preparedness Plan.
3. The contract Project Manager or designee will work in conjunction and cooperation of the Bidder to conduct annual fire drills on Camp Grayling-JMTC property which include structural and EMS response activities coordinated with contract Project Manager or designee.
4. The agency CCI shall make final determination of a contractual employee's suitability for assignment to a specific location. Problems of this nature will be addressed with the Bidder's management.
5. The Camp Grayling Project Manager or designee will coordinate, review and discuss with Bidder after action reports provided by Bidder as required by FEMA regulations <http://www.fema.gov/library/view> to discuss lessons learned from disaster or action to offer recommendations for future disasters or actions.

Compliance will be based on the State's overall evaluation and interpretation in accordance with method of performance, frequencies and method of performance, as set forth in this document.

Contractor's response to how they intend to accomplish the work and deliverables for which they are submitting a proposal for consideration for each section.

Bidder Response to Task:

[See above 1.022.5](#)

Bidder to provide names and phone numbers of required supervisory staff with detailed resumes and identify general fire department staff.

Bidder Response to Task:

[Doug Baum, City of Manager 989-348-2131 and Russell H. Strohpaul, Jr. Fire Chief 989-348-6319](#)

**1.040 Project Plan**

**1.041 Project Plan Management**

Bidder must submit a proposed project plan for providing the fire and emergency services as specified in the CONTRACT. The project management plan shall include, identifying methods, tools and processes proposed to oversee the project, address issues/changes as they may arise, and keep all appropriate parties apprised of progress, changes, etc.

Bidder Response:

[See Section 1.02](#)



### 1.042 Reports

Bidders shall include with their proposal sample reports provided by your company and identify and or explain their specific purpose. Bidder must provide copies of proposed standard set of reports for managing the project as part of their bid response. Including but not limited to:

Bidder Response:

- 1) Accounting for this program will be maintained the Treasures office at the City of Grayling; and will utilize currently accepted accounting practices and reporting procedures. Reports will be available through the Fire Chief.
- 2) The Grayling Fire Department will continue to report on all incidents within its jurisdiction and to investigate fires to determine original and cause. Reports are currently generated for the national Fire Incident Reporting system (NFIRS), original and cause, and local run statistics. Additional reports will be made available to maintain compliance with this program
- 3) Disaster preparedness Reporting will be established in a mutually agreed upon format and timeframe

### 1.050 Acceptance

#### 1.051 Criteria

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

The project must meet all work and deliverables requirements, specifications and guidelines as provided in CONTRACT.

#### 1.052 Final Acceptance

The State of Michigan-DMVA Contract Manager and Camp Grayling Project Manager will determine at completion of the project if the project met the specifications outlined in this CONTRACT and the prints/specifications provided.

### 1.060 Proposal Pricing

#### 1.061 Proposal Pricing

For authorized Services and Price List, see Attachment A.

Bidder'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 Bidder for the expense at the State's current travel reimbursement rates. See [www.michigan.gov/dtmb](http://www.michigan.gov/dtmb) for current rates.

The contractor may be required to submit an Administrative Fee (see Section 2.031) on all payments remitted under the Contract. Contractor should consider Administrative Fee requirements when developing its price proposal. Extended purchasing program volume requirements are not included, unless stated otherwise.

#### 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-Deleted-Not applicable**

**1.070 Additional Requirements**

**1.071 Additional Terms and Conditions specific to this CONTRACT-Reserved**

## **Article 2. Terms and Conditions**

### **2.000 Contract Structure and Term**

#### **2.001 Contract Term**

The Contract is from September 30, 2013 thru March 30, 2014. 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-Reserved**

#### **2.003 Legal Effect**

Bidder must show acceptance of the Contract by signing two (2) copies of the Contract and returning them to the Contract Administrator. The Bidder 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 Bidder 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 Bidder or payment under the Contract, until Bidder 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 Bidder 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 (1) State agency and if the Deliverable/Service does not 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 (1) 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 Military and Veterans Affairs, Purchasing and Contracts. Purchasing and Contracts is the sole point of contact in the State with regard to all procurement and Contractual matters relating to the Contract. Purchasing Operations **is the only State office authorized to change, modify, amend, alter or clarify the prices, specifications, terms and conditions of the Contract.** The Bidder Administrator within DMVA-Purchasing and Contracts for the Contract is:

Kimberly Graham, Buyer Manager  
DMVA, State Operations  
Purchasing & Contracts  
3423 N. Martin Luther King Jr. Blvd, Suite 320F  
Lansing, MI 48906  
Phone: (517) 481-7643  
Fax: (517) 481-7644  
Email: grahamk@michigan.gov  
Phone: (517) 373-6535

### **2.022 Contract Compliance Inspector**

After DMVA Purchasing and Contracts receives the properly executed Contract, it is anticipated that the Director of DMVA Purchasing and Contracts, in consultation with Camp Grayling-JTMC, 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 DMVA Purchasing and Contracts.** The CCI for the Contract is:

Elizabeth Noffsinger, Buyer Manager  
DMVA, State Operations  
Purchasing & Contracts  
1000 M-93  
DPW, Bldg. 36  
Grayling, MI 49737  
Phone: (989) 344-6190  
Fax: (989) 344-6188  
Email: noffsingere@michigan.gov

### **2.023 Project Manager**

The following individual will oversee the project:

David Golnick  
Storekeeper  
Camp Grayling-JMTC  
DPW, Bldg. 36  
Camp Grayling, MI 49738  
Email: david.m.golnick.nfg@mail.mil  
Telephone: 989-344-6197

#### **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 Bidder 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 DMVA Purchasing and Contracts.
- (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 is deemed to be an employee, agent or servant of the State. 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 (1) 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-Reserved**

### **2.032 Media Releases**

News releases (including promotional literature and commercial advertisements) pertaining to the CONTRACT 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 CONTRACT and Contract are to be released without prior written approval of the State and then only to persons designated.

### **2.033 Contract Distribution**

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

### **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. .

### **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's. 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 breaking out labor and materials. Additional specific details of invoices and payments will be agreed upon between the CCI and the Contractor.

The specific payment schedule for any Contract(s) entered into, as the State and the Contractor(s) 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 CCI, after negotiation. Contractor must show verification of measurable progress at the time of requesting progress payments.

### **2.045 Pro-ration**

To the extent there are any Services that are to be paid for on a monthly basis, the cost of such Services 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 (1) 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.cpxpress.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: (1) all members of any controlled group as defined in § 1563(a) of the Internal Revenue Code and applicable regulations of which the company is a member, and (2) all organizations under common control as defined in § 414(c) of the Internal Revenue Code and applicable regulations of which the company is a member that make sales at retail for delivery into the State are registered with the State for the collection and remittance of sales and use taxes. In applying treasury regulations defining "two (2) 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 background check or any other information about the individual reasonably requested by the State. The State reserves the right to interview the individual before granting written approval. If the State disapproves an individual, the State will provide a written explanation including reasonable detail outlining the reasons for the rejection.

(d) Contractor must not remove any Key Personnel from their assigned roles on 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.

(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. 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.

#### **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-\*\*Subcontracting is not permitted on this 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 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 immediately 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**

(a) Contractors that process, transmit or store credit/debit cardholder data, must adhere to the Payment Card Industry (PCI) Data Security Standards. The Contractor is responsible for the security of cardholder data in its possession. The data may only be used to assist the State or for other uses specifically authorized by law.

(b) The Contractor must notify the CCI (within 72 hours of discovery) of any breaches in security where cardholder data has been compromised. In that event, the Contractor must provide full cooperation to the Visa, MasterCard, Discover and state Acquirer representative(s), and/or a PCI approved third party to conduct a thorough security review. The Contractor must make the forensic report available within two weeks of completion. The review must validate compliance with the current PCI Data Security Standards for protecting cardholder data.

(c) The Contractor must properly dispose of cardholder data, in compliance with DTMB policy, when it is no longer needed. The Contractor must continue to treat cardholder data as confidential upon contract termination.

(d) The Contractor must provide the CCI with an annual Attestation of Compliance (AOC) or a Report on Compliance (ROC) showing the contractor is in compliance with the PCI Data Security Standards. The Contractor must notify the CCI of all failures to comply with the PCI Data Security Standard.

## **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 have the right to enter the Contractor's premises or any other places where work is being performed in relation to this Contract. The representatives may inspect, monitor, or evaluate the work being performed. The Contractor must provide reasonable assistance for the State's representatives during inspections.

#### **2.112 Retention of Records**

(a) The Contractor must retain all financial and accounting records related to this Contract for a period of 7 years after the Contractor performs any work under this Contract (Audit Period).

(b) If an audit, litigation, or other action involving the Contractor's records is initiated before the end of the Audit Period, the Contractor must retain the records until all issues arising out of the audit, litigation, or other action are resolved or until the end of the Audit Period, whichever is later.

**2.113 Examination of Records**

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

(b) In addition to the rights conferred upon the State in paragraph (a) of this section and in accordance with MCL 18.1470, DTMB or its designee may audit the Contractor to verify compliance with the Contract. The financial and accounting records associated with the Contract shall be made available to DTMB or its designee and the auditor general, upon request, during the term of the Contract and any extension of the Contract and for 3 years after the later of the expiration date or final payment under the Contract.

**2.114 Audit Resolution**

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

**2.115 Errors**

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

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

**2.120 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 (2) 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 DMVA Purchasing and Contracts.

#### **2.122 Warranty of Merchantability**

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

#### **2.123 Warranty of Fitness for a Particular Purpose**

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

#### **2.124 Warranty of Title**

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

#### **2.125 Equipment Warranty**

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 (1) year and/or the manufacturers recommended time period whichever is longer, 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 must provide a toll-free telephone number to allow the State to report equipment failures and problems to be remedied by the Contractor.

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.

All warranty work must be performed on the State of Michigan worksite(s).

#### **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 DMVA Purchasing and Contracts 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

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

- (a) The Contractor must provide proof that it has obtained the minimum levels of insurance coverage indicated or required by law, whichever is greater. The insurance must protect the State from claims that may arise out of, or result from, or are alleged to arise out of, or result from, the Contractor's or a Subcontractor's performance, including any person directly or indirectly employed by the Contractor or a Subcontractor, or any person for whose acts the Contractor or a Subcontractor may be liable.
- (b) The Contractor waives all rights against the State for the recovery of damages that are covered by the insurance policies the Contractor is required to maintain under this Section. The Contractor's failure to obtain and maintain the required insurance will not limit this waiver.
- (c) All insurance coverage provided relative to this Contract is primary and non-contributing to any comparable liability insurance (including self-insurance) carried by the State.
- (d) The State, in its sole discretion, may approve the use of a fully-funded self-insurance program in place of any specified insurance identified in this Section.
- (e) Unless the State approves otherwise, any insurer must have an A.M. Best rating of "A" or better and a financial size of VII or better, or if those ratings are not available, a comparable rating from an insurance rating agency approved by the State. All policies of insurance must be issued by companies that have been approved to do business in the State.
- (f) Where specific coverage limits are listed in this Section, they represent the minimum acceptable limits. If the Contractor's policy contains higher limits, the State is entitled to coverage to the extent of the higher limits.
- (g) The Contractor must maintain all required insurance coverage throughout the term of this Contract and any extensions. However, in the case of claims-made Commercial General Liability policies, the Contractor must secure tail coverage for at least three (3) years following the termination of this Contract.
- (h) The Contractor must provide, within five (5) business days, written notice to the Director of DMVA Purchasing and Contracts if any policy required under this section is cancelled. The notice must include the applicable Contract or Purchase Order number.
- (i) The minimum limits of coverage specified are not intended, and may not be construed, to limit any liability or indemnity of the Contractor to any indemnified party or other persons.
- (j) The Contractor is responsible for the payment of all deductibles.
- (k) If the Contractor fails to pay any premium for a required insurance policy, or if any insurer cancels or significantly reduces any required insurance without the State's approval, the State may, after giving the Contractor at least 30 days' notice, pay the premium or procure similar insurance coverage from another company or companies. The State may deduct any part of the cost from any payment due the Contractor, or require the Contractor to pay that cost upon demand.
- (l) In the event the State approves the representation of the State by the insurer's attorney, the attorney may be required to be designated as a Special Assistant Attorney General by the Michigan Attorney General.
- (m) The Contractor is required to pay for and provide the type and amount of insurance checked  below:

(i) **Commercial General Liability**

#### Minimal Limits:

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

Deductible maximum:

\$50,000 Each Occurrence

Additional Requirements:

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

**(ii) Umbrella or Excess Liability**

Minimal Limits:

\$10,000,000.00 General Aggregate

Additional Requirements:

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

**(iii) Motor Vehicle**

Minimal Limits:

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

**(iv) Hired and Non-Owned Motor Vehicle**

Minimal Limits:

\$1,000,000 Per Accident

Additional Requirements:

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

**(v) Workers' Compensation Insurance**

Minimal Limits:

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

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

Additional Requirements:

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

**(vi) Employers Liability**

Minimal Limits:

\$100,000 Each Incident;  
\$100,000 Each Employee by Disease  
\$500,000 Aggregate Disease

Additional Requirements:

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

**(vii) Employee Fidelity (Crime)**

Minimal Limits:

\$1,000,000 Employee Theft Per Loss

Deductible Maximum:

\$50,000 Per Loss

Additional Requirements:

Insurance must cover Forgery and Alteration, Theft of Money and Securities, Robbery and Safe Burglary, Computer Fraud, Funds Transfer Fraud, Money Order and Counterfeit Currency.

The Contractor must list the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees, and agents as Loss Payees on the certificate.

**(viii) Professional Liability (Errors and Omissions)**

Minimal Limits:

\$3,000,000 Each Occurrence

\$3,000,000 Annual Aggregate

Deductible Maximum:

\$50,000 Per Loss

**(ix) Medical Malpractice**

Minimal Limits:

(Small Provider) \$200,000 Each Occurrence  
\$600,000 Annual Aggregate

(Large Provider) \$1,000,000 Each Occurrence  
\$3,000,000 Annual Aggregate

Deductible Maximum:

\$5,000 Each Occurrence

**(x) Cyber Liability**

Minimal Limits:

\$1,000,000 Each Occurrence

\$1,000,000 Annual Aggregate

Additional Requirements:

Insurance should cover (a) unauthorized acquisition, access, use, physical taking, identity theft, mysterious disappearance, release, distribution or disclosures of personal and corporate information; (b) Transmitting or receiving malicious code via the insured's computer system; (c) Denial of service attacks or the inability to access websites or computer systems.

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

**(xi) Property Insurance**

Property Insurance covering any loss or damage to the State-owned office space used by Contractor for any reason under this Contract, and the State-owned 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 State must be endorsed on the policy as a loss payee as its interests appear.

**2.132 Subcontractor Insurance Coverage\*\*SUBCONTRACTING IS PROHIBITED ON THIS CONTRACT\*\***

### **2.133 Certificates of Insurance**

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 of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees, and agents are listed as additional insureds as required. The Contractor must provide DMVA Purchasing and Contracts (with all applicable certificates of insurance verifying insurance coverage or providing, if approved, satisfactory evidence of self-insurance as required in Section 2.13.1, Liability Insurance. Each certificate must be on the standard "Accord" form or equivalent and MUST IDENTIFY THE APPLICABLE CONTRACT OR PURCHASE ORDER NUMBER.

### **2.140 Indemnification**

#### **2.141 General Indemnification**

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**

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**

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 and attorney fees.

#### **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-Reserved**

#### **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 30 days. These efforts must include, but are not limited to, those listed in **Sections 2.171, 2.172, 2.173, 2.174, and 2.175.**

### **2.172 Contractor Personnel Transition**

The Contractor must work with the State, or a specified third party, to develop a transition plan setting forth the specific tasks and schedule to be accomplished by the parties to effect an orderly transition. The Contractor must allow as many personnel as practicable to remain on the job to help the State, or a specified third party, maintain the continuity and consistency of the services required by 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-Reserved**

#### **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**

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

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

### **2.180 Stop Work**

#### **2.181 Stop Work Orders**

The State may, at any time, by written stop work order to Contractor, require that Contractor stop all, or any part, of the work called for by 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. 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 Director of Purchasing and Contracts 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 (1) 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 Director of Purchasing and Contracts, 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 must comply with the Elliott-Larsen Civil Rights Act, 1976 PA453, MCL 37.2101 et seq., as amended, and all applicable federal, State and local fair employment practices and equal opportunity laws as amended. 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 and any Subcontractor must comply with applicable state and federal laws.

### **2.204 Prevailing Wage**

The rates of wages and fringe benefits to be paid each class of individuals employed by the Contractor, its subcontractors, their subcontractors, and all persons involved with the performance of the Contract in privity of contract with the Contractor must not be less than the wage rates and fringe benefits established by the Michigan Department of Licensing and Regulatory Affairs, Wage and Hour Division, schedule of occupational classification and wage rates and fringe benefits for the local where the work is to be performed. The term Contractor must include all general contractors, prime contractors, project managers, trade contractors, and all of their contractors or subcontractors and persons in privity of contract with them.

The Contractor, its subcontractors, their subcontractors and all persons involved with the performance of the Contract in privity of contract with the Contractor must keep posted on the work site, in a conspicuous place, a copy of all wage rates and fringe benefits as prescribed in the contract. You must also post, in a conspicuous place, the address and telephone number of the Michigan Department of Licensing and Regulatory Affairs, the office responsible for enforcement of the wage rates and fringe benefits. The Contractor must keep an accurate record showing the name and occupation of the actual wage and benefits paid to each individual employed in connection with the Contract. This record must be available to the State upon request for reasonable inspection.

If any trade is omitted from the list of wage rates and fringe benefits to be paid to each class of individuals by the Contractor, it is understood that the trades omitted must also be paid not less than the wage rate and fringe benefits prevailing in the local where the work is to be performed.

## **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 and the Contractor expressly consents to personal jurisdiction in Michigan. With respect to any claim between the parties, the Contractor consents to venue in Ingham County, Michigan and irrevocably waives any objections to this venue. Contractor agrees to appoint agents in the State of Michigan to receive service of process

## **2.220 Limitation of Liability**

### **2.221 Limitation of Liability**

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

The State's liability for damages to the Contractor is limited to the value of 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 DMVA Purchasing and Contracts.
- (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-Reserved**

### **2.233 Bankruptcy and Insolvency**

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 must place 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)-Reserved**

### **2.243 Liquidated Damages-Reserved**

### **2.244 Excusable Failure**

Neither party will be liable for any default, damage, or delay in the performance of its obligations that is caused by government regulations or requirements, power failure, electrical surges or current fluctuations, war, water or other forces of nature or acts of God, delays or failures of transportation, equipment shortages, supplier' failures, or acts or omission of common carriers, fire; riots, civil disorders; 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 excuse); 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-Reserved**

## **2.260 Ownership-Reserved**

## **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](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.

### **2.274 Electronic Receipt Processing Standard**

All electronic commerce applications that allow for electronic receipt of credit/debit card and electronic check (ACH) transactions must be processed via the Centralized Electronic Payment Authorization System (CEPAS).

## **2.280 Extended Purchasing Program**

### **2.281 Extended Purchasing Program**

The Agreement may be extended to MiDEAL members. MiDEAL members include local units of government, school districts, universities, community colleges, and nonprofit hospitals. A current list of MiDEAL members is available at [www.michigan.gov/mideal](http://www.michigan.gov/mideal). Upon mutual written agreement between the State of Michigan and the Contractor, this Agreement may be extended to (a) State of Michigan employees, or (b) other states (including governmental subdivisions and authorized entities

If extended, the Contractor must supply all goods and services at the established Agreement prices and terms. The State reserves the right to negotiate additional discounts based on any increased volume generated by such extensions.

The Contractor must submit invoices to, and receive payment from, extended purchasing program members on a direct and individual basis."

## **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/deq/0,1607,7-135-3310\\_4108-173523--,00.html](http://www.michigan.gov/deq/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**

**2.311 Forced Labor, Convict Labor, Forced or Indentured Child Labor, or Indentured Servitude Made Materials**  
Equipment, materials, or supplies, that will be furnished to the State under the Contract must not be produced in whole or in part by forced labor, convict labor, forced or indentured child labor, or indentured servitude.

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

**Attachment A. Price**

	Quantity	Total
Initial/Start-up Costs (outfitting, training, operational, capital purchases, etc. ) for one 8 hours shift, seven days a week	1	\$161,198.58

	Number of Months	Total Cost Per Month	Total for number of months
Staffing Costs ( one 8 hour shift, seven days a week)	6	\$48133.57	\$288801.42

Total for  
Initial/Start-  
up costs and  
Staffing  
Costs                    \$450,000.00

**Attachment B, TABLE E3.T**

**TABLE E3.T1. MINIMUM LEVEL OF SERVICE OBJECTIVES – OPERATIONS<sup>1</sup>**

<b>PROGRAM ELEMENT</b>	<b>ART (minutes)<sup>2</sup></b>	<b>RATE (%)<sup>3</sup></b>	<b>COMPANIES<sup>4</sup></b>	<b>STAFF<sup>4</sup></b>
<b>Structural Fire</b>				
First Arriving Company	7	90	1	4
Initial Full Alarm Assignment	12	90	3	13
<b>Other Fire Response/Investigative Response</b>				
First Arriving Company	7	90	1	4
<b>HAZMAT/CBRNE</b>				
First Arriving Company (Defensive Operations) <sup>5</sup>	7	90	1	4
Full Alarm Assignment (Offensive Operations) <sup>5</sup>	22	90	3	15
<b>Emergency Medical</b>				
First Arriving Company (BLS with AED)	7	90	1	2
Transport Unit (BLS with AED)	12	90	1	2
ALS Capability	12	90	1	2
<b>ARFF</b>				
Unannounced First Arriving Company	5	90	1	3
Announced First Arriving Company <sup>6</sup>	1	90	1	3
Additional Units – should arrive at 30-second intervals	-	-	-	-
<b>Technical Rescue</b>				
First Arriving Company	7	90	1	4
Full Alarm Assignment	22	90	3	13
<b>Wildfire</b>				
As required to meet Installation Wildland Fire Management Plan	-	-	-	-
<b>Other Response</b>				
As required to meet NFPA standard, other consensus standard, or installation standard of cover	-	-	-	-

<sup>1</sup>This table deviates from NFPA standards based on historical risk profile of DoD installations.

<sup>2</sup>Consists of dispatch time, turnout time, and the remainder travel time.

<sup>3</sup>Fractile response rate indicates the percentage of responses that are equal to or less than the ART.

<sup>4</sup>Indicates the minimum number of companies and personnel required to safely and effectively perform initial operations for the respective program element. These minimum requirements do not provide sustainment capability and will not provide sufficient resources for major incidents.

<sup>5</sup> See Enclosure 4.

<sup>6</sup> Assumes pre-positioned units for an announced emergency; ARFF apparatus will be capable of responding to any incident on the runways within 1 minute.

**NOTE:** During actual emergency operations the incident commander determines the deployment of available resources using ORM principles.

**TABLE E3.T2. MINIMUM LEVEL OF SERVICE OBJECTIVES – PREVENTION**

<b>PROGRAM ELEMENT</b>	<b>REQUIREMENT</b>	<b>FREQUENCY</b>
Fire Risk Management Surveys/Inspections	Survey/inspect all facilities. <sup>1</sup> (including areas such as piers, open storage locations, etc.)	Annual
Plan Review	Review all military construction, sustainment/restoration and modernization, and self-help projects.	As required
Public Fire Education Programs	Provide programs that inform and motivate all installation personnel on individual fire prevention responsibilities.	Quarterly

<sup>1</sup>Family housing is excluded except for common areas in multifamily units.

**TABLE E3.T3. MINIMUM LEVEL OF SERVICE OBJECTIVES – MANAGEMENT**

<b>PROGRAM ELEMENT</b>	<b>REQUIREMENT</b>
Incident Command	Provide command and control of all incidents consistent with the National Incident Management System (see Reference (aa)).
Supervision	Provide effective direction and oversight for subordinate personnel.
Planning	Provide required strategic and operational plans.
Budget	Provide budget requirements and manage program costs.
Program Management	Provide effective and efficient F&ES programs to the installation.

## Attachment C-E2 Definitions

E2.1. Advanced Life Support (ALS). Functional provision of advanced airway management, advanced cardiac monitoring, manual defibrillation, establishment and maintenance of intravenous access, and drug therapy.

E2.2. Aerial Fire Apparatus. A vehicle equipped with an aerial ladder, elevating platform, aerial ladder platform, or water tower that is designed and equipped to support fire fighting and rescue operations by positioning personnel, handling materials, providing continuous egress, or discharging water at positions elevated from the ground.

E2.3. Aero-Medical Ambulance. A fixed- or rotary-wing aircraft designed for or configured to transport victims or patients from an emergency scene or staging area to a Medical Treatment Facility (MTF).

E2.4. Aggregate Response Time (ART). Total of dispatch time, turnout time, and travel time (defined below). The time elapsed from the receipt of the emergency alarm to when the units arrive on the scene.

E2.5. Aircraft Rescue and Fire Fighting (ARFF). The fire-fighting actions taken to rescue persons and to control or extinguish fire involving or adjacent to aircraft on the ground.

E2.6. ARFF Vehicle. A vehicle intended to carry rescue and fire-fighting equipment for rescuing occupants and combating fires in aircraft at, or in the vicinity of, an airport.

E2.7. Alarm. A signal or message from a person or device indicating the existence of a fire, medical emergency, or other situation that requires fire department action.

E2.8. Ambulance. See Ground Ambulance and/or Aero-Medical Ambulance.

E2.9. Authority Having Jurisdiction. The organization, office, or individual responsible, designated by the DoD Component for approving equipment, materials, and procedures for DoD Component fire departments.

E2.10. Automatic Aid. A legally binding agreement for the automatic response by installation/base fire departments to prearranged areas outside the installation/base and, conversely, an automatic response by the outside municipality/government to prearranged areas inside the installation/base.

E2.11. Basic Life Support (BLS). Functional provision of patient assessment, including basic airway management; oxygen therapy; stabilization of spinal, musculoskeletal, soft tissue, and shock injuries; stabilization of bleeding; and stabilization and intervention for sudden illness, poisoning, heat/cold injuries, childbirth, cardiopulmonary resuscitation (CPR), and automatic external defibrillator (AED) capability.

E2.12. Company. A group of members: (1) under the direct supervision of an officer; (2) trained and equipped to perform assigned tasks; (3) usually organized and identified as ARFF, engine companies, ladder companies, rescue companies, squad companies, or multifunctional companies; and (4) operating with one piece of fire apparatus, except where multiple apparatus are assigned that are dispatched and arrive together, continuously operate together, and are managed by a single company officer.

E2.13. Defensive Operations. Actions taken by a HAZMAT responder during an incident where there is no intentional contact with the material involved. These actions include elimination of ignition sources, vapor suppression, and diking or diverting to keep a release in a confined area. Defensive operations require notification and possible evacuation, but do not involve plugging, patching, or cleanup of spilled or leaking materials.

E2.14. Dispatch Time. The point of receipt of the emergency alarm at the public safety answering point to the point where sufficient information is known to the dispatcher and applicable units are notified of the emergency.

E2.15. Emergency Medical Care. The provision of treatment to patients, including first aid, CPR, BLS (emergency medical technician (EMT) level), advanced life support (paramedic level), and other medical procedures that occur prior to arrival at a hospital or other health care facility.

E2.16. Emergency Medical Services (EMS). Services provided to patients facing immediate medical emergencies that occur outside of MTFs.

E2.17. Engine Companies. Fire companies whose primary functions are to pump and deliver water and perform basic fire fighting, including search and rescue.

E2.18. Fire Apparatus. A fire department emergency vehicle used for rescue, fire suppression, or other specialized functions.

E2.19. Fire Brigade. An organized group of employees who are knowledgeable, trained, and skilled in at least basic fire-fighting operations, and whose full-time occupation might or might not be the provision of fire suppression and related activities for their employer.

E2.20. Fire-Fighting Operations. Operations including rescue, fire suppression, and property conservation in buildings, enclosed structures, aircraft interiors, vehicles, vessels, aircraft, or like properties that are involved in a fire or emergency situation.

E2.21. Fire Prevention. Measures such as, but not limited to, training, public education, plans reviews, surveys/inspections, engineering reviews, and life safety code enforcement directed toward avoiding the inception of fire and minimizing consequences if a fire occurs.

E2.22. Fire Suppression. The activities involved in controlling and extinguishing fires. E2.23.

Foreign Consequence Management (FCM). Assistance provided by the U.S.

Government to a host nation to mitigate the effects of a deliberate or inadvertent CBRNE attack or event and to restore essential operations and services.

E2.24. Ground Ambulance. A wheeled road vehicle designed for emergency medical care that provides a driver's compartment and a patient compartment to accommodate an EMT/paramedic and two litter patients.

E2.25. HAZMAT First Responders at the Awareness Level. Those persons who, in the course of their normal duties, could be the first on the scene of an emergency involving HAZMAT and who are expected to recognize the presence of HAZMAT, and who have been trained to initiate an emergency response sequence by notifying the proper authorities, and to protect themselves, and secure the area.

E2.26. HAZMAT First Responders at the Operational Level. Those persons who respond to releases or potential releases of HAZMAT as part of the initial response to the incident for the purpose of protecting nearby persons, the environment, or property from the effects of the release, and who are expected to respond in a defensive fashion to control the release from a safe distance without actually trying to stop the release, and keep it from spreading.

E2.27. HAZMAT First Responders at the Technician Level. Those persons who respond to releases or potential releases of HAZMAT for the purpose of controlling the release using specialized protective clothing and control equipment.

E2.28. Immediate Response. For the purpose of this Instruction, immediate response is any form of immediate action taken by a DoD Component or military commander to assist civil authorities or the public to save lives, prevent human suffering, or mitigate great property damage under imminently serious conditions occurring where there has not been any declaration of major disaster or emergency by the President, or there is an attack.

E2.29. Initial Full Alarm Assignment. Those personnel, equipment, and resources ordinarily dispatched upon notification of a structural fire.

E2.30. Installation. For the purpose of this Instruction, an installation is a base, camp, post, station, yard, center, homeport facility for any ship, or other activity under the jurisdiction of the Department of Defense, including any leased facility.

E2.31. Ladder/Truck Companies. Fire companies whose primary functions are to perform the variety of services associated with truck work, such as forcible entry, ventilation, search and rescue, aerial operations for water delivery and rescue, utility control, illumination, overhaul, and salvage work.

E2.32. Mutual Aid. Reciprocal assistance by emergency services under a prearranged agreement or plan.

E2.33. Offensive Operations. Actions taken by a HAZMAT responder, in appropriate chemical- protective clothing, to handle an incident in such a manner that contact with the released material may result. These actions include approaching the point of release for patching or plugging to slow or stop a leak, containing a material in its own package or container, and cleanup operations that may require overpacking or transfer of a product to another container.

E2.34. Operational Risk Management (ORM). The process of identifying, assessing, and controlling risks and making operational decisions that balance risk with mission benefit.

E2.35. Personal Protective Clothing and Protective Equipment (PPC&PE). Equipment or clothing worn by a person to provide protection from hazards to which the person is likely to be exposed while performing duties.

E2.36. Quint. Fire apparatus with a permanently mounted fire pump, a water tank, a hose storage area, an aerial ladder or elevating platform with a permanently mounted waterway, and a complement of ground ladders.

E2.37. Rescue. Those activities directed at locating endangered persons at an emergency incident, removing those persons from danger, treating the injured, and ensuring the victims are transported to an appropriate health care facility.

E2.38. Risk Communication. An interactive process or exchange of information and opinions among interested parties or stakeholders concerning a risk, potential risk, or perceived risk to human health, safety, or the environment.

E2.39. Special Operations. For the purpose of this Instruction, special operations are emergency operations that require specialized or advanced equipment or training. Examples include, but are not limited to, HAZMAT/CBRNE mitigation operations; technical rescue such as rescue from heights, water, or confined spaces; and response to medical emergencies.

E2.40. Standards of Response Coverage. Level of service policies that establish the distribution and concentration of F&ES resources for an installation or region.

E2.41. Team. Two or more individuals who have been assigned a common task and are in communication with each other, coordinate their activities as a work group, and support the safety of one another.



E2.42. Travel Time. The time that begins when units are enroute to the emergency incident and ends when units arrive at the scene.

E2.43. Turnout Time. The time beginning when units are notified of the emergency to the beginning point of travel time.