

Form No. DTMB-3522 (Rev. 4/2012)  
 AUTHORITY: Act 431 of 1984  
 COMPLETION: Required  
 PENALTY: Contract will not be executed unless form is filed

**STATE OF MICHIGAN  
 DEPARTMENT OF MILITARY AND VETERANS AFFAIRS  
 STATE OPERATIONS – PURCHASING AND CONTRACTS  
 RESERVE FORCES SUPPORT CENTER  
 3423 N. MARTIN LUTHER KING JR BLVD, SUITE 320  
 LANSING, MI 48906**

**NOTICE OF CONTRACT NO. 511B6600065  
 between  
 THE STATE OF MICHIGAN  
 DEPARTMENT OF MILITARY AND VETERAN AFFAIRS  
 and**

NAME & ADDRESS OF CONTRACTOR:	PRIMARY CONTACT	EMAIL
Environmental Pest Control, INC. 3741 Merrie Lane Grayling, MI 49738	Mark Lee	mark@environmentalpestcontrol.net
	TELEPHONE	CONTRACTOR #, MAIL CODE
	989-348-4500	

STATE CONTACTS	AGENCY	NAME	PHONE	EMAIL
PROGRAM MANAGER:	DMVA	Dave Golnick	989-344-6197	david.m.golnick.nfg@mail.mil
BUYER:	DMVA	Elizabeth Noffsinger	989-344-6190	noffsingere@michigan.gov

<b>CONTRACT SUMMARY:</b>				
<b>DESCRIPTION: Pest Control Services at Camp Grayling Joint Maneuver Training Center</b>				
INITIAL TERM				
Three years	7/30/2016	7/29/2019	Two, One year options	
PAYMENT TERMS	F.O.B	SHIPPED	SHIPPED FROM	
Net 30	N/A	N/A	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		
MINMUM DELIVERY REQUIREMENTS:				
Provide pest control services at Camp Grayling Joint Maneuver (CGJMTC) per the attached terms				

<b>MISCELLANEOUS INFORMATION:</b>	
N/A	
<b>ESTIMATED CONTRACT VALUE AT TIME OF EXECUTION:</b>	
	<b>\$36,096.00</b>

**THIS IS NOT AN ORDER:** This Contract Agreement is awarded on the basis of our inquiry bearing the solicitation # **051116B0008526**  
**Orders for delivery will be issued directly by the Department of Military and Veteran Affairs through the issuance of a Purchase Order Form.**

**Notice of Contract #: 511B6600065**

<p><b>FOR THE CONTRACTOR:</b>                  Environmental Pest Control, LLC.                  _____                  Firm Name</p> <p>_____                  Authorized Agent Signature</p> <p>_____                  Authorized Agent (Print or Type)</p> <p>_____                  Date</p>	<p><b>FOR THE STATE:</b></p> <p>_____                  Signature                  Kimberly Graham Buyer Manager, CPPB                  _____                  Name/Title</p> <p>Department of Military and Veteran Affairs                  _____                  Enter Name of Agency</p> <p>_____                  Date</p>
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# STATE OF MICHIGAN

**Contract 511B6600065  
PEST CONTROL AT CAMP GRAYLING JMTC  
EXHIBIT A  
STATEMENT OF WORK CONTRACT ACTIVITIES**

This exhibit identifies the requirements of the Contract.

## **BACKGROUND**

The contractor will provide two pest control applications annually (one in the Fall and one in the Spring on dates specified by Camp Grayling JMTC Project Manager) to all administrative, mess hall and barracks. Each application will include the interior and exterior of the buildings, annually. The Troop Medical Center (TMC) will not have pesticide applications as it violates operating procedures of the building. Exhibit A-Attachment 1 details the buildings at Camp Grayling JMTC that are to receive this treatment, including some buildings at the Grayling Army Airfield. Additionally, four applications of bedbug eradication applications/services on an as needed basis where needed basis at approximately 1000 sq. feet applications, annually. During applications, if Contractor notices structural conditions that are hampering pest control, the conditions are to be added to reports and provided to the Camp Grayling JMTC Project Manager via the required reports.

The contract(s) awarded from this RFP will be part of a comprehensive Integrated Pest Management (IPM) program for the buildings and other areas specified herein. The goal of IPM is to deliver effective pest control while at the same time reducing the volume and toxicity of pesticides used and human and environmental exposure to pesticides. IPM is a process for achieving long term, environmentally sound pest control through the use of a wide variety of technological and management practices. Control techniques in an IPM program include a combination of pest monitoring, good sanitation practices, education, appropriate solid waste management, building maintenance, alternative physical, mechanical, and biological pest control, and the use of pesticides when warranted according to a predetermined hierarchy of pest management choices, formulations, and application techniques, which will minimize the exposure and potential risk to people and the environment.

## **SCOPE**

The contractor shall furnish all supervision, labor, materials and equipment necessary to accomplish the surveillance, trapping, and pesticide application components of the IPM program. The Contractor shall also provide detailed, site-specific recommendations for structural and procedural modifications necessary to achieve pest prevention. The contractor should make these recommendations for modifications by logging them in the IPM journal or service record in the original walk through inspection and any supplemental IPM inspection visits. In addition, these recommendations for modification should be copied to the appropriate facility/program manager. Service shall be performed on a regularly scheduled basis as agreed upon between vendor and agency and on an as needed basis with the Contractor responding within 48 hours of agency's request.

## **Minimum Requirements**

The Natural Resources and Environmental Protection Act, Act 451, Part 83, Pesticide Control and Regulation 637, Pesticide Use has certain requirements when making a pesticide application in schools, day care centers, public buildings, or health care facilities. The Michigan Department of Agriculture and Rural Development (MDARD) regulate this Act and Regulation to fall under these laws. Those requirements include, but are not limited to:

A verifiable Integrated Pest Management (IPM) program as created by the guidelines of the Department of Defense for the Department of Military and Veterans Affairs (DMVA) will be in place shall be in place prior to making a pesticide application in schools, day care centers, public buildings or health care facilities. Each building that is treated with a pesticide must have a verifiable IPM program. Note that the Michigan Department of Agriculture and Rural Development

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(MDARD) interprets the Act to require that a verifiable copy of the IPM program be located in each individual building so that it is available for use and review by facility staff, parents/guardians, or MDARD as needed or requested. For DMVA locations, the Contractor will follow the standardized IPM as outlined in Exhibit A-Attachment 2 – IPM DMVA.

- All pesticide applicators must be IPM trained. Training can be done through self-study books and verified by the applicator’s immediate supervisor sending a signed form of compliance to MDARD.
- Depending on the type of pesticide treatment applied, the applicator may be required to hold a valid commercial pesticide applicator certification or registration credential issued by MDARD.
- In addition, the Contractor must have a current Pesticide Applicator’s Business License (PABL) through the State of Michigan - MDARD. The awarded Contractor(s) must provide proof of all pest control technicians that will be working in any State facility that the individuals providing this service meet state requirements.

**1. General Requirements**

**1.1. Transition**

Upon termination of contract, Contractor will be responsible with providing the State all past and current reports. Contractor will also be required to provide a service technician for the initial assessment with the incoming Contractor.

**1.2. Description of Service**

This contract is part of a comprehensive Integrated Pest Management (IPM) program for the buildings and other areas specified herein. The goal of IPM is to deliver effective pest control while at the same time reducing the volume and toxicity of pesticides used and human and environmental exposure to pesticides. IPM is a process for achieving long term, environmentally sound pest control through the use of a wide variety of technological and management practices.

Control techniques in an IPM program include a combination of pest monitoring, good sanitation practices, education, appropriate solid waste management, building maintenance, alternative physical, mechanical, and biological pest control, and the use of pesticides when warranted according to a predetermined hierarchy of pest management choices, formulations, and application techniques, which will minimize the exposure and potential risk to people and the environment.

It is the responsibility of the Contractor to create and provide the program/facility manager with the IPM for each facility being serviced.

The contractor shall furnish all supervision, labor, materials and equipment necessary to accomplish the surveillance, trapping, and pesticide application components of the IPM program. The Contractor shall also provide detailed, site-specific recommendations for structural and procedural modifications necessary to achieve pest prevention.

**1.3. Pests Included and Excluded**

The Contractor shall adequately suppress indoor populations of rats, mice, cockroaches, ants including carpenter ants as occasional invaders, winged termite swarmer emerging indoors, incidental/occasional invaders entering from out-of-doors, and flies and other arthropod pests not specifically excluded from the contract. Populations of these pests that are located immediately outside of the specified buildings and pose a possible infestation problem to the specified buildings are included.

Other insects included, but not limited to, are as follows:

Amphipods	Dobson Flies	Kudzu Bug	Mites	Stinging Pests
Ants	Dragonflies	Lace Bug	Moths	Stink Bugs
Beetles	Earwigs	Leaf Footed Bugs	Psocids	Thrips
Box Elder Bug	Firebrats	Leaf Miner	Rodents	Walking Stick Bugs
Caddisfly	Flies	Lice	Scorpion Flies	Weevils
Centipedes	Fruit Flies	Locusts	Silverfish	Whiteflies
Chinch Bug	Gnats	Mayflies	Snails and Slugs	
Cicadas	Horntails	Mealworms	Sow bugs	
Cockroaches	Jerusalem Crickets	Mealybugs	Spiders	

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Crickets	Kissing Bugs	Millipedes	Springtails	
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Populations of the following pests will be considered special services and separate for the specifications of this contract:

- Bed Bugs
- Birds, bats, snakes and all other vertebrates other than commensal rodents;
- Termites, carpenter ants nesting within structures and other wood-destroying organisms;
- Mosquitoes and other free flying insects originating out of doors;
- Pests that primarily feed on outdoor vegetation;
- Fleas and ticks.

### 1.4. Initial Inspection

The Contractor shall conduct a thorough, initial inspection of each building or site within the agreed upon number of working days after the effective date of the contract. The purpose of the initial inspection is for the Contractor to identify problem areas and any equipment, structural features, or management practices that are contributing to pest infestations. The initial inspection shall be conducted by a certified commercial supervisory applicator employed by the Contractor and will be considered as part of the IPM program for that facility. The contractor will provide a written description or a map of the areas that are part of the treatment area. The information will be included with the IPM program for that facility.

Access to building space shall be coordinated with the Program Manager. The Program Manager will inform the Contractor of any restrictions or areas requiring special scheduling.

Ideally, the Program Manager should have oversight of custodial staff to ensure that sanitation practices and building maintenance procedures associated with proper pest control are accomplished, and should interact with all facility staff members to ensure that pest sightings and other pest control related items are promptly brought to the attention of the Contractor and are logged in the IPM journal.

### 1.5. Integrated Pest Management Plan

The Contractor must have in place prior to providing pest management services an Integrated Pest Management (IPM) per Act 451 of 1994, Part 83, and Regulation 637.

The Department of Military and Veterans Affairs must adhere to the following additional requirements:

- DoD Instruction 4150.7, DoD Pest Management Program, 22 April 1996.
- AR 200-5, Pest Management, 29 October 1999.
- Memorandum, NGB/TAG All States, 21 January 1997, subject: (All States Log Number P97-0027) Integrated Pest Management.

For DMVA locations, the Contractor will follow the standardized IPM as outlined in Exhibit A-Attachment 2 – IPM DMVA.

**Integrated Pest Management (IPM)** is defined as a pest management system that utilizes all suitable techniques in a total pest management system with the intent of preventing pests from reaching unacceptable levels or to reduce an existing population to an acceptable level. An emphasis is placed on manipulation of the pest's environment to the point that it will not support a pest population. Biological controls may also be used.

After the initial inspection, and prior to initiation of service, the Contractor shall submit to the Program Manager an IPM Plan for each building or site within the agreed upon number of working days following the initial inspection. Upon receipt of the IPM, the Program Manager will render a decision regarding its acceptability within an agreed upon number of working days. The Contractor shall be on site to initiate service within an agreed upon number of working days following notice of approval. If aspects of the IPM are incomplete or disapproved, the Contractor shall have an agreed upon number of working days to submit revisions.

The IPM Plan will follow the guidelines of **Attachment A – Integrated Pest Management Program Information Guide**

### 1.6. Pesticide Application

The Contractor shall not apply any pesticide product that has not been included in the IPM or approved in writing by the Program Manager. The Program Manager will make a timely decision on any matter that requires a written approval.

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Pesticide applications shall be according to need and not by schedule. As a general rule, application of pesticides in any area inside or outside the premises shall not occur unless visual inspections or monitoring devices indicate the presence of pests in that specific area.

Preventive pesticide treatments of areas determined to be at high risk for infestation by insects or rodents, through inspection at the onset of the program or as part of a maintenance program, are acceptable. These applications must be conducted in accordance with the pesticide use hierarchy found in section 2 INSECT CONTROL of this document. Written approval must be granted by the Program Manager prior to any preventive pesticide application.

Contractor will follow Michigan's Posting Requirements following the use of pesticides, per Regulation 637, Pesticide Use, Rule 11.

The Contractor shall not store any pesticide product on any State facility property.

**1.7. Structural/Procedural Recommendations**

Structural modifications for pest control, including the application of caulk and other sealing materials will not be the responsibility of the Contractor. However, throughout the life of this contract, the Contractor shall be responsible for notifying the Program Manager in writing about any structural, sanitary, or procedural modifications deemed necessary to eliminate pest food, water, harborage, or access.

**CONTRACTOR RESPONSE**

Contractor agrees to the above stated terms and conditions by initialing in this section.

ML

**1.8. Record Keeping**

The Contractor shall be responsible for maintaining a pest control logbook or file for each building or site specified in this contract. These records shall be kept on the property of the facility being serviced under this contract and maintained on each visit by the Contractor.

Each logbook or file shall contain at least the following items:

- a) A copy of the IPM plan for the building or site, including labels and MSDS sheets for all pesticides used in the building, and the Contractor's service schedule for the building;
- b) The Pest Sighting Report, Pest Monitoring Form, Pesticide Applicator Information Activity Log, and Pesticide Recordkeeping Form will be supplied to the Contractor by the Program Manager, and will be used to advise the Contractor of routine service requests and to document the performance of all work, including emergency work. This includes all the information on pesticide applications required by the State of Michigan. Upon completion of a service visit to the building, the Contractor's representative performing the service shall complete, sign and date the form, and return it to the logbook or file on the same or succeeding day of the services rendered.

**CONTRACTOR RESPONSE**

Contractor agrees to the above stated terms and conditions by initialing in this section.

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**1.9. Special Requests and Emergency Service**

On occasion, the Program Manager may request that the Contractor perform corrective, special, or emergency service (s) that are beyond routine service requests. The Contractor shall respond to these exceptional circumstances and complete the necessary work within one (1) working day after receipt of the request. In the event that such services cannot be completed within one working day, the Contractor shall immediately notify the Program Manager and indicate an anticipated completion date.

Corrective services will be defined as a service that was not done correctly during the normally scheduled service and will be completed at no additional cost to the State.

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Special and Emergency services will be quoted by the Contractor and presented to the Program Manager for approval before services are to be completed.

### **CONTRACTOR RESPONSE**

Contractor agrees to the above stated terms and conditions by initialing in this section.

ML

#### **1.10. Training**

The Contractor must provide the following training:

Once the IPM is in place, Contractor will be responsible for initial training on how to implement the IPM with the designated facility staff

The Contractor must provide documentation and training materials necessary to facility staff to follow for proper compliance of the new IPM.

#### **2. Insect Control**

##### **2.1. Non-pesticide Products and Use**

The Contractor shall use non-pesticide methods of control wherever possible as part of the IPM plan.

For example: sticky traps are used to guide and evaluate indoor pest control efforts wherever necessary.

##### **2.2. Pesticide Products and Use**

The goal of an IPM plan is to deliver effective pest control while at the same time reducing the volume and toxicity of pesticides used and human and environmental exposure to pesticides. When it is determined that a pesticide must be used in order to obtain adequate control, the Contractor shall employ the use of formulations and treatment techniques which minimize the amount of pesticides used and the potential exposure of people and the environment.

The Contractor shall be responsible for application of pesticides according to the product label. All pesticides used by the Contractor must be registered with the Environmental Protection Agency (EPA) and the state Department of Environmental Protection. Transport, handling and use of all pesticides shall be in strict accordance with the manufacturers label instructions and all applicable federal and state laws and regulations.

The Contractor will use the following pesticide use hierarchy as a guide to minimize the amounts of pesticides applied as well as the potential for exposure.

##### **a) Baits and Gels**

Containerized and other types of bait formulations rather than sprays shall be used for cockroach and ant control wherever appropriate. Baits and gels are considered the standard choice for most spaces. Baits and gels for other insects should also be considered as they are introduced into the marketplace and their efficacy established.

##### **b) Dusts in closed areas such as wall voids**

Dusts are the preferred pesticide product for treatment in such areas as, contrary to liquid products; they are not as directional when applied and affect a broader internal void area.

##### **c) Crack and crevice treatment using, in order of preference**

Wettable powders  
Microencapsulated products  
Emulsifiable concentrates  
Aerosols

As a general rule, if effective baits are not available for the targeted indoor pest, liquid, aerosol, or dust formulations shall be applied only as crack and crevice treatments with application devices specifically designed or modified for this purpose. "Crack and crevice treatment" is defined in this contract as an application in which the pesticide is only released within the crack and crevice and does not leave a deposit on exposed surfaces.

**d) Spot treatments**

As differentiated from overall, broadcast, or complete coverage, spot treatment is application to localized or restricted areas no more than (2) square feet where insects are likely to occur. These areas may occur on floors, walls and bases or undersides of equipment. Application must not be performed in food areas unless permitted by the pesticide product label.

**e) General sprays or fogs**

Application of pesticide liquid, aerosol or dust to exposed surfaces, and pesticide space sprays (including fogs, mists and ultra-low volume applications), shall be restricted to unique situations where no alternative measures which will result in timely control within the predetermined tolerance thresholds, are practical. In the event that these applications become necessary, a formulation with the least potential for exposure will be chosen. As a general rule, wettable powder and microencapsulated formulation will be considered as first choices. Solvent-based pesticides will be used only as a last resort when no other effective alternatives exist. All application shall be made only to areas unoccupied at the time of application and shall remain unoccupied until the treated surfaces have dried, or longer if the label specifies a longer reentry time. The Contractor and Program Manager will determine, on a case-by-case basis, what additional ventilation and pre-notification are needed.

The Contractor shall obtain the approval of the Program Manager prior to any application of pesticide liquid, aerosol or dust to exposed surfaces, or any space spray treatment. The Contractor shall take all necessary precautions to ensure occupant and employee safety, and all necessary steps to ensure the containment of the pesticide to the site of application. No liquid, aerosol or dust applications shall be made while occupants, other than properly trained and equipped pesticide handlers, are present in the treated areas.

**3. Commensal Rodent Control**

**3.1. Non-pesticide Products and Use**

As a general rule, rodent control inside occupied buildings shall be accomplished with trapping devices only. All such devices shall be concealed, whenever possible, out of the general view and in protected areas so as not to be affected by routine cleaning and other operations. Trapping devices shall be checked on a schedule consistent with good pest control practice and approved by the Program Manager. During regular service, the Contractor shall be responsible for disposing of all trapped rodents and all rodent carcasses in an appropriate manner.

**3.2. Pesticide Products and Use**

In circumstances when rodenticides are deemed essential for adequate rodent control inside occupied buildings, the Contractor shall obtain the approval of the Program Manager prior to making any interior rodenticide treatment.

All rodenticides, regardless of packaging, shall be placed either in locations not accessible to children, pets, wildlife, and domestic animals or in EPA-approved tamper-resistant bait boxes.

Frequency of servicing bait boxes shall depend upon the level of rodent infestation. All bait boxes shall be maintained in accordance with EPA regulations and the Michigan's Pesticide Control Act 451, Part 83, Michigan's Pesticide Applicators Regulation 636, and Michigan's Pesticide Use Regulation 637. The Contractor shall adhere to the following five points:

- a) All bait boxes, whenever possible, shall be placed out of the general view and in locations where they will not be disturbed by routine operations;
- b) The lids of all bait boxes shall be securely locked or fastened shut for safety concerns;
- c) All bait boxes shall be securely attached or anchored to the floor, ground, wall or other surface, to discourage movement by non-authorized personnel;
- d) Bait shall always be placed in the baffle-protected feeding chamber of the box and never in the runway of the box;
- e) All bait boxes shall be labeled with the Contractors business name and address, and dated at the time of installation and each servicing.

- f) As a general rule, rodenticide application outside buildings shall emphasize the direct treatment of rodent burrows wherever feasible. The Contractor shall be responsible for notifying the COR about the location of all rodent burrows on the premises that must be filled.

#### **4. Project Management**

##### **4.1. Program Evaluation**

The contracting agency reserves the right to evaluate the progress of this contract in terms of effectiveness and safety, and to require such changes as necessary. The Contractor shall take prompt action to correct all identified deficiencies.

##### **4.2. Integrated Pest Management (IPM) Plan**

The Contractor will carry out this IPM Plan under the direction and control of the Program Manager. Within 30 calendar days of the Effective Date, the Contractor must submit an IPM Plan to the Program Manager for final approval. The plan must include all information as outlined in Attachment A – Integrated Pest Management Program Information.

##### **4.3. Meetings**

The Contract Administrator is responsible for scheduling and facilitating Contractor Progress Meetings. A “Contract Progress Meeting” is intended to assist the State and Contractor in, including but not limited to, reviewing the Contract Compliance Report, addressing outstanding items on the Issue Tracking Log and Vendor Performance in MAIN, reviewing overall contract compliance, discuss market trends that will assist the State in understanding changes in the industry, and solicit contractor recommendations for increasing contract efficiency and reducing costs.

Contract Progress Meetings can be held (in person or by conference call) at any time, but at a minimum the Contract Administrator should hold a Contract Progress Meeting at least yearly. The Contract Administrator, Program Manager and any individual identified by the parties should participate.

##### **4.4. Reporting**

The Contractor must explain its reporting capabilities and any reporting that is included in its proposal.

##### **CONTRACTOR RESPONSE:**

Contractor to explain reporting capabilities and reporting. Attach additional documents if necessary. THE FACILITY WILL BE GIVEN A WRITTEN REPORT IN THE IPM BOOK OF TREATMENT AND PROBLEMS FOUND AND ALSO ALL SDS FORMS AND MATERIALS USED AND AMOUNTS APPLIED

##### **4.5. Project Plan**

**Contractor to provide a project plan in its proposal detailing the activities (with locations and number of days for each activity) that will occur to ensure this project and each spray is successful.**

##### **CONTRACTOR RESPONSE:**

Contractor to provide a detailed project plan with proposal. Attach additional documents, if necessary. TREATMENT IN SIDE BLDGS WILL BE WITH BACK PACKS AND EXTERIOR TREATMENT WILL BE WITH POWER SPREAYERS, APPROXIMATE NO. OF DAYS PER TREATMENT TO COMPLETE IS 4

#### **5. Ordering**

##### **5.1. Authorizing Document**

The appropriate authorizing document for the Contract will be a Purchase Order, which must be approved by the Program Manager, to order any Deliverable(s). The Contractor is not authorized to begin performance until receipt of a Purchase Order.

#### **6. Vendor Performance**

The contractor, upon receiving two "less than satisfactory" ratings of the same nature in the same treatment area, must document all procedures done, to date, and establish the extent of the pest level. If the pest levels are outside the predetermined tolerance thresholds (if thresholds exist for the given pest), the Contractor shall have an agreed upon

## ENVIRONMENTAL PEST CONTROL, INC.

number of days to submit to the Program Manager an acceptable recommendation to alleviate the unsatisfactory situation.

Any treatment area receiving three consecutive "less than satisfactory" ratings of the same nature may result in the filing of a formal complaint from the Program Manager to the Contracting Agency with intent to terminate the contract. The Contractor will not be terminated if the "less than satisfactory" rating is a result of circumstances outside of the Contractor's control, such as failure of the Program Manager to make structural or operational changes that would facilitate the pest control effort.

## **7. Safety and Health**

All work shall comply with all applicable state and federal safety and health requirements. Where there is a conflict between applicable regulations, the most stringent will apply.

The Contractor shall assume full responsibility and liability for compliance with all applicable regulations pertaining to the health and safety of personnel during the execution of work.

## **8. Invoice and Payment**

### **8.1. Invoice Requirements**

All invoices submitted to the State must include: (a) Contract number (b) date; (c) purchase order; (d) quantity; (e) description of the Contract Activities; (f) price of service; (g) total price (h) current issues observed with detailed corrective action needed. Overtime, holiday pay, and travel expenses will not be paid.

### **8.2. Payment Methods**

The State will make payment for approved/accepted Contract Activities by Electronic Funds Transfer (EFT).

### **8.3. Inclement Weather**

State office buildings periodically shut down during inclement weather. If a State facility is closed on the day service is scheduled, and the Contractor is unable to service that building, the State will not be billed for that cancelled service.

### **8.4. Procedure**

The Contractor shall perform routine pest control services that do not adversely affect occupant health or productivity during the regular hours of operation in the buildings. No sprays or dusts may be applied when the immediate area to be treated is occupied, except by properly trained and equipped pesticide handlers. When it is necessary to perform work outside of the regularly scheduled hours set forth in the Pest Control Plan, the Contractor shall notify the COR at least one day in advance.

The Contractor shall observe all safety precautions throughout the performance of this contract. Certain areas within some buildings may require special instructions for persons entering the building. Any restrictions associated with these special areas will be explained by the COR. The Contractor shall adhere to these restrictions and incorporate them into the Pest Control Plan for the specific building or site.

All Contractor personnel working in or around buildings designated under this contract shall wear distinctive uniform clothing. The Contractor shall determine and provide additional personal protection equipment required for the safe performance of work. Protective clothing, equipment, and devices shall, as a minimum, conform to Occupational Safety and Health Administration (OSHA) standards for the products being used.

## **9. Acceptance of Ongoing Activities**

### **9.1. Inspection**

After the completion of each service, the Contractor and Program Manager will go over the inspection check list to discuss areas serviced, problems identified, and recommendations to minimize those problems.

## **10. Staffing**

### **10.1. Contractor Representative**

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The Contractor must appoint 1 supervisor and 1 service technician, specifically assigned to State of Michigan accounts, that will respond to State inquiries regarding the Contract Activities, answering questions related to ordering and delivery, etc. (the "Contractor Representative"). Each supervisor/service technician will be trained on each facility assigned of all aspects of the service being provided.

The Contractor must notify the Contract Administrator and Program Manager at least 30 calendar days before removing or assigning a new Contractor Representative.

**10.2. Customer Service Toll-Free Number**

The Contractor must specify its toll-free number for the State to make contact with the Contractor Representative. The Contractor Representative must be available for calls during the hours of 8 am to 5 pm EST.

**10.3. Work Hours**

The Contractor must provide Contract Activities during the State's normal working hours Monday – Friday, 7:00 a.m. to 6:00 p.m. EST, and possible night and weekend hours depending on the requirements of the service required.

**10.4. Personnel**

Throughout the life of this contract, all Contractor personnel providing on-site pest control service must meet state requirements for training and certification as Commercial Pesticide Applicators. Uncertified/unregistered individuals working under the supervision of a Certified Applicator will not be permitted to provide service under the terms of this contract.

**CONTRACTOR RESPONSE**

Contractor to provide copies of all current required licenses for each of it's staff members and company, as it pertains to this RFP. Attach additional documents if necessary.  
MARK A LEE, CERT NO. C002920047, AND IPM CERT.  
DAN CHITWOOD, CERT. NO. C002060072, AND IPM CERT.  
CODY ALLEN, CERT. NO. C004110429, AND IPM CERT.  
JOE BANCROFT, CERT. NO. C002140180 AND IPM CERT.

**10.5. Organizational Chart**

The Contractor must provide an overall organizational chart that details staff members, by name and title, and subcontractors.

**CONTRACTOR RESPONSE**

Contractor to provide an organizational chart with details on each staff member with proposal. Attach additional documents if necessary.  
MARK A LEE, MANAGER ON SITE  
DAN CHITWOOD, SUPERVISOR  
CODY ALLEN, TECHNICIAN  
JOE BANCROFT, TECHNICIAN

**10.6. Disclosure of Subcontractors**

If the Contractor intends to utilize subcontractors, the Contractor must ensure that the subcontractor is properly licensed and uses only properly certified or registered pesticide applicators. In addition, the Contractor must disclose the following:

The legal business name; address; telephone number; a description of subcontractor's organization and the services it will provide; and information concerning subcontractor's ability to provide the Contract Activities.

The relationship of the subcontractor to the Contractor.

Whether the Contractor has a previous working experience with the subcontractor. If yes, provide the details of that previous relationship.

A complete description of the Contract Activities that will be performed or provided by the subcontractor.  
Of the total bid, the price of the subcontractor's work.

**10.7. Security**

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The bidder's staff will be required to enter State facilities. The bidder must: (a) explain how it intends to ensure the security of State facilities, (b) whether it uses uniforms and ID badges, etc., (c) identify the company that will perform background checks, and (d) the scope of the background checks. The State may require the Contractor's personnel to wear State issued identification badges.

The Contractor will be subject to the following security procedures as required by the Department of Corrections. Current versions of these policies are available through the Program Manager.  
Prison Rape Elimination Act (PREA).  
The Department of Corrections Vendor Handbook.

The Contractor must explain any additional security measures in place to ensure the security of State facilities.

The Department/Agency reserves the right to screen, for the purpose of security, all employees of the Contractor who will work in or around State facilities. The Contractor must replace any prospective employees who are found to constitute security risks. The State further reserves the right to recommend reassignment of personnel deemed unsatisfactory by the State. Such employees in either case may not be assigned to any other State facility.

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

# STATE OF MICHIGAN

**Contract 511B6600065  
PEST CONTROL AT CAMP GRAYLING JMTC  
EXHIBIT C  
PRICING**

1. The Contractor must provide a pricing schedule for the proposed Contract Activities using the space provided below. The pricing schedule should be submitted in a modifiable format (e.g., Microsoft Word or Excel); however, you may also submit an additional pricing schedule in a non-modifiable format (e.g., PDF). Failure to complete the pricing schedule as requested may result in disqualification of your proposal.
2. The Contractor is offering the quick payment terms listed below. The number of days do not include processing time for payment to be received by the Contractor's financial institution.

Quick payment terms:  5  % discount off invoice if paid within  30  days after receipt of invoice.

3. The Contractor certifies that the prices were arrived at independently, and without consultation, communication, or agreement with any other Contractor.

**PRICING –**

<b>ITEM</b>	<b>CG Pest Control</b>	<b>UNIT</b>	<b>Cost per unit</b>	<b>Number of units per contract</b>	<b>TOTAL BID PRICE</b>
1	Pest application, exterior and interior, of buildings specified in Exhibit A- Attachment 1 targeting crawling insects/occasional invaders per specifications listed in Exhibit A.	ONE APPLICATION PER SEASON	5636.00	6	33,816.00
2	Bedbug application, as needed where needed (1000 sq. feet as specified in Exhibit A)	PER 1000 SQ FOOT APPLICATION	760.00	3	2,280.00
3	<b>TOTAL COST FOR PROJECT</b>	<b>Total</b>			<b>36,096.00</b>



# STATE OF MICHIGAN

## STANDARD CONTRACT TERMS

**Contract 511B6600065**

### **PEST CONTROL AT CAMP GRAYLING JOINT MANUEVER TRAINING CENTER (JMTC)**

This STANDARD CONTRACT (“**Contract**”) is agreed to between the State of Michigan (the “**State**”) and Environmental Pest Control LLC (“**Contractor**”), a Michigan limited liability company. This Contract is effective on July 30, 2016 (“**Effective Date**”), and unless terminated, expires on July 29, 2019, funding dependent.

This Contract may be renewed for up to two (2) one (1) year renewal options. Renewal is at the sole discretion of the State and will automatically extend the Term of this Contract. The State will document its exercise of renewal options via Contract Change Notice.

The parties agree as follows:

- Duties of Contractor.** Contractor must perform the services and provide the deliverables described in **Exhibit A – Statement of Work** (the “**Contract Activities**”) as defined in RFP 051116B0008526. An obligation to provide delivery of any commodity is considered a service and is a Contract Activity.

Contractor must furnish all labor, equipment, materials, and supplies necessary for the performance of the Contract Activities, and meet operational standards, unless otherwise specified in Exhibit A.

Contractor must: (a) perform the Contract Activities in a timely, professional, safe, and workmanlike manner consistent with standards in the trade, profession, or industry; (b) meet or exceed the performance and operational standards, and specifications of the Contract; (c) provide all Contract Activities in good quality, with no material defects; (d) not interfere with the State’s operations; (e) obtain and maintain all necessary licenses, permits or other authorizations necessary for the performance of the Contract; (f) cooperate with the State, including the State’s quality assurance personnel, and any third party to achieve the objectives of the Contract; (g) return to the State any State-furnished equipment or other resources in the same condition as when provided when no longer required for the Contract; (h) not make any media releases without prior written authorization from the State; (i) assign to the State any claims resulting from state or federal antitrust violations to the extent that those violations concern materials or services supplied by third parties toward fulfillment of the Contract; (j) comply with all State physical and IT security policies and standards which will be made available upon request; and (k) provide the State priority in performance of the Contract except as mandated by federal disaster response requirements. Any breach under this paragraph is considered a material breach.

Contractor must also be clearly identifiable while on State property by wearing identification issued by the State, and clearly identify themselves whenever making contact with the State.

- Notices.** All notices and other communications required or permitted under this Contract must be in writing and will be considered given and received: (a) when verified by written receipt if sent by courier; (b) when actually received if sent by mail without verification of receipt; or (c) when verified by automated receipt or electronic logs if sent by facsimile or email.

<b>If to State:</b> Dave Golnick Camp Grayling JMTC 1000 M-93	<b>If to Contractor:</b> MARK A LEE, MANAGER. 989-370-2421 3741 MERRIE LN, GRAYLING, MI. 49738 <a href="mailto:MARK@ENVIRONMENTALPESTCONTROL.NET">MARK@ENVIRONMENTALPESTCONTROL.NET</a>
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Building 36, Storekeeper Grayling, MI 49738 989-344-6197	
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3. **Contract Administrator.** The Contract Administrator for each party is the only person authorized to modify any terms and conditions of this Contract (each a “**Contract Administrator**”):

If to State: Elizabeth Noffsinger 989-344-6190 noffsingere@michigan.gov	If to Contractor: MARK A LEE, MANAGER. 989-370-2421 3741 MERRIE LN, GRAYLING, MI. 49738 <a href="mailto:MARK@ENVIRONMENTALPESTCONTROL.NET">MARK@ENVIRONMENTALPESTCONTROL.NET</a>
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4. **Program Manager.** The Program Manager for each party will monitor and coordinate the day-to-day activities of the Contract (each a “**Program Manager**”):

If to State: Dave Golnick Camp Grayling JMTC 1000 M-93 Building 36, Storekeeper Grayling, MI 49738 david.m.golnick.nfg@mail.mil	If to Contractor: MARK A LEE, MANAGER. 989-370-2421 3741 MERRIE LN, GRAYLING, MI. 49738 <a href="mailto:MARK@ENVIRONMENTALPESTCONTROL.NET">MARK@ENVIRONMENTALPESTCONTROL.NET</a>
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5. **Performance Guarantee.** Contractor must at all times have financial resources sufficient, in the opinion of the State, to ensure performance of the Contract and must provide proof upon request. The State may require a performance bond (as specified in Exhibit A) if, in the opinion of the State, it will ensure performance of the Contract.

6. **Insurance Requirements.** Contractor must maintain the insurances identified below and is responsible for all deductibles. All required insurance must: (a) protect the State from claims that may arise out of, are alleged to arise out of, or result from Contractor's or a subcontractor's performance; (b) be primary and non-contributing to any comparable liability insurance (including self-insurance) carried by the State; and (c) be provided by a company with an A.M. Best rating of "A" or better and a financial size of VII or better.

Insurance Type	Additional Requirements
<b>Commercial General Liability Insurance</b>	
<u>Minimal Limits:</u> \$1,000,000 Each Occurrence Limit \$1,000,000 Personal & Advertising Injury Limit \$2,000,000 General Aggregate Limit \$2,000,000 Products/Completed Operations  <u>Deductible Maximum:</u> \$50,000 Each Occurrence	Contractor must have their policy: (1) endorsed to add “the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees, and agents” as additional insureds using endorsement CG 20 10 11 85, or both CG 2010 07 04 and CG 2037 07 04; (2) include a waiver of subrogation; and (3) for a claims-made policy, provide 3 years of tail coverage.
<b>Umbrella or Excess Liability Insurance</b>	
<u>Minimal Limits:</u> \$5,000,000 General Aggregate	Contractor must have their policy: (1) endorsed to add “the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees, and agents” as additional insureds, and (2) include a waiver of subrogation.
<b>Motor Vehicle Insurance</b>	
<u>Minimal Limits:</u> \$1,000,000 Per Occurrence	

<b>Workers' Compensation Insurance</b>	
<u>Minimal Limits:</u> Coverage according to applicable laws governing work activities.	Waiver of subrogation, except where waiver is prohibited by law.
<b>Employers Liability Insurance</b>	
<u>Minimal Limits:</u> \$100,000 Each Accident \$100,000 Each Employee by Disease \$500,000 Aggregate Disease.	

If Contractor's policy contains limits higher than the minimum limits, the State is entitled to coverage to the extent of the higher limits. The minimum limits are not intended, and may not be construed to limit any liability or indemnity of Contractor to any indemnified party or other persons.

Contractor must: (a) provide insurance certificates to the Contract Administrator, containing the agreement or purchase order number, at Contract formation and within 20 calendar days of the expiration date of the applicable policies; (b) require that subcontractors maintain the required insurances contained in this Section; (c) notify the Contract Administrator within 5 business days if any insurance is cancelled; and (d) waive all rights against the State for damages covered by insurance. Failure to maintain the required insurance does not limit this waiver.

7. **Reserved**
8. **Reserverd**
9. **Independent Contractor.** Contractor is an independent contractor and assumes all rights, obligations and liabilities set forth in this Contract. Contractor, its employees, and agents will not be considered employees of the State. No partnership or joint venture relationship is created by virtue of this Contract. Contractor, and not the State, is responsible for the payment of wages, benefits and taxes of Contractor's employees and any subcontractors. Prior performance does not modify Contractor's status as an independent contractor.
10. **Subcontracting.** Contractor may not delegate any of its obligations under the Contract without the prior written approval of the State. Contractor must notify the State at least 90 calendar days before the proposed delegation, and provide the State any information it requests to determine whether the delegation is in its best interest. If approved, Contractor must: (a) be the sole point of contact regarding all contractual matters, including payment and charges for all Contract Activities; (b) make all payments to the subcontractor; and (c) incorporate the terms and conditions contained in this Contract in any subcontract with a subcontractor. Contractor remains responsible for the completion of the Contract Activities, compliance with the terms of this Contract, and the acts and omissions of the subcontractor. The State, in its sole discretion, may require the replacement of any subcontractor.
11. **Staffing.** The State's Contract Administrator may require Contractor to remove or reassign personnel by providing a notice to Contractor.
12. **Background Checks.** Upon request, Contractor must perform background checks on all employees and subcontractors and its employees prior to their assignment. The scope is at the discretion of the State and documentation must be provided as requested. Contractor is responsible for all costs associated with the requested background checks. The State, in its sole discretion, may also perform background checks.
13. **Assignment.** Contractor may not assign this Contract to any other party without the prior approval of the State. Upon notice to Contractor, the State, in its sole discretion, may assign in whole or in part, its rights or responsibilities under this Contract to any other party. If the State determines that a novation of the Contract to a third party is necessary, Contractor will agree to the novation, provide all necessary documentation and signatures, and continue to perform, with the third party, its obligations under the Contract.

14. **Change of Control.** Contractor will notify, at least 90 calendar days before the effective date, the State of a change in Contractor's organizational structure or ownership. For purposes of this Contract, a change in control means any of the following: (a) a sale of more than 50% of Contractor's stock; (b) a sale of substantially all of Contractor's assets; (c) a change in a majority of Contractor's board members; (d) consummation of a merger or consolidation of Contractor with any other entity; (e) a change in ownership through a transaction or series of transactions; (f) or the board (or the stockholders) approves a plan of complete liquidation. A change of control does not include any consolidation or merger effected exclusively to change the domicile of Contractor, or any transaction or series of transactions principally for bona fide equity financing purposes.

In the event of a change of control, Contractor must require the successor to assume this Contract and all of its obligations under this Contract.

15. **Ordering.** Contractor is not authorized to begin performance until receipt of authorization as identified in Exhibit A.
16. **Acceptance.** Contract Activities are subject to inspection and testing by the State within 30 calendar days of the State's receipt of them ("**State Review Period**"), unless otherwise provided in Exhibit A. If the Contract Activities are not fully accepted by the State, the State will notify Contractor by the end of the State Review Period that either: (a) the Contract Activities are accepted, but noted deficiencies must be corrected; or (b) the Contract Activities are rejected. If the State finds material deficiencies, it may: (i) reject the Contract Activities without performing any further inspections; (ii) demand performance at no additional cost; or (iii) terminate this Contract in accordance with Section 23, Termination for Cause.

Within 10 business days from the date of Contractor's receipt of notification of acceptance with deficiencies or rejection of any Contract Activities, Contractor must cure, at no additional cost, the deficiency and deliver unequivocally acceptable Contract Activities to the State. If acceptance with deficiencies or rejection of the Contract Activities impacts the content or delivery of other non-completed Contract Activities, the parties' respective Program Managers must determine an agreed to number of days for re-submission that minimizes the overall impact to the Contract. However, nothing herein affects, alters, or relieves Contractor of its obligations to correct deficiencies in accordance with the time response standards set forth in this Contract.

If Contractor is unable or refuses to correct the deficiency within the time response standards set forth in this Contract, the State may cancel the order in whole or in part. The State, or a third party identified by the State, may perform the Contract Activities and recover the difference between the cost to cure and the Contract price plus an additional 10% administrative fee.

17. **Delivery.** Contractor must deliver all Contract Activities F.O.B. destination, within the State premises with transportation and handling charges paid by Contractor, unless otherwise specified in Exhibit A. All containers and packaging becomes the State's exclusive property upon acceptance.
18. **Risk of Loss and Title** Until final acceptance, title and risk of loss or damage to Contract Activities remains with Contractor. Contractor is responsible for filing, processing, and collecting all damage claims. The State will record and report to Contractor any evidence of visible damage. If the State rejects the Contract Activities, Contractor must remove them from the premises within 10 calendar days after notification of rejection. The risk of loss of rejected or non-conforming Contract Activities remains with Contractor. Rejected Contract Activities not removed by Contractor within 10 calendar days will be deemed abandoned by Contractor, and the State will have the right to dispose of it as its own property. Contractor must reimburse the State for costs and expenses incurred in storing or effecting removal or disposition of rejected Contract Activities.
19. **Warranty Period.** The warranty period, if applicable, for Contract Activities is a fixed period commencing on the date specified in Exhibit A. If the Contract Activities do not function as warranted during the warranty period the State may return such non-conforming Contract Activities to the Contractor for a full refund.
20. **Terms of Payment.** Invoices must conform to the requirements communicated from time-to-time by the State. All undisputed amounts are payable within 45 days of the State's receipt. Contractor may only charge for Contract Activities performed as specified in Exhibit A. Invoices must include an itemized statement of all charges. The State is exempt from State sales tax for direct purchases and may be exempt from federal excise tax, if Contract Activities purchased under the Contract are for the

State's exclusive use. Prices are exclusive of all taxes, and Contractor is solely responsible for payment of any applicable taxes.

The State has the right to withhold payment of any disputed amounts until the parties agree as to the validity of the disputed amount. The State will notify Contractor of any dispute within a reasonable time. Payment by the State will not constitute a waiver of any rights as to Contractor's continuing obligations, including claims for deficiencies or substandard Contract Activities. Contractor's acceptance of final payment by the State constitutes a waiver of all claims by Contractor against the State for payment under this Contract, other than those claims previously filed in writing on a timely basis and still disputed.

The State will only disburse payments under this Contract through Electronic Funds Transfer (EFT). Contractor must register with the State at <http://www.michigan.gov/cpexpress> to receive electronic fund transfer payments. If Contractor does not register, the State is not liable for failure to provide payment. Without prejudice to any other right or remedy it may have, the State reserves the right to set off at any time any amount then due and owing to it by Contractor against any amount payable by the State to Contractor under this Contract.

21. **Liquidated Damages.** Liquidated damages, if applicable, will be assessed as described in Exhibit A.
22. **Stop Work Order.** The State may suspend any or all activities under the Contract at any time. The State will provide Contractor a written stop work order detailing the suspension. Contractor must comply with the stop work order upon receipt. Within 90 calendar days, or any longer period agreed to by Contractor, the State will either: (a) issue a notice authorizing Contractor to resume work, or (b) terminate the Contract or purchase order. The State will not pay for Contract Activities, Contractor's lost profits, or any additional compensation during a stop work period.
23. **Termination for Cause.** The State may terminate this Contract for cause, in whole or in part, if Contractor, as determined by the State: (a) endangers the value, integrity, or security of any location, data, or personnel; (b) becomes insolvent, petitions for bankruptcy court proceedings, or has an involuntary bankruptcy proceeding filed against it by any creditor; (c) engages in any conduct that may expose the State to liability; (d) breaches any of its material duties or obligations; or (e) fails to cure a breach within the time stated in a notice of breach. Any reference to specific breaches being material breaches within this Contract will not be construed to mean that other breaches are not material.

If the State terminates this Contract under this Section, the State will issue a termination notice specifying whether Contractor must: (a) cease performance immediately, or (b) continue to perform for a specified period. If it is later determined that Contractor was not in breach of the Contract, the termination will be deemed to have been a Termination for Convenience, effective as of the same date, and the rights and obligations of the parties will be limited to those provided in Section 24, Termination for Convenience.

The State will only pay for amounts due to Contractor for Contract Activities accepted by the State on or before the date of termination, subject to the State's right to set off any amounts owed by the Contractor for the State's reasonable costs in terminating this Contract. The Contractor must pay all reasonable costs incurred by the State in terminating this Contract for cause, including administrative costs, attorneys' fees, court costs, transition costs, and any costs the State incurs to procure the Contract Activities from other sources.

24. **Termination for Convenience.** The State may immediately terminate this Contract in whole or in part without penalty and for any reason, including but not limited to, appropriation or budget shortfalls. The termination notice will specify whether Contractor must: (a) cease performance of the Contract Activities immediately, or (b) continue to perform the Contract Activities in accordance with Section 25, Transition Responsibilities. If the State terminates this Contract for convenience, the State will pay all reasonable costs, as determined by the State, for State approved Transition Responsibilities.
25. **Transition Responsibilities.** Upon termination or expiration of this Contract for any reason, Contractor must, for a period of time specified by the State (not to exceed 90 calendar days), provide all reasonable transition assistance requested by the State, to allow for the expired or terminated portion of the Contract Activities to continue without interruption or adverse effect, and to facilitate the orderly transfer of such Contract Activities to the State or its designees. Such transition assistance may

include, but is not limited to: (a) continuing to perform the Contract Activities at the established Contract rates; (b) taking all reasonable and necessary measures to transition performance of the work, including all applicable Contract Activities, training, equipment, software, leases, reports and other documentation, to the State or the State's designee; (c) taking all necessary and appropriate steps, or such other action as the State may direct, to preserve, maintain, protect, or return to the State all materials, data, property, and confidential information provided directly or indirectly to Contractor by any entity, agent, vendor, or employee of the State; (d) transferring title in and delivering to the State, at the State's discretion, all completed or partially completed deliverables prepared under this Contract as of the Contract termination date; and (e) preparing an accurate accounting from which the State and Contractor may reconcile all outstanding accounts (collectively, "**Transition Responsibilities**"). This Contract will automatically be extended through the end of the transition period.

- 26. General Indemnification.** Contractor must defend, indemnify and hold the State, its departments, divisions, agencies, offices, commissions, officers, and employees harmless, without limitation, from and against any and all actions, claims, losses, liabilities, damages, costs, attorney fees, and expenses (including those required to establish the right to indemnification), arising out of or relating to: (a) any breach by Contractor (or any of Contractor's employees, agents, subcontractors, or by anyone else for whose acts any of them may be liable) of any of the promises, agreements, representations, warranties, or insurance requirements contained in this Contract; (b) any infringement, misappropriation, or other violation of any intellectual property right or other right of any third party; (c) any bodily injury, death, or damage to real or tangible personal property occurring wholly or in part due to action or inaction by Contractor (or any of Contractor's employees, agents, subcontractors, or by anyone else for whose acts any of them may be liable); and (d) any acts or omissions of Contractor (or any of Contractor's employees, agents, subcontractors, or by anyone else for whose acts any of them may be liable).

The State will notify Contractor in writing if indemnification is sought; however, failure to do so will not relieve Contractor, except to the extent that Contractor is materially prejudiced. Contractor must, to the satisfaction of the State, demonstrate its financial ability to carry out these obligations.

The State is entitled to: (i) regular updates on proceeding status; (ii) participate in the defense of the proceeding; (iii) employ its own counsel; and to (iv) retain control of the defense if the State deems necessary. Contractor will not, without the State's written consent (not to be unreasonably withheld), settle, compromise, or consent to the entry of any judgment in or otherwise seek to terminate any claim, action, or proceeding. To the extent that any State employee, official, or law may be involved or challenged, the State may, at its own expense, control the defense of that portion of the claim.

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. An attorney designated to represent the State may not do so until approved by the Michigan Attorney General and appointed as a Special Assistant Attorney General.

- 27. Infringement Remedies.** If, in either party's opinion, any piece of equipment, software, commodity, or service supplied by Contractor or its subcontractors, or its operation, use or reproduction, is likely to become the subject of a copyright, patent, trademark, or trade secret infringement claim, Contractor must, at its expense: (a) procure for the State the right to continue using the equipment, software, commodity, or service, or if this option is not reasonably available to Contractor, (b) replace or modify the same so that it becomes non-infringing; or (c) accept its return by the State with appropriate credits to the State against 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.
- 28. Limitation of Liability.** The State is not liable for consequential, incidental, indirect, or special damages, regardless of the nature of the action.
- 29. Disclosure of Litigation, or Other Proceeding.** Contractor must notify the State within 14 calendar days of receiving notice of any litigation, investigation, arbitration, or other proceeding (collectively, "**Proceeding**") involving Contractor, a subcontractor, or an officer or director of Contractor or subcontractor, that arises during the term of the Contract, including: (a) a criminal Proceeding; (b) a parole or probation Proceeding; (c) a Proceeding under the Sarbanes-Oxley Act; (d) a civil Proceeding involving: (1) a claim that might reasonably be expected to adversely affect Contractor's viability or financial stability; or (2) a governmental or public entity's claim or written allegation of fraud; or (e) a

Proceeding involving any license that Contractor is required to possess in order to perform under this Contract.

30. **State Data.** All data and information provided to Contractor by or on behalf of the State, and all data and information derived therefrom, is the exclusive property of the State ("**State Data**"); this definition is to be construed as broadly as possible. Upon request, Contractor must provide to the State, or a third party designated by the State, all State Data within 10 calendar days of the request and in the format requested by the State. Contractor will assume all costs incurred in compiling and supplying State Data. No State Data may be used for any marketing purposes.

31. **Reserved**

32. **Non-Disclosure of Confidential Information.** The parties acknowledge that each party may be exposed to or acquire communication or data of the other party that is confidential, privileged communication not intended to be disclosed to third parties. The provisions of this Section survive the termination of this Contract.

- a. Meaning of Confidential Information. For the purposes of this Contract, the term "**Confidential Information**" means all information and documentation of a party that: (a) has been marked "confidential" or with words of similar meaning, at the time of disclosure by such party; (b) if disclosed orally or not marked "confidential" or with words of similar meaning, was subsequently summarized in writing by the disclosing party and marked "confidential" or with words of similar meaning; and, (c) should reasonably be recognized as confidential information of the disclosing party. The term "Confidential Information" does not include any information or documentation that was: (a) subject to disclosure under the Michigan Freedom of Information Act (FOIA); (b) already in the possession of the receiving party without an obligation of confidentiality; (c) developed independently by the receiving party, as demonstrated by the receiving party, without violating the disclosing party's proprietary rights; (d) obtained from a source other than the disclosing party without an obligation of confidentiality; or, (e) publicly available when received, or thereafter became publicly available (other than through any unauthorized disclosure by, through, or on behalf of, the receiving party). For purposes of this Contract, in all cases and for all matters, State Data is deemed to be Confidential Information.
- b. Obligation of Confidentiality. The parties agree to hold all Confidential Information in strict confidence and not to copy, reproduce, sell, transfer, or otherwise dispose of, give or disclose such Confidential Information to third parties other than employees, agents, or subcontractors of a party who have a need to know in connection with this Contract or to use such Confidential Information for any purposes whatsoever other than the performance of this Contract. The parties agree to advise and require their respective employees, agents, and subcontractors of their obligations to keep all Confidential Information confidential. Disclosure to a subcontractor is permissible where: (a) use of a subcontractor is authorized under this Contract; (b) the disclosure is necessary or otherwise naturally occurs in connection with work that is within the subcontractor's responsibilities; 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 or any subcontractor may be required to execute a separate agreement to be bound by the provisions of this Section.
- c. Cooperation to Prevent Disclosure of Confidential Information. Each party must use its best efforts to assist the other party in identifying and preventing any unauthorized use or disclosure of any Confidential Information. Without limiting the foregoing, each party must advise the other party immediately in the event either party learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this Contract and each party will cooperate with the other party in seeking injunctive or other equitable relief against any such person.
- d. Remedies for Breach of Obligation of Confidentiality. Each party acknowledges that breach of its obligation of confidentiality may give rise to irreparable injury to the other party, which damage may be inadequately compensable in the form of monetary damages. Accordingly, a party may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies which may be available, to

include, in the case of the State, at the sole election of the State, the immediate termination, without liability to the State, of this Contract or any Statement of Work corresponding to the breach or threatened breach.

- e. Surrender of Confidential Information upon Termination. Upon termination of this Contract or a Statement of Work, in whole or in part, each party must, within 5 calendar days from the date of termination, return to the other party any and all Confidential Information received from the other party, or created or received by a party on behalf of the other party, which are in such party's possession, custody, or control; provided, however, that Contractor must return State Data to the State following the timeframe and procedure described further in this Contract. Should Contractor or the State determine that the return of any non-State Data Confidential Information is not feasible, such party must destroy the non-State Data Confidential Information and must certify the same in writing within 5 calendar days from the date of termination to the other party.

33. **Reserved**

34. **Reserved**

35. **Reserved**

36. **Records Maintenance, Inspection, Examination, and Audit.** The State or its designee may audit Contractor to verify compliance with this Contract. Contractor must retain, and provide to the State or its designee and the auditor general upon request, all financial and accounting records related to the Contract through the term of the Contract and for 7 years after the latter of termination, expiration, or final payment under this Contract or any extension ("**Audit Period**"). If an audit, litigation, or other action involving the records is initiated before the end of the Audit Period, Contractor must retain the records until all issues are resolved.

Within 10 calendar days of providing notice, the State and its authorized representatives or designees have the right to enter and inspect Contractor's premises or any other places where Contract Activities are being performed, and examine, copy, and audit all records related to this Contract. Contractor must cooperate and provide reasonable assistance. If any financial errors are revealed, the amount in error must be reflected as a credit or debit on subsequent invoices until the amount is paid or refunded. Any remaining balance at the end of the Contract must be paid or refunded within 45 calendar days.

This Section applies to Contractor, any parent, affiliate, or subsidiary organization of Contractor, and any subcontractor that performs Contract Activities in connection with this Contract.

37. **Warranties and Representations.** Contractor represents and warrants: (a) Contractor is the owner or licensee of any Contract Activities that it licenses, sells, or develops and Contractor has the rights necessary to convey title, ownership rights, or licensed use; (b) all Contract Activities are delivered free from any security interest, lien, or encumbrance and will continue in that respect; (c) the Contract Activities will not infringe the patent, trademark, copyright, trade secret, or other proprietary rights of any third party; (d) Contractor must assign or otherwise transfer to the State or its designee any manufacturer's warranty for the Contract Activities; (e) the Contract Activities are merchantable and fit for the specific purposes identified in the Contract; (f) the Contract signatory has the authority to enter into this Contract; (g) all information furnished by Contractor in connection with the Contract fairly and accurately represents Contractor's business, properties, finances, and operations as of the dates covered by the information, and Contractor will inform the State of any material adverse changes; and (h) all information furnished and representations made in connection with the award of this Contract is true, accurate, and complete, and contains no false statements or omits any fact that would make the information misleading. A breach of this Section is considered a material breach of this Contract, which entitles the State to terminate this Contract under Section 23, Termination for Cause.

38. **Conflicts and Ethics.** Contractor will uphold high ethical standards and is prohibited from: (a) holding or acquiring an interest that would conflict with this Contract; (b) doing anything that creates an appearance of impropriety with respect to the award or performance of the Contract; (c) attempting to influence or appearing to influence any State employee by the direct or indirect offer of anything of value; or (d) paying or agreeing to pay any person, other than employees and consultants working for Contractor, any consideration contingent upon the award of the Contract. Contractor must immediately notify the State of any violation or potential violation of these standards. This Section applies to Contractor, any parent, affiliate, or subsidiary organization of Contractor, and any subcontractor that performs Contract Activities in connection with this Contract.

39. **Compliance with Laws.** Contractor must comply with all federal, state and local laws, rules and regulations.
40. **Prevailing Wage.** This Contract and any subcontract is subject to the Prevailing Wage Act, 1965 PA 166. Contractor must comply with the state prevailing wage law and its requirements.
41. **Nondiscrimination.** Under the Elliott-Larsen Civil Rights Act, 1976 PA 453, MCL 37.2101, *et seq.*, and the Persons with Disabilities Civil Rights Act, 1976 PA 220, MCL 37.1101, *et seq.*, Contractor and its subcontractors agree not to discriminate against an employee or applicant for employment with respect to hire, tenure, terms, conditions, or privileges of employment, or a matter directly or indirectly related to employment, because of race, color, religion, national origin, age, sex, height, weight, marital status, or mental or physical disability. Breach of this covenant is a material breach of this Contract.
42. **Unfair Labor Practice.** Under MCL 423.324, the State may void any Contract with a Contractor or subcontractor who appears on the Unfair Labor Practice register compiled under MCL 423.322.
43. **Governing Law.** This Contract is governed, construed, and enforced in accordance with Michigan law, excluding choice-of-law principles, and all claims relating to or arising out of this Contract are governed by Michigan law, excluding choice-of-law principles. Any dispute arising from this Contract must be resolved in Michigan Court of Claims. Contractor consents to venue in Ingham County, and waives any objections, such as lack of personal jurisdiction or *forum non conveniens*. Contractor must appoint agents in Michigan to receive service of process.
44. **Non-Exclusivity.** Nothing contained in this Contract is intended nor will be construed as creating any requirements contract with Contractor. This Contract does not restrict the State or its agencies from acquiring similar, equal, or like Contract Activities from other sources.
45. **Force Majeure.** Neither party will be in breach of this Contract because of any failure arising from any disaster or acts of god that are beyond their control and without their fault or negligence. Each party will use commercially reasonable efforts to resume performance. Contractor will not be relieved of a breach or delay caused by its subcontractors. If immediate performance is necessary to ensure public health and safety, the State may immediately contract with a third party.
46. **Dispute Resolution.** The parties will endeavor to resolve any Contract dispute in accordance with this provision. The dispute will be referred to the parties' respective Contract Administrators or Program Managers. Such referral must include a description of the issues and all supporting documentation. The parties must submit the dispute to a senior executive if unable to resolve the dispute within 15 business days. The parties will continue performing while a dispute is being resolved, unless the dispute precludes performance. A dispute involving payment does not preclude performance.
- Litigation to resolve the dispute will not be instituted until after the dispute has been elevated to the parties' senior executive and either concludes that resolution is unlikely, or fails to respond within 15 business days. The parties are not prohibited from instituting formal proceedings: (a) to avoid the expiration of statute of limitations period; (b) to preserve a superior position with respect to creditors; or (c) where a party makes a determination that a temporary restraining order or other injunctive relief is the only adequate remedy. This Section does not limit the State's right to terminate the Contract.
47. **Media Releases.** News releases (including promotional literature and commercial advertisements) pertaining to the 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 of the State.
48. **Website Incorporation.** The State is not bound by any content on Contractor's website unless expressly incorporated directly into this Contract.
49. **Order of Precedence.** In the event of a conflict between the terms and conditions of the Contract, the exhibits, a purchase order, or an amendment, the order of precedence is: (a) the purchase order; (b) the amendment; (c) Exhibit A; (d) any other exhibits; and (e) the Contract.
50. **Severability.** If any part of this Contract is held invalid or unenforceable, by any court of competent jurisdiction, that part will be deemed deleted from this Contract and the severed part will be replaced by

agreed upon language that achieves the same or similar objectives. The remaining Contract will continue in full force and effect.

51. **Waiver.** Failure to enforce any provision of this Contract will not constitute a waiver.
52. **Survival.** The provisions of this Contract that impose continuing obligations, including warranties and representations, termination, transition, insurance coverage, indemnification, and confidentiality, will survive the expiration or termination of this Contract.
53. **Entire Contract and Modification.** This Contract is the entire agreement and replaces all previous agreements between the parties for the Contract Activities. This Contract may not be amended except by signed agreement between the parties (a "**Contract Change Notice**").