STATE OF MICHIGAN
ENTERPRISE PROCUREMENT

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

CONTRACT CHANGE NOTICE

Change Notice Number 1
to
Contract Number **071B5500144**

CONTRACTOR	
	Iris Waste Diversion Specialists, Inc.
	P.O. Box 5708
	Saginaw, MI 48603-5708
	Sarah Archer
	(734) 476-2186
	Sarah@iriswastediversion.com
	*******3598

STATE			
	Program Manager	Sherri Dunfield	DEQ
		(517) 284-6502	
		DunfieldS@michigan.gov	
	Contract Administrator	Dan Stevens	DTMB
		(517) 284-7049	
		StevensD6@michigan.gov	

CONTRACT SUMMARY			
DESCRIPTION: ANTENNA SITE LICENSE AGREEMENT-DMB/OITS			
INITIAL EFFECTIVE DATE	**INITIAL EXPIRATION DATE**	**INITIAL AVAILABLE OPTIONS**	**EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW**
September 15, 2015	May 1, 2019	2 – 1 year	May 1, 2019
PAYMENT TERMS		**DELIVERY TIMEFRAME**	
NET 45		N/A	
ALTERNATE PAYMENT OPTIONS			**EXTENDED PURCHASING**
☐ P-card	☐ Direct Voucher (DV)	☐ Other	☐ Yes ☒ No
MINIMUM DELIVERY REQUIREMENTS			
N/A			

DESCRIPTION OF CHANGE NOTICE				
OPTION	**LENGTH OF OPTION**	**EXTENSION**	**LENGTH OF EXTENSION**	**REVISED EXP. DATE**
☐		☐		May 1, 2019
CURRENT VALUE	**VALUE OF CHANGE NOTICE**	**ESTIMATED AGGREGATE CONTRACT VALUE**		
$46,500.00	$15,650.00	$ 62,150.00		

DESCRIPTION: Effective September 14, 2016, the Contract value is hereby increased by $15,650.00, and the attached Statement of Work is incorporated into the Contract as “Attachment A”. Please note the Contract Administrator has changed to Dan Stevens, and the Program Manager has changed to Sherri Dunfield (Sections 2, 3 and 4) Contract Administration, Notices and Program Manager. All other terms, conditions, specifications, and pricing remain the same. Per contract and agency agreement, and DTMB Procurement approval.

Scope of Work

Iris will focus on the identifications and verification of the primary resource recovery entity and main point of contact.

1.) MDEQ will provide Iris with a list of all currently available statewide county recycling contacts (Entity)
    a.) Iris will identify the primary entity which may be a:
        i. County
        ii. Authority
        iii. Conservation District
        iv. Non-Governmental Organization

2.) Iris will contact entity by phone with the following objectives:
    a.) To verify entity exists and record contact information, contact information will include
        i. Entity name
        ii. Address
        iii. Phone number
        iv. Web address
        v. Contact person's name and email address
        vi. General entity email address
    b.) To introduce the Michigan Recycling Directory (Recycle Search)
    c.) Encourage entity, on behalf of DEQ, to utilize and enter information into the MRD and to encourage other local recycling entities to add their information to the MRD
    d.) To gather information from entity about other local recycling contacts
    e.) Record the results of phone calls with entity

3.) To support item 3c, entity utilization of the MRD, Iris will follow up the initial entity phone call with an email which will include:
    a.) An overview of the Michigan Recycling Directory
    b.) Instructions on how to access the MRD including a live link to RecycleSearch.com
    c.) Information on who to contact if assistance is needed
    d.) MRD Promotion Flyer
        i. Message targets to entity and other
        ii. Includes information on why and how to use RecycleSearch.com
        iii. Single-sided, 8 1/2x11, full-color flyer
        iv. Delivered as PDF, printing costs not included

4.) As part of the entity phone call, Iris will poll entity to gauge their ability/desire to add/maintain their recycling information on the MRD within 30 days. To determine level of activity and impact of entity phone calls, Iris will:
    a.) Check MRD for addition of new information 30-45 days after entity phone call
    b.) Maintain record of entity level of activity

5.) A list of all other recycling contacts (other) obtained during entity phone calls, see item 3d, will be established and provided to the MDEQ

6.) Iris will provide bi-monthly updates to the Program Manager with the following information:
    a.) Number on entities contacted
    b.) Results of poll
    c.) MRD activity level
    d.) Number of other contacts

7.) The work as described will be completed by April 30, 2017

8.) The cost for the work described is $15,650.00

Form No. DTMB-3522 (Rev. 2/2015)
AUTHORITY: Act 431 of 1984
COMPLETION: Required
PENALTY: Contract change will not be executed unless form is filed

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

NOTICE OF CONTRACT NO. 071B5500144

between

THE STATE OF MICHIGAN

and

NAME & ADDRESS OF CONTRACTOR	PRIMARY CONTACT	EMAIL
Iris Waste Diversion Specialists, Inc.	Sarah M. Archer	sarah@iriswastediversion.com
PO Box 5708	PHONE	VENDOR TAX ID # (LAST FOUR DIGITS ONLY)
Saginaw, MI 48603-5708	(734) 476-2186	5539

STATE CONTACTS	AGENCY	NAME	PHONE	EMAIL
PROGRAM MANAGER	DEQ	Matt Flechter	(517) 614-7353	flechterm@michigan.gov
CONTRACT ADMINISTRATOR	DTMB	Jillian Yeates	(517) 284-7019	yeatesj@michigan.gov

CONTRACT SUMMARY

DESCRIPTION:

Recycling End Use Market Analysis and Recycling Market Development for the Department of Environmental Quality

INITIAL TERM	EFFECTIVE DATE	INITIAL EXPIRATION DATE	AVAILABLE OPTIONS
3 Years, 8 Months	September 15, 2015	May 1, 2019	2 one-year

PAYMENT TERMS	F.O.B.	SHIPPED TO
Net 45	N/A	N/A

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

MINIMUM DELIVERY REQUIREMENTS:

N/A

MISCELLANEOUS INFORMATION:

THIS IS NOT AN ORDER: This Contract Agreement is awarded on the basis of our inquiry bearing the solicitation #007115B0005580. Orders for delivery will be issued directly by Departments through the issuance of a Purchase Order Form

ESTIMATED CONTRACT VALUE AT TIME OF EXECUTION:	$46,500.00

For the Contractor:

_____ _____

Sarah M. Archer,
Contract Administrator
Iris Waste Diversion Specialists, Inc.

Date

For the State:

_____ _____

Sharon Walenga-Maynard,
Sourcing Director
State of Michigan

Date

STATE OF MICHIGAN
Contract No. 071B5500144
Recycling Market Directory

EXHIBIT A
STATEMENT OF WORK
CONTRACT ACTIVITIES

Project Request: This is a Contract to perform a Recycling Market Directory.

1.0 Background

Recycling Plan of Action

Governor Snyder's Recycling Plan of Action issued in 2014 highlights the importance of recycling market development. http://www.michigan.gov/documents/deq/DEQ-OWMRP-SWS-Proposed_Recycling_Action_Plan_448494_7.pdf The Governor's Plan says, "Leader states invest in strong market development programs. By providing opportunities to both the supply and the demand side of the recycling industry, markets will develop, and demand will increase for both recycling and recycled commodities. A market development program should have two components: technology transfer and business development." Among other items the plan calls for the DEQ to "Create a directory that identifies potential buyers for recycled commodities to assist local community recycling programs in defraying operational costs" and "engage partners in market development and innovation." This Contract will be a major first step in accomplishing these goals. It is important to begin the implementation phase of the Governor's recycling initiative with a firm understanding of the existing flow of recycling materials through the recycling value chain

2.0 Requirements
Recycled Materials Market Directory

The Contractor must perform management and maintenance of the Michigan Recycled Materials Market Directory

A. Contractor must develop a directory of end users, buyers, and brokers of recycled materials regionally servicing Michigan. The directory is to be provided in MS Access database format with a separate column for each data point to include:
    1. End User, Buyer, or Broker Name
    2. Company Contact
    3. Address
    4. Phone Number
    5. Email Address
    6. Website
    7. Materials Accepted
    8. Description and information about collection, material preparation, and amounts and volumes accepted
B. Methodology:
    1. Contractor will manage and maintain a Recycled Materials Markets Directory (RMMD) that will perform as an effective and reliable tool for suppliers and seekers of recycled and recyclable commodities and deliver a quality experience that will gain user approval and referral.
    2. The major components of the RMMD project include verification and collection of market information, populating the database with verified, accurate information, and assuring the accuracy of the RMMD through routine contact with the markets. New market opportunities will be identified through continuous attention to industry developments. The following steps will be taken in the development and maintenance of the database for the Michigan RMMD:
        a. Market Research and Compilation of Information
            i. Develop a standardized worksheet for collecting market information

ii. Verification of information contained within current Recycled Materials Market Directory
iii. Research to establish a list of additional Michigan and Regional markets.
iv. Contact markets to confirm company information for inclusion in RMMD
v. Research and compilation activities will occur through a variety of methods including Internet, industry and manufacturing groups and associations, NAICS code, inquiry and referral.
vi. Make revisions to existing market information and populate database with new markets

b. RMMD Maintenance
i. The directory will be divided into sections and a section will be scheduled for review and verification each month throughout the year. This rotating schedule will ensure all information is verified annually, at a minimum.
ii. The addition of new markets and revisions to existing information will occur as identified and requested.
iii. To keep the RMMD as current as possible, networks will be established to obtain information on changes within the marketplace for inclusion/deletion in the directory.
iv. Contractor will remain continuously alert for new market opportunities
v. Progress reports will be provided as required by the State.

C. Optional: Annual maintenance of the directory for an additional 3 year period through May 1, 2019 is at the State's option. The annual maintenance cost is not included in the budget stated on page one (1), this will be an additional amount per year for maintenance.

D. Project Plans
1. Contractor must develop project plans. The project plans must document the following and follow the schedule for each task stated in the Task Time Frame:
   a. The project plan will include a timeline for all tasks and deliverables.
   b. The project plan will identify any entities with which the Contractor will coordinate to accomplish the identified tasks.
   c. No other work shall be conducted until the project plan is approved by the Program Manager.
   d. Should changes to the work plan be necessary, the Contractor will submit any such changes to the Program Manager for approval before conducting other work.
   e. Project Plan reporting requirements:
      1. The Contractor must communicate with the Program Manager on an ongoing basis and provide written reports, on a monthly basis at a minimum, to the Program Manager covering activities that are in progress, completed, and upcoming; any issues that have arisen; a status of meeting the timelines established in the project plan, etc.
      2. If significant issues arise, the Contractor must not wait for a scheduled report and will report them to the Program Manager immediately.

E. Task Time Frame: The contract is estimated to begin September 15, 2015 and end May 1, 2019 if optional 3-year maintenance is performed. The time frame below reflects the task/time frame of the contract from date of award:

Tasks	**Deliverable(s)**	**Estimated Timeframe**
Task A: A directory of end users, buyers, and brokers of recycled materials	MS Access Database	5/1/2016
Task B: Plan for maintenance of the directory for an additional 3 years	Plan	Ongoing through 5/1/2019 with Monthly Progress Reports

3.0 Staffing

3.1 Contractor Representative

The Contractor must appoint *a Project Manager* who holds the following authority: Act as the Contractor's Representative for work to be provided under this contract; Act as the Contractor's Representative regarding contractual matters relating to this contract.

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

Contractor's Contractor Representative: Tracy Purrenhage

3.2 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 project.

3.3 Key Personnel

The Contractor must appoint a Project Manager who will be directly responsible for the day-to-day operations of the Contract ("Key Personnel"). Key Personnel must be specifically assigned to the State account, be knowledgeable on the contractual requirements.

Contractor's Project Manager: Tracy Purrenhage

The State has the right to recommend and approve in writing the initial assignment, as well as any proposed reassignment or replacement, of any Key Personnel. Before assigning an individual to any Key Personnel position, Contractor will notify the State of the proposed assignment, introduce the individual to the State's Project Manager, and provide the State with a resume and any other information about the individual reasonably requested by the State. The State reserves the right to interview the individual before granting written approval. In the event the State finds a proposed individual unacceptable, the State will provide a written explanation including reasonable detail outlining the reasons for the rejection. The State may require a 30-calendar day training period for replacement personnel.

Contractor's Key Personnel
Sarah M. Archer
Tracy Purrenhage
Saundra Porter-Riley
Sandra Cottle

3.4 Disclosure of Subcontractors

If the Contractor intends to utilize subcontractors, 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.

4. Ordering

4.1 Authorizing Document

The appropriate authorizing document for the Contract will be a blanket purchase order and Purchase Order (PO) release.

5. Invoice and Payment

5.1 Payment Methods

The State will make payment for Contract Activities by electronic funds transfer (EFT).

STATE OF MICHIGAN

Contract No. 071B5500144
Recycling Market Directory

EXHIBIT B
RESERVED

STATE OF MICHIGAN

Contract No. 071B5500144
Recycling Market Directory

EXHIBIT C
PRICING

Recycling Market Directory, Exhibit. A	***Year***	***Description of Services:*** Recycled Materials Market Directory	***Fixed Cost***
Task A	1	A directory of end users, buyers, and brokers of recycled materials regionally servicing Michigan; including required work plans	$24,000.00
		Sub-total for Year 1	
Task B	2-4	Optional: Annual maintenance of the directory for an additional 3 year period – this is an optional item for which pricing will not be considered in Task A	$7,500.00
		Sub-total for Years 2-4	$22,500.00
		Grand Total	**$46,500.00**

STATE OF MICHIGAN

STANDARD CONTRACT TERMS

This STANDARD CONTRACT ("**Contract**") is agreed to between the State of Michigan (the "**State**") and Iris Waste Diversion Specialists, Inc. ("**Contractor**"), a Michigan corporation. This Contract is effective on September 15, 2015 ("**Effective Date**"), and unless terminated, expires on May 1, 2019.

This Contract may be renewed for up to 2 one year period(s). Renewal must be by written agreement of the parties and will automatically extend the Term of this Contract.

The parties agree as follows:

1. **Duties of Contractor.** Contractor must perform the services and provide the deliverables described in **Exhibit A – Statement of Work** (the "**Contract Activities**"). 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.

2. **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.

If to State:	If to Contractor:
Jillian Yeates *525 W. Allegan* *Lansing, MI 48913* *yeatesj@michigan.gov* *(517) 284-7019*	*Sarah M. Archer, President* *PO Box 5708* *Saginaw, MI 48603-5708* *sarah@iriswastediversion.com* *734-476-2186*

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**"):

State:	Contractor:
Jillian Yeates *525 W. Allegan* *Lansing, MI 48933* *yeatesj@hotmail.com* *517-284-7019*	*Sarah M. Archer, President* *PO Box 5708* *Saginaw ,MI 48603-5708* *sarah@iriswastediversion.com* *734-476-2186*

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**"):

State:	I Contractor:
RECYCLED COMMODITIES PROGRAM MANAGER: Matt Flechter DEQ, Office of Waste Management and Radiological Protection 4th Floor, South Tower, Constitution Hall 525 W. Allegan Lansing, MI 48933 517-614-7353	*Tracy A. Purrenhage* *903 N. Vermont Ave.* *Royal Oak, MI 48067* *tracy@iriswastediversion.com* *248-217-6855*

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 an company with an A.M. Best rating of "A" or better and a financial size of VII or better.

Insurance Type	Additional Requirements
Commercial General Liability Insurance	
Minimal Limits: $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 Deductible Maximum: $50,000 Each Occurrence	Contractor must have their policy 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 0.
Automobile Liability Insurance	
Minimal Limits: $1,000,000 Per Occurrence	

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

If any of the required policies provide **claim-made** coverage, the Contractor must: (a) provide coverage with a retroactive date before the effective date of the contract or the beginning of Contract Activities; (b) maintain coverage and provide evidence of coverage for at least three (3) years after completion of the Contract Activities; and (c) if coverage is canceled or not renewed, and not replaced with another claims-made policy form with a retroactive date prior to the contract effective date, Contractor must purchase extended reporting coverage for a minimum of three (3) years after completion of work.

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.
This Section is not intended to and is not be construed in any manner as waiving, restricting or limiting the liability of either party for any obligations under this Contract (including any provisions hereof requiring Contractor to indemnify, defend and hold harmless the State).

7. **Reserved.**

8. **Reserved.**

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. Contractor hereby acknowledges that the State is and will be the sole and exclusive owner of all right, title, and interest in the Contract Activities and all associated intellectual property rights, if any. Such Contract Activities are works made for hire as defined in Section 101 of the Copyright Act of 1976. To the extent any Contract Activities and related intellectual property do not qualify as works made for hire under the Copyright Act, Contractor will, and hereby does, immediately on its creation, assign, transfer and otherwise convey to the State, irrevocably and in perpetuity, throughout the universe, all right, title and interest in and to the Contract Activities, including all intellectual property rights therein.

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. **Reserved.**

18. **Reserved.**

19. **Reserved**.

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 Services purchased under this Agreement are for the State's exclusive use. Notwithstanding the foregoing, all prices are inclusive of taxes, and Contractor is responsible for all sales, use and excise taxes, and any other similar taxes, duties and charges of any kind imposed by any federal, state, or local governmental entity on any amounts payable by the State under this Contract.

    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 4 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. **Reserved.**

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**").