

STATE OF MICHIGAN
 DEPARTMENT OF NATURAL RESOURCES
 PROCUREMENT
 P.O. BOX 30028, LANSING, MI 48909
 OR
 525 W. ALLEGAN, LANSING, MI 48933

CHANGE NOTICE NO. 01
 to
CONTRACT NO. 751B1300016
 between
THE STATE OF MICHIGAN
 and

NAME & ADDRESS OF CONTRACTOR	PRIMARY CONTACT	EMAIL
Eastern Michigan University Office of Research Development Starkweather Hall, 2nd Floor Ypsilanti, MI 48197	Susan Campbell	susan.campbell@emich.edu
	PHONE	CONTRACTOR'S TAX ID NO. (LAST FOUR DIGITS ONLY)
	(734) 487-3090	5986/054

STATE CONTACTS	DIVISION	NAME	PHONE	EMAIL
CONTRACT MANAGER	Wildlife	Bill Scullon	(906) 353-6651	Scullonh@michigan.gov
CONTRACT ADMINISTRATOR	Finance and Operations	Jana Harding-Bishop	(517) 284-5938	HardingJ3@michigan.gov

CONTRACT SUMMARY			
DESCRIPTION: Bat Survey Services			
INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW
2/16/11	11/30/15	5 – 1 YEAR	11/30/15
PAYMENT TERMS		DELIVERY TIMEFRAME	
Net 45		N/A	
ALTERNATE PAYMENT OPTIONS			EXTENDED PURCHASING
<input type="checkbox"/> P-card <input type="checkbox"/> Direct Voucher (DV) <input type="checkbox"/> Other			<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
MINIMUM DELIVERY REQUIREMENTS			
N/A			

DESCRIPTION OF CHANGE NOTICE				
EXERCISE OPTION?	LENGTH OF OPTION	EXERCISE EXTENSION?	LENGTH OF EXTENSION	REVISED EXP. DATE
<input checked="" type="checkbox"/>	1 year	<input type="checkbox"/>		11/30/16
CURRENT VALUE		VALUE OF CHANGE NOTICE	ESTIMATED AGGREGATE CONTRACT VALUE	

\$122,822.00	\$30,390.00	\$153,212.00
DESCRIPTION: Exercise an option year to extend contract end date to 11/30/16 Add \$30,390.00 to the contract to cover FY-16 and document budget (see attached)		

		2015-2016
Wages		\$12,000
A. Kurta		\$6,000
S. Smith (150 hours/year @ \$40/hour)		\$6,000
Fringe Benefits 8%		\$960
Kurta		\$480
Smith		\$480
Travel		\$7,759
Mileage		\$4,715
Lodging		\$1,650
Per Diem		\$1,394
Field Equipment/supplies		\$900
climbing gear (ropes, ascenders, harnesses, crampons, etc.), batteries, lights, oxygen sensor, cold-weather gear (snowshoes, gators, gloves, snowpants, warmers, etc.), decontamination supplies (chemicals, tubs, etc.), camera supplies, etc.		
Rental (Snowmobile/4-wheeler/trailer)		\$2,500
Direct		\$24,119
Indirect costs	26%	\$6,271
Total		\$30,390

Change Notice Number: 01
Contract Number: 751B1300016

FOR THE CONTRACTOR:

Eastern Michigan University

Company Name

On-file in DNR Procurement

Authorized Agent Signature

Susan Campbell

Authorized Agent (Print or Type)

10/21/15

Date

FOR THE STATE:

On-file in DNR Procurement

Signature

Laurie Gyorkos, Manager

Name & Title

DNR/Finance and Operations Division

Dept/Division

10/23/15

Date

March 31, 2011

STATE OF MICHIGAN
DEPARTMENT OF NATURAL RESOURCES
PROCUREMENT SERVICES
P.O. BOX 30028, LANSING, MI 48909
OR
530 W. ALLEGAN, LANSING, MI 48933

NOTICE
OF
CONTRACT NO. 751B1300016
(supercedes 777B1300016)
Between
THE STATE OF MICHIGAN
and

NAME & ADDRESS OF CONTRACTOR Eastern Michigan University Office of Research Development Starkweather Hall, 2nd Floor Ypsilanti, MI 48197	CONTRACTOR CONTACT: Susan Campbell (734) 487-3090
	BUYER Sharon Walenga-Maynard 517-373-7527 maynards1@michigan.gov
CONTRACT ADMINISTRATOR: H. William Scullon	
Bat Survey Service	
CONTRACT PERIOD: From: February 16, 2011 To: November 30, 2015	
TERMS: Net 45 days	SHIPMENT: N/A
F.O.B. N/A	SHIPPED FROM: N/A
MINIMUM DELIVERY REQUIREMENTS: N/A	

The terms and conditions of this Contract are those of Contract No. 777B1300016 (attached).

Estimated Contract Value: \$ 122,822.00

March 31, 2011

STATE OF MICHIGAN
DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENT
PROCUREMENT SERVICES
P.O. BOX 30028, LANSING, MI 48909
OR
530 W. ALLEGAN, LANSING, MI 48933

CHANGE NOTICE NO. 1
TO
CONTRACT NO. 777B1300016
between
THE STATE OF MICHIGAN
and

NAME & ADDRESS OF CONTRACTOR Eastern Michigan University Office of Research Development Starkweather Hall, 2nd Floor Ypsilanti, MI 48197	CONTRACTOR CONTACT: Susan Campbell (734) 487-3090
	BUYER Sharon Walenga-Maynard 517-373-7527 maynards1@michigan.gov
CONTRACT ADMINISTRATOR: H. William Scullon	
Bat Survey Service	
CONTRACT PERIOD: From: February 16, 2011 To: November 30, 2015	
TERMS: Net 45 days	SHIPMENT: N/A
F.O.B. N/A	SHIPPED FROM: N/A
MINIMUM DELIVERY REQUIREMENTS: N/A	

Effective March 13, 2011, Department of Natural Resources and Environment was reorganized into two separate departments - Department of Natural Resources and Department of Environmental Quality. Due to Administrative and accounting changes, Contract 777B1300016 is hereby CANCELED and REPLACED with 751B1300016. All terms and conditions of Contract 777B1300016 remain the same and therefore will become part of contract 751B1300016.

Estimated Contract Value Remains: \$122,822.00

**DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENT
FINANCIAL SERVICES
P.O. BOX 30425, LANSING, MI 48909
OR
530 W. ALLEGAN, LANSING, MI 48933**

**CONTRACT AGREEMENT NO. 777B1300016
between
THE STATE OF MICHIGAN
and**

NAME & ADDRESS OF VENDOR Eastern Michigan University Office of Research Development Starkweather Hall, 2nd Floor Ypsilanti, MI 48197	TELEPHONE Susan Campbell (734)-487-3090
BUYER (517) 373.7587 Sharon Walenga-Maynard, C.P.M. maynards1@michigan.gov	
Contract Administrator: H. William Scullon <p style="text-align: center;">Bat Survey Services</p>	
CONTRACT PERIOD: From: February 16, 2011 To: November 30, 2015	
TERMS <p style="text-align: center;">Net 45 days</p>	SHIPMENT <p style="text-align: center;">N/A</p>
F.O.B. <p style="text-align: center;">N/A</p>	SHIPPED FROM <p style="text-align: center;">N/A</p>
MINIMUM DELIVERY REQUIREMENTS <p style="text-align: center;">N/A</p>	

The attached represents the mutually agreed to description of services to be provided and terms and conditions.

This is not an order. A Purchase Order will be issued and sent to the contractor to request goods or services as authorized under the terms and conditions of this contract.

Est. Contract Value: \$122,822

Caryn Charter, Director	Date	Sharon Walenga-Maynard, C.P.M.	Date
EMU, Office of Research Dev.		MDNR, Contract Services	

Article 1 – Statement of Work (SOW)

1.010 Project Identification

1.011 Project Request

The purpose of this project is for the Department of Natural Resources and Environment, Wildlife Division (DNRE-WD) to conduct surveys in underground mines and caves and to collect biological data regarding bat populations, disease surveillance, assess public safety risk and document the underground works and environmental conditions.

1.012 Background

Since 1996, the DNRE-WD has conducted annual bat population survey work throughout the Upper Peninsula (UP), west and central primarily, in numerous abandoned iron and copper mines on all ownership types. Abandoned mines are entered by a two-man team, for safety reasons, and assessed for various biological and structural aspects. In the past, one member of the team was the bat biology expert to conduct and oversee the population surveys while the second team member was the underground, rope and safety expert who assisted in the biological portion of the survey process. The survey team has been responsible for the logistical work necessary to secure legal access to the mine sites which historically meant that one member of the survey team was responsible for coordinating which mine sites would be surveyed with DNRE-WD, the various County Mine Inspectors, and respective landowners. Methods for entering the mine sites vary depending on whether the mines are horizontal or vertical in orientation. Safely conducting the surveys may require rope work (repelling and ascending) into vertical shafts. A list of previously identified/surveyed mines is maintained by DNRE-WD for subsequent periodic resurveys, but newly identified sites are continually sought from various sources

Survey team will systematically survey the underground works of abandoned mines, caves and other identified sites, primarily in the UP but some sites are located in the Southern Peninsula, for bat populations. Field surveys are to be conducted during the same time period annually, the period of November 1 and completed prior to April 15 when the bats are in torpor (hibernation). When physically possible conduct a minimum population count otherwise appropriate sampling techniques will be utilized to determine population estimates. Population estimates should include documentation of species present and proportion of population by species. DNRE-WD will provide guidance on population sampling methodology. Reasonable efforts are to be made to keep disturbance to hibernating bats and invasive techniques to a minimum.

A critical facet to the survey protocol will be disease surveillance for White Nose Syndrome (WNS) of all mine sites and hibernacula's entered. WNS is new wildlife disease phenomenon first documented in bats in the Northeast region of the US in 2006. The infected area is rapidly expanding (16 States and 2 Canadian provinces). It is characterized by white fungal growth on infected bats and has resulted in extremely high mortality in infected hibernacula. WNS poses a catastrophic threat to the existence and stability of Great Lakes bat populations and as such early detection is critical in slowing the disease front. The survey team is to systematically evaluate bat populations surveyed for any sign of White Nose Syndrome (WNS) based on WD direction, any bats that appear diseased or otherwise abnormal should be collected / sampled using standard control protocols (consult with DNRE representative for detailed instructions) and provided to the DNRE or designated facility for testing. If any evidence WNS is detected DNRE-WD Contract Administrator is to be notified immediately. Between all survey sites survey team is required to decontaminate field and personal equipment in accordance with USFWS WNS decontamination protocols (consult with DNRE-WD Contract Administrator for detailed instructions).

Responsibility rests with the survey team to provide all their own personal and rope safety equipment, safety training, accommodations and transportation to and from survey sites. The survey team has the responsibility for all the logistical work necessary to secure legal access to the mine sites which has historically meant survey team was responsible for coordinating which mine sites would be resurveyed and new survey with DNRE-WD Contract Administrator, the various County Mine Inspectors, and respective landowners. The annual full field season (November 1 - April 15) survey target is to survey a minimum of 15 mines (coordination of sites selected to be surveyed needs to be pre-approved by DNRE-WD Contract Administrator) However, all reasonable efforts to do as many sites as possible should be maximized. Each year a portion of the survey work, dependent upon opportunity, has been expended on assessing newly discovered mine sites. Otherwise a subset of previously surveyed mines will be surveyed. Survey Team has primary responsibility for identifying new sites. Precise mine locations / directions for specified sites and coordination of all resurveys and inclusion of new mine sites should be provided to and pre-approved by the DNRE Contract Administrator prior to initiation of surveys. DNRE – WD reserves the authority to redirect survey work, focus, methodology, and decontamination protocols in the eventuality WNS is discovered within the state.

Based on survey results and the direct recommendations of the survey team a prioritization of mine sites that warrant additional protection / conservation measures (i.e. construction of specially designed bat friendly gate structures) will be shared amongst the Michigan Bat Working Group partners. This enables the responsible state or federal agency with appropriate jurisdiction to effectively develop protection / conservation mechanisms for these sites.

1.020 Scope of Work and Deliverables

1.021 In Scope

Contractor will systematically survey the underground works for bat populations and provide annual summary reports of the surveyed areas. A final report in the form of an updated digital database (already in DNR possession) will be submitted by September 30, 2015. Original field notes will be retained by Dr. Kurta and copies will be made available to MDNRE upon request.

1.022 Work and Deliverable

Field work is to be conducted beginning in November 1 and completed prior to April 15 each year (when the bats are in topor or hibernation) each winter, with a comprehensive annual summary survey report due no later than May 31, of each year of the mutliyear contract. Surveys are to be conducted each winter over a five year period Work includes the following:

1. Where physically possible the contractor shall conduct a minimum population count, otherwise appropriate sampling techniques will be utilized to determine population estimates. Population estimates should include documentation of species present and proportion of population by species. DNRE- WD will provide guidance on population sampling methodology.
2. Bats to be systematically evaluated and surveyed for any sign of White Nose Syndrome (WNS). Any bats that appear diseased or otherwise abnormal should be collected / sampled using standard control protocols (reference USFWS WNS website) and provided to the DNRE or designated facility for testing. Any suspected or confirmed detection of WNS will require immediate notification of DNRE –WD Project Manager. DNRE-WD will determine / coordinate appropriate public release of any such information through communications channels and message content. Between all survey sites survey team is required to decontaminate field and personal equipment in accordance with USFWS WNS decontamination protocols (consult with DNRE-WD Project Manager for detailed instructions). Some decontamination supplies may be provided by

WD such as protective disposable coveralls and gloves, disinfectant, etc. depending on funding availability. Specialized WNS surveillance equipment and other survey materials which may subsequently be required at later dates by DNRE will be provided by WD.

3. Measure and record the air temperatures and relative humidity within the mines, map and record the underground works, GPS and record the orientation of known entrances, document any public safety risks associated with site, photo document entrance and underground works, provide all pertinent information on mine location, surface and minerals ownership, directions to site, and pertinent contact information. Record time, date and weather conditions during field survey. All the above information is to be included in the final survey report due May 31 of each year of multi year survey period

The target is to survey a minimum of 15 mines per full survey season (Nov 1 – April 15). Precise mine locations / directions for specified sites and coordination of all resurveys and inclusion of new mine sites to be provided by and pre-approved by the DNR Contract Administrator prior to initiation of surveys. DNRE reserves the right to add other sites or modify this list but any changes will be agreed to and impact on contract deliverables and cost documented with a contract change.

Target Mines to be surveyed during the five year period may include but are not limited to a subset from the following list of all known sites. Any given years individual survey season scheduled target list of sites will be determined by the **DNRE- WD Project Manager** in conjunction with the **Survey Team and mutually agreed to**. Specific site locations / and legal descriptions are sensitive information and are available directly through the **DNRE- Project Manager**.

- Adventure mine, Ontonagon County
- Adventure Adit, Ontonagon County
- Advenbure Shaft, Ontonagon County
- Agency Place Mine, Keweenaw County
- Algonquin Adit #1, Ontonagon County
- Algonquin Adit #2 Ontonagon County
- Algonquin Adit #3, Ontonagon County
- Arch Cave, Mackinac County
- Aztec Adit, Ontonagon County
- Aztec Mine, Ontonagon County
- Aztec Upper Drift, Ontonagon County
- Bad Breath Cave, Mackinac County
- Bate's Cave, Iron County
- Bear Cave, Berrien County
- Beaten's Cave, Ontonagon County
- Bumblebee Mine, Ontonagon County
- Caledonia Mine, Ontonagon County
- Caledonia Adit, Ontonagon County
- Cave In The Woods, Mankinac County
- Chatam Mine, Gogebic County
- Child's Adit, Keweenaw County
- Colby Mine, Gogebic County
- Collin's Adit, Ontonagon County
- Copper Falss Mine, Keweenaw County
- Copper Peak Adit, Gogebic County
- County Line Adit, Ontonagon County
- Delaware Mine, Keweenaw County
- Derby Adit, Ontonagon County

- Derby Shaft, Ontonagon County
- Devil's Kitchen, Mackinac County
- Devon Mine, Ontonagon County
- Disgusting Cave, Mackinac County
- Douglas Houghton Adit #1, Keweenaw County
- Douglas Houghton Adit #2, Keweenaw County
- East Evergreen Bluff Mine, Ontonagon County
- Eagle Point Cave, Mackinac County
- Eagle River Adit #1, Keweenaw County
- Eagle River Adit #2, Keweenaw County
- Eagle River Adit #3, Keweenaw County
- Eureka Mine, Ontonagon County
- Eureka Shaft #3, Gogebic County
- Farm Mine, Ontonagon County
- Fenwick's Cache, Mackinac County
- Firesteel Mine, Ontonagon County
- Flintsteel Adit, Ontonagon County
- Glen Adit #1, Ontonagon County
- Glen Adit #2, Ontonagon County
- Glen Adit #3, Ontonagon County
- Galena Mine, Gogebic County
- Hancock Mine, Houghton County
- Hendrire River Water Cave, Mackinac County
- Hilton Mine, Ontonagon County
- Hilton Ohio, Ontonagon County
- Hole-in-the-wall Adit, Ontonagon County
- Indiana Mine, Ontonagon County
- Iron Mountain Iron Mine, Dickinson
- Isabella Mine, Iron County
- Jone's Adit, Dickinson County
- Keel Ridege Mine, Dickinson County
- Knowlton Mine, Ontonagon County
- Kochab Cave, Mackinac County
- Lafayette East Adit, Ontonogon County
- Lafayette West Adit, Ontonogon County
- Lafayette East Shaft, Ontonogon County
- Lafayette West Shaft, Ontonogon County
- Mackinac Bridge (anchor peirs), Mackinac County
- Mass Mine, Ontonagon County
- Mass C Adit, Ontonagon County
- Mastodon #2 Shaft, Iron County
- Mead Adit of Carp Lake Mine, Ontonagon County
- Merchant Mine, Ontonagon County
- Merchant's Adit North, Ontonagon County
- Merchant's Adit South, Ontonagon County
- Meriweather Shaft #1, Ontonagon County
- Meriweather Shaft #2, Ontonagon County
- Meriweather Shaft #3, Ontonagon County
- Michigan A, Ontonagon County
- Millie Mine, Dickinson County
- Nassau Mine, Ontonagon County
- National Mine #7, Ontonagon County
- National Mine #3, Ontonogon County

- Nebraska Mine, Ontonagon County
- New Algoma, Ontonagon County
- North American Adit, Keweenaw County
- North Belt Moine, Ontonagon County
- North Cliff Mine, Keweenaw County
- North Lake Mine, Ontonagon County
- Norway Mine, Dickinson County
- Norwich, Ontonagon County
- Norwich D, Ontonagon County
- Ogemaw Mine, Ontonagon County
- Ogemaw Adit, Ontonagon County
- Ohio Traprock Mine #1, Ontonagon County
- Ohio Traprock Mine #2, Ontonagon County
- Ohio Traprock Mine #3, Ontonagon County
- Ohio Traprock Mine #59, Ontonagon County
- Ohio Traprock Mine #60, Ontonagon County
- Old Caledonia Mine, Ontonagon County
- Ohio Mine, Baraga County
- Old Flintsteel River Adit A, Ontonagon County
- Old Flintsteel River Adit B, Ontonagon County
- Old Penn Mine, Ontonagon County
- Owl Creek Fissure, Keweenaw County
- Pabst Mine H Shaft, Gogebic County
- Palms Mine Air Shaft, Gogebic County
- Penninsular Adit, Ontonagon County
- Pewabic Mine, Houghton County
- Pewabic Mine, Dickinson County
- Piscatauwau Mine, Ontonagon County
- Quarry Cave, Mackinac County
- Quincy Mine, Houghton County
- Randville Quarry Mine, Ontonagon County
- Ridge Adit, Ontonagon County
- Rockport Quarry North Tunnel, Alpena County
- Rockport Quarry South Tunnel, Alpena County
- Scott's Cave, Mackinac County
- Senaca Mine #3, Keweenaw County
- Silas Doty Cave, Hillsdale County
- Silver Mountain Mine, Houghton County
- Skull Cave, Mackinac County
- South Belt Mine, Ontonagon County
- South Bluff Adit, Ontonagon County
- South Bluff East Adit, Ontonagon County
- South Lake Mine, Ontonagon County
- Stair Cave, Mackinac County
- Sugarloaf Cave, Mackinac County
- Sunday Lake Mine, Gogebic County
- Talyor Adit, Baraga County
- Tilden Mine, Gogebic county
- Tippy Dam, Manistee
- Trader's Mine, Dickinson County
- Toltec Mine, Ontonagon County
- Vulcan Adit, Dickinson County
- Washburn Mine, Gogebic County

- West Evergreen Bluff Mine, Ontonagon County
- Windsor Shaft #3, Ontonagon County
- Young's Adit, Ontonagon County

All field survey work is to be completed prior to April 15 of each year.

A comprehensive summary survey report is due no later than May 31, each year. All the above information is to be included in the final survey report.

1.030 Roles and Responsibilities

1.031 Contractor Staff, Roles, and Responsibilities

Staff must have experience in abandoned underground mines and repelling, should have current rabies vaccinations, skilled in WNS detection and species differentiation, and experienced in underground bat sampling and hibernation surveys.

Contractor is responsible to provide all equipment, secure appropriate permission to enter the mines, Coordinate work with County Mine Inspectors, have sufficient safety training, follow WNS decontamination protocols as published by the Fish and Wildlife Services, and provide accommodations and transportation to and from survey sites.

1.040 Project Plan

1.041 Project Plan Management

Annually, contractor and DNRE Project Manager will agree to the work to be performed.

1.042 Reports

DNR's Contract Administrator and/or liaison will meet with the Contractor regularly, usually in the field, for the purpose of reviewing progress and providing necessary guidance to the Contractor in solving problems which arise. Upon issuance of this Contract, Contractor will contact DNRE to schedule the commencement of work.

The annual report will be due no later than May 31 each year. A final report in the form of an updated digital database (already in DNR possession) will be submitted by September 30, 2015. Additionally, the contractor shall provide two hard copies.

1.050 Acceptance

1.051 Criteria

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

Completion of the survey and distribution of the reports to DNRE-WD.

1.052 Final Acceptance

Receipt of annual and final report by DNRE-WD project manager.

1.060 Proposal Pricing

1.061 Proposal Pricing

Contractor's price proposal should be all inclusive. See Attachment A.

Bidders are encouraged to offer quick payment terms (i.e. _____% discount off invoice if paid within _____ days). This information can be noted on the bidders price proposal (see Attachment A) and/or a separated attachment. This may be a factor considered in our award decision.

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

1.062 Price Term

(X) Firm Fixed/ Lump Sum Price for bat surveys and annual reports.

Price quoted is firm for the entire length of the Contract. Progress payments may be made each year with approval by the DNRE-WD Project Manager.

1.063 Tax Excluded from Price

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

(b) Federal Excise Tax: The State may be exempt from Federal Excise Tax, or the taxes may be reimbursable, if articles purchased under any resulting Contract are used for the State's exclusive use. Certificates showing exclusive use for the purposes of substantiating a tax-free, or tax-reimbursable sale will be sent upon request. If a sale is tax exempt or tax reimbursable under the Internal Revenue Code, prices must not include the Federal Excise Tax.

1.064 Holdback (Deleted-Not Applicable)

1.070 Additional Requirements

1.071 Additional Terms and Conditions specific to this RFP (Deleted-Not Applicable)

Article 2, Terms and Conditions

2.000 Contract Structure and Term

2.001 Contract Term

This Contract period is from 2/16/2011 to 11/30/2015. All outstanding Purchase Orders must also expire upon the termination (cancellation for any of the reasons listed in **Section 2.150**) of the Contract, unless otherwise extended.

2.002 Options to Renew

This contract may be renewed by a written and mutually executed agreement of the parties, in accordance with Section I-I above, not less than 30 days before its expiration. The contract may be renewed for up to five (5) one year periods.

2.003 Legal Effect

The Contractor shall not proceed with the performance of the work to be done under the Contract, including the purchase of necessary materials, until notification and receipt of a Purchase Order. The Purchase Order results from the Contractor's proposal and acceptance of terms.

Except as otherwise agreed in writing by the parties, the State assumes no liability for costs incurred by Contractor or payment under this Contract, until a Purchase Order has been issued.

2.004 Attachments & Exhibits

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

2.005 Ordering

The State will issue a written Purchase Order and it is subject to the terms and conditions of this Contract.

2.006 Order of Precedence

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

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

2.007 Headings

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

2.008 Form, Function & Utility (Deleted-Not Applicable)

2.009 Reformation and Severability

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

2.010 Consents and Approvals

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

2.011 No Waiver of Default

If a party fails to insist upon strict adherence to any term of the Contract then the party has not waived the right to later insist upon strict adherence to that term, or any other term, of the Contract.

2.012 Survival

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

2.020 Contract Administration

2.021 Issuing Office

This Contract is issued by the DNRE. Procurement Services is the sole point of contact in the State with regard to all procurement and contractual matters relating to the Contract.

Procurement Services **is the only State office authorized to change, modify, amend, alter or clarify the prices, specifications, terms and conditions of this Contract.** The Contract Administrator within Procurement Services for this Contract is:

Sharon Walenga-Maynard, C.P.M.
Procurement Services
Department of Natural Resources and Environment
Mason Bldg, 6th Floor
PO Box 30028
Lansing, MI 48909
Email: maynards1@michigan.gov
Phone 517.373.7587

2.022 Contract Compliance Inspector (CCI) (Deleted-Not Applicable)

2.023 Project Manager

After DNRE-Procurement Services issues the Purchase Order, Procurement Services will direct the person named below, or any other person so designated, to monitor and coordinate the activities for the Contract on a day-to-day basis during its term. However, monitoring of this Contract implies **no authority to change, modify, clarify, amend, or otherwise alter the prices, terms, conditions and specifications of the Contract as that authority is retained by DNRE Procurement Services.** The following individual will oversee the project:

H. William Scullon
Wildlife Division, DNRE
Baraga Operations Service Center
427 US-41
Baraga, MI 49908
906.353.6651

2.024 Change Requests

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

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

Change Requests:

- (a) By giving Contractor written notice within a reasonable time, the State must be entitled to accept a Contractor proposal for Change, to reject it, or to reach another agreement with Contractor. Should the parties agree on carrying out a Change, a written Contract Change Notice must be prepared and issued under this Contract, describing the Change and its effects on the Services and any affected components of this Contract (a "Contract Change Notice").
- (b) No proposed Change may be performed until the proposed Change has been specified in a duly executed Contract Change Notice issued by the Department of Natural Resources, Procurement Services.
- (c) If the State requests or directs the Contractor to perform any activities that Contractor believes constitute a Change, the Contractor must notify the State that it believes the requested activities are a Change before beginning to work on the requested activities. If the Contractor fails to notify the State before beginning to work on the requested activities, then the Contractor waives any right to assert any claim for additional compensation or time for performing the requested activities. If the Contractor commences performing work outside the scope of this Contract and then ceases performing that work, the Contractor must, at the request of the State, retract any out-of-scope work that would adversely affect the Contract.

2.025 Notices

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

State:
Michigan Department of Natural Resources
Procurement Services
Mason Building, 6th Floor
P.O. Box 30028 (48909)
530 West Allegan Street (48933)
Lansing, MI 48909

Contractor:
Eastern Michigan University
Office of Research Development
Attn: Susan Campbell
Starkweather Hall, 2nd Floor
Ypsilanti, MI 48197

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

2.026 Binding Commitments

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

2.027 Relationship of the Parties

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

2.028 Covenant of Good Faith

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

2.029 Assignments

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

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

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

2.030 General Provisions

2.031 Media Releases

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

Dr. Kurta retains the right to publish any of the data in a scholarly format or to present any of the data at academic conferences without written approval of the State. Contractor shall acknowledge and/or credit DNRE as a source of the underlying data from research activities. Furthermore, Contractor can only publish or present data after work product has been received and approved by the State.

2.032 Contract Distribution

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

2.033 Permits

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

2.034 Website Incorporation (Deleted-Not Applicable)

2.035 Future Bidding Preclusion (Deleted-Not Applicable)

2.036 Freedom of Information

All information in any proposal submitted to the State by Contractor and this Contract is subject to the provisions of the Michigan Freedom of Information Act, 1976 Public Act No. 442, as amended, MCL 15.231, et seq (the "FOIA").

2.037 Disaster Recovery (Deleted-Not Applicable)

2.040 Financial Provisions

2.041 Fixed Prices for Services/Deliverables

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

2.042 Adjustments for Reductions in Scope of Services/Deliverables

If the scope of the Services/Deliverables under any Statement of Work issued under this Contract is subsequently reduced by the State, the parties shall negotiate an equitable reduction in Contractor's charges under such Statement of Work commensurate with the reduction in scope.

2.043 Services/Deliverables Covered

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

2.044 Invoicing and Payment – In General

(a) Each Statement of Work issued under this Contract shall list the price for all Services/Deliverables, equipment and commodities to be provided, and the associated payment milestones and payment amounts.

(b) Each Contractor invoice will show details as to charges by Service/Deliverable component and location at a level of detail reasonably necessary to satisfy the State's accounting and charge-back requirements.

(c) Correct invoices will be due and payable by the State, in accordance with the State's standard payment procedure as specified in 1984 Public Act No. 279, MCL 17.51 et seq., within 45 days after receipt, provided the State determines that the invoice was properly rendered.

(d) All invoices should reflect actual work done. Specific details of invoices and payments will be agreed upon between the Contract Compliance Inspector and the Contractor after the proposed Contract Agreement has been signed and accepted by both the Contractor and DNRE-Procurement Services. This activity will occur only upon the specific written direction from Procurement Services.

2.045 Pro-ration

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

2.046 Antitrust Assignment

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

2.047 Final Payment

The making of final payment by the State to Contractor does not constitute a waiver by either party of any rights or other claims as to the other party's continuing obligations under the Contract, nor will it constitute a waiver of any claims by one party against the other arising from unsettled claims or failure by a party to comply with this Contract, including claims for Services and Deliverables not reasonably known until after acceptance to be defective or substandard. Contractor's acceptance of final payment by the State under this Contract shall constitute 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 unsettled.

2.048 Electronic Payment Requirement

Electronic transfer of funds is required for payments on State Contracts. Contractors are required to register with the State electronically at <http://www.cpexpress.state.mi.us>. As stated in Public Act 431 of 1984, all contracts that the State enters into for the purchase of goods and services shall provide that payment will be made by electronic fund transfer (EFT).

2.050 Taxes

2.051 Employment Taxes

Contractors are expected to collect and pay all applicable federal, state, and local employment taxes, including the taxes.

2.052 Sales and Use Taxes

Contractors are required to be registered and to remit sales and use taxes on taxable sales of tangible personal property or services delivered into the State. Contractors that lack sufficient presence in Michigan to be required to register and pay tax must do so as a volunteer. This requirement extends to: (1) all members of any controlled group as defined in § 1563(a) of the Internal Revenue Code and applicable regulations of which the company is a member, and (2) all organizations under common control as defined in § 414(c) of the Internal Revenue Code and applicable regulations of which the company is a member that make sales at retail for delivery into the State are registered with the State for the collection and remittance of sales and use taxes. In applying treasury regulations defining "two or more trades or businesses under common control" the term "organization" means sole proprietorship, a partnership (as defined in § 701(a)(2) of the Internal Revenue Code), a trust, an estate, a corporation, or a limited liability company.

2.060 Contract Management

2.061 Contractor Personnel Qualifications

All persons assigned by Contractor to the performance of Services under this Contract must be employees of Contractor or its majority-owned (directly or indirectly, at any tier) subsidiaries (or a State-approved Subcontractor) and must be fully qualified to perform the work assigned to them. Contractor must include a similar provision in any subcontract entered into with a Subcontractor. For the purposes of this Contract, independent contractors engaged by Contractor solely in a staff augmentation role must be treated by the State as if they were employees of Contractor for this Contract only; however, the State understands that the relationship between Contractor and Subcontractor is an independent contractor relationship.

2.062 Contractor Key Personnel

- (a) The Contractor must provide the Contract Compliance Inspector with the names of the Key Personnel.
- (b) Key Personnel must be dedicated as defined in the Statement of Work to the Project for its duration in the applicable Statement of Work with respect to other individuals designated as Key Personnel for that Statement of Work.
- (c) The State will have 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, will introduce the individual to the appropriate State representatives, and will 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.
- (d) Contractor must not remove any Key Personnel from their assigned roles on the Contract without the prior written consent of the State. The Contractor's removal of Key Personnel without the prior written consent of the State is an unauthorized removal ("Unauthorized Removal"). Unauthorized Removals does not include replacing Key Personnel for reasons beyond the reasonable control of Contractor, including illness, disability, leave of absence, personal emergency circumstances, resignation or for cause termination of the Key Personnel's employment. Unauthorized Removals does not include replacing Key Personnel because of promotions or other job movements allowed by Contractor personnel policies or Collective

Bargaining Agreement(s) as long as the State receives prior written notice before shadowing occurs and Contractor provides 30 days of shadowing unless parties agree to a different time period. The Contractor with the State must review any Key Personnel replacements, and appropriate transition planning will be established. Any Unauthorized Removal may be considered by the State to be a material breach of the Contract, in respect of which the State may elect to exercise its termination and cancellation rights.

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

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

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

2.064 Contractor Personnel Location

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

2.065 Contractor Identification

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

2.066 Cooperation with Third Parties (Deleted-Not Applicable)

2.067 Contractor Return of State Equipment/Resources

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

2.068 Contract Management Responsibilities

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

2.070 Subcontracting by Contractor

2.071 Contractor Full Responsibility

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

2.072 State Consent to Delegation

Contractor shall not delegate any duties under this Contract to a Subcontractor unless the Department of Natural Resources, Procurement Services has given written consent to such delegation. The State shall have the right of prior written approval of all Subcontractors and to require Contractor to replace any Subcontractors found, in the reasonable judgment of the State, to be unacceptable. The State's request shall be written with reasonable detail outlining the reasons for the removal request. Additionally, the State's request shall be based on legitimate, good-faith reasons. Replacement Subcontractor(s) for the removed Subcontractor shall be fully qualified for the position. If the State exercises this right, and the Contractor cannot immediately replace the removed Subcontractor, the State will agree to an equitable adjustment in schedule or other terms that may be affected by the State's required removal. If any such incident with a removed Subcontractor results in delay not reasonable anticipatable under the circumstances and which is attributable to the State, the applicable SLA for the affected Work will not be counted for a time agreed upon by the parties.

2.073 Subcontractor Bound to Contract

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

2.074 Flow Down

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

2.075 Competitive Selection

The Contractor shall select subcontractors (including suppliers) on a competitive basis to the maximum practical extent consistent with the objectives and requirements of the Contract.

2.080 State Responsibilities

2.081 Equipment

The State will provide only the equipment and resources identified in the Statements of Work and other Contract Exhibits.

2.082 Facilities

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

2.090 Security

2.091 Background Checks (Deleted-Not Applicable)

2.092 Security Breach Notification (Deleted-Not Applicable)

2.093 PCI Data Security Requirements (Deleted-Not Applicable)

2.100 Confidentiality

2.101 Confidentiality

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

2.102 Protection and Destruction of Confidential Information

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

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

2.103 Exclusions

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

2.104 No Implied Rights

Nothing contained in this Section must be construed as obligating a party to disclose any particular Confidential Information to the other party, or as granting to or conferring on a party, expressly or impliedly, any right or license to the Confidential Information of the other party.

2.105 Respective Obligations

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

2.110 Records and Inspections

2.111 Inspection of Work Performed

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

2.112 Examination of Records

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

2.113 Retention of Records

Contractor must maintain at least until the end of the Audit Period all pertinent financial and accounting records (including time sheets and payroll records, and information pertaining to the Contract and to the Services, equipment, and commodities provided under the Contract)

pertaining to the Contract according to generally accepted accounting principles and other procedures specified in this Section. Financial and accounting records must be made available, upon request, to the State at any time during the Audit Period. If an audit, litigation, or other action involving Contractor's records is initiated before the end of the Audit Period, the records must be retained until all issues arising out of the audit, litigation, or other action are resolved or until the end of the Audit Period, whichever is later.

2.114 Audit Resolution

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

2.115 Errors

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

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

2.120 Warranties

2.121 Warranties and Representations

The Contractor represents and warrants:

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

(b) It is not in material default or breach of any other contract or agreement that it may have with the State or any of its departments, commissions, boards, or agencies. Contractor further represents and warrants that it has not been a party to any contract with the State or any of its departments that was terminated by the State or the department within the previous five years for the reason that Contractor failed to perform or otherwise breached an obligation of the Contract.

2.122 Warranty of Merchantability (Deleted-Not Applicable)

2.123 Warranty of Fitness for a Particular Purpose (Deleted-Not Applicable)

2.124 Warranty of Title (Deleted-Not Applicable)

2.125 Equipment Warranty (Deleted-Not Applicable)

2.126 Equipment to be New (Deleted-Not Applicable)

2.127 Prohibited Products (Deleted-Not Applicable)

2.128 Consequences For Breach (Deleted-Not Applicable)

2.130 Insurance

2.131 Liability Insurance

Contractor (EMU) reserves the right to self-insure through the Michigan Universities Self-Insurance Corporation (M.U.S.I.C.).

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

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

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

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

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

See www.michigan.gov/dleg.

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

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

1. Commercial General Liability with the following minimum coverage:
- \$1,000,000 General Aggregate Limit other than Products/Completed Operations
 - \$1,000,000 Products/Completed Operations Aggregate Limit
 - \$300,000 Personal & Advertising Injury Limit
 - \$300,000 Each Occurrence Limit

The Contractor must list the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees and agents as ADDITIONAL INSUREDS on the Commercial General Liability certificate.

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

The Contractor must list the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees and agents as ADDITIONAL INSUREDS on the vehicle liability certificate.

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

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

4. Employers liability insurance with the following minimum limits:

\$300,000 each accident
\$300,000 each employee by disease
\$500,000 aggregate disease

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

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

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

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

2.132 Subcontractor Insurance Coverage

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

2.133 Certificates of Insurance and Other Requirements

Contractor must furnish to DNRE-Procurement Services, certificate(s) of insurance verifying insurance coverage or providing satisfactory evidence of self-insurance as required in this

Section (the "Certificates"). The Certificate must be on the standard "accord" form or equivalent. **THE CONTRACT OR PURCHASE ORDER NO. MUST BE SHOWN ON THE CERTIFICATE OF INSURANCE TO ASSURE CORRECT FILING.** All Certificate(s) are to be prepared and submitted by the Insurance Provider. The notice must include the Contract or Purchase Order number affected. Before the Contract is signed, and not less than 20 days before the insurance expiration date every year thereafter, the Contractor must provide evidence that the State and its agents, officers and employees are listed as additional insureds under each commercial general liability and commercial automobile liability policy. In the event the State approves the representation of the State by the insurer's attorney, the attorney may be required to be designated as a Special Assistant Attorney General by the Attorney General of the State of Michigan.

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

2.140 Indemnification

2.141 General Indemnification

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

2.142 Code Indemnification (Deleted-Not Applicable)

2.143 Employee Indemnification (Deleted-Not Applicable)

2.144 Patent/Copyright Infringement Indemnification (Deleted-Not Applicable)

2.145 Continuation of Indemnification Obligations (DELETED-NOT APPLICABLE)

2.146 Indemnification Procedures (Deleted-Not Applicable)

2.150 Termination/Cancellation

2.151 Notice and Right to Cure

If the Contractor breaches the Contract, and the State in its reasonable discretion determines that the breach is curable, then the State will provide the Contractor with written notice of the breach and a time period (not less than 30 days) to cure the Breach. The notice of breach and opportunity to cure is inapplicable for successive or repeated breaches or if the State determines in its reasonable discretion that the breach poses a serious and imminent threat to the health or

safety of any person or the imminent loss, damage, or destruction of any real or tangible personal property.

2.152 Termination for Cause

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

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

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

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

2.153 Termination for Convenience

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

2.154 Termination for Non-Appropriation

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

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

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

2.155 Termination for Criminal Conviction

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

2.156 Termination for Approvals Rescinded

The State may terminate this Contract if any final administrative or judicial decision or adjudication disapproves a previously approved request for purchase of personal services under Constitution 1963, Article 11, § 5, and Civil Service Rule 7-1. In that case, the State will pay the Contractor for only the work completed to that point under the Contract. Termination may be in whole or in part and may be immediate as of the date of the written notice to Contractor or may be effective as of the date stated in the written notice.

2.157 Rights and Obligations upon Termination

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

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

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

2.158 Reservation of Rights

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

2.160 Termination by Contractor

2.161 Termination by Contractor

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

The Contractor may terminate this Contract if the State (i) materially breaches its obligation to pay the Contractor undisputed amounts due and owing under this Contract, (ii) breaches its other obligations under this Contract to an extent that makes it impossible or commercially impractical for the Contractor to perform the Services, or (iii) does not cure the breach within the time period specified in a written notice of breach. But the Contractor must discharge its obligations under **Section 2.190** before it terminates the Contract.

2.170 Transition Responsibilities

2.171 Contractor Transition Responsibilities

If the State terminates this Contract, for convenience or cause, or if the Contract is otherwise dissolved, voided, rescinded, nullified, expires or rendered unenforceable, the Contractor agrees to comply with direction provided by the State to assist in the orderly transition of equipment, services, software, leases, etc. to the State or a third party designated by the State.

2.172 Contractor Personnel Transition (Deleted-Not Applicable)

2.173 Contractor Information Transition (Deleted-Not Applicable)

2.174 Contractor Software Transition (Deleted-Not Applicable)

2.175 Transition Payments (Deleted-Not Applicable)

2.176 State Transition Responsibilities (Deleted-Not Applicable)

2.180 Stop Work

2.181 Stop Work Orders

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

the period of the stop work order, the State must either: (a) cancel the stop work order; or (b) terminate the work covered by the stop work order as provided in **Section 2.150**.

2.182 Cancellation or Expiration of Stop Work Order

The Contractor must resume work if the State cancels a Stop Work Order or if it expires. The parties will agree upon an equitable adjustment in the delivery schedule, the Contract price, or both, and the Contract must be modified, in writing, accordingly, if: (a) the stop work order results in an increase in the time required for, or in Contractor's costs properly allocable to, the performance of any part of the Contract; and (b) Contractor asserts its right to an equitable adjustment within 30 calendar days after the end of the period of work stoppage; provided that, if the State decides the facts justify the action, the State may receive and act upon a Contractor proposal submitted at any time before final payment under the Contract. Any adjustment will conform to the requirements of **Section 2.024**.

2.183 Allowance of Contractor Costs

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

2.190 Dispute Resolution

2.191 In General

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

2.192 Informal Dispute Resolution

(a) All disputes between the parties must be resolved under the Contract Management procedures in this Contract. If the parties are unable to resolve any disputes after compliance with the processes, the parties must meet with the DNRE-Procurement Services Buyer or designee, for the purpose of attempting to resolve the dispute without the need for formal legal proceedings, as follows:

- (i) The representatives of Contractor and the State must meet as often as the parties reasonably deem necessary to gather and furnish to each other all information with respect to the matter in issue which the parties believe to be appropriate and germane in connection with its resolution. The representatives must discuss the problem and negotiate in good faith in an effort to resolve the dispute without the necessity of any formal proceeding.
- (ii) During the course of negotiations, all reasonable requests made by one party to another for non-privileged information reasonably related to the Contract will be honored in order that each of the parties may be fully advised of the other's position.
- (iii) The specific format for the discussions will be left to the discretion of the designated State and Contractor representatives, but may include the preparation of agreed upon statements of fact or written statements of position.

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

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

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

2.193 Injunctive Relief

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

2.194 Continued Performance

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

2.200 Federal and State Contract Requirements

2.201 Nondiscrimination

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

2.202 Unfair Labor Practices

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

2.203 Workplace Safety and Discriminatory Harassment

In performing Services for the State, the Contractor must comply with the Department of Civil Services Rule 2-20 regarding Workplace Safety and Rule 1-8.3 regarding Discriminatory Harassment. In addition, the Contractor must comply with Civil Service regulations and any

applicable agency rules provided to the Contractor. For Civil Service Rules, see <http://www.mi.gov/mdcs/0,1607,7-147-6877---,00.html>.

2.204 Prevailing Wage

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

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

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

2.210 Governing Law

2.211 Governing Law

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

2.212 Compliance with Laws

Contractor shall comply with all applicable state, federal and local laws and ordinances in providing the Services/Deliverables.

2.213 Jurisdiction

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

2.220 Limitation of Liability

2.221 Limitation of Liability

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

damages; or to court costs or attorney's fees awarded by a court in addition to damages after litigation based on this Contract.

2.230 Disclosure Responsibilities

2.231 Disclosure of Litigation

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

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

- (i) the ability of Contractor (or a Subcontractor) to continue to perform this Contract according to its terms and conditions, or
- (ii) whether Contractor (or a Subcontractor) in performing Services for the State is engaged in conduct which is similar in nature to conduct alleged in the Proceeding, which conduct would constitute a breach of this Contract or a violation of Michigan law, regulations or public policy, then the Contractor must provide the State all reasonable assurances requested by the State to demonstrate that:

- (a) Contractor and its Subcontractors will be able to continue to perform this Contract and any Statements of Work according to its terms and conditions, and
- (b) Contractor and its Subcontractors have not and will not engage in conduct in performing the Services which is similar in nature to the conduct alleged in the Proceeding.

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

- (1) Within 30 days of Contractor becoming aware that a change in its ownership or officers has occurred, or is certain to occur, or a change that could result in changes in the valuation of its capitalized assets in the accounting records, Contractor must notify DNRE-Procurement Services.
- (2) Contractor must also notify DNRE-Procurement Services within 30 days whenever changes to asset valuations or any other cost changes have occurred or are certain to occur as a result of a change in ownership or officers.
- (3) Contractor must also notify DNRE-Procurement Services within 30 days whenever changes to company affiliations occur.

2.232 Call Center Disclosure (Deleted-Not Applicable)

2.233 Bankruptcy

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

- (a) the Contractor files for protection under the bankruptcy laws;
- (b) an involuntary petition is filed against the Contractor and not removed within 30 days;
- (c) the Contractor becomes insolvent or if a receiver is appointed due to the Contractor's insolvency;
- (d) the Contractor makes a general assignment for the benefit of creditors; or
- (e) the Contractor or its affiliates are unable to provide reasonable assurances that the Contractor or its affiliates can deliver the services under this Contract.

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

2.240 Performance

2.241 Time of Performance

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

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

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

2.242 Service Level Agreements (SLAs) (Deleted-Not Applicable)

2.243 Liquidated Damages (Deleted-Not Applicable)

2.244 Excusable Failure

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

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

If any of the above-enumerated circumstances substantially prevent, hinder, or delay the Contractor's performance of the Services/provision of Deliverables for more than 10 Business Days, and the State determines that performance is not likely to be resumed within a period of time that is satisfactory to the State in its reasonable discretion, then at the State's option: (a) the State may procure the affected Services/Deliverables from an alternate source, and the State is not be liable for payment for the unperformed Services/ Deliverables not provided under the Contract for so long as the delay in performance continues; (b) the State may terminate any portion of the Contract so affected and the charges payable will be equitably adjusted to reflect those Services/Deliverables terminated; or (c) the State may terminate the affected Statement of Work without liability to Contractor as of a date specified by the State in a written notice of termination to the Contractor, except to the extent that the State must pay for Services/Deliverables provided through the date of termination.

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

2.250 Approval of Deliverables (Section Deleted-Not Applicable)

2.251 Delivery Responsibilities

2.252 Delivery of Deliverables

2.253 Testing

2.254 Approval of Deliverables, In General

2.255 Process For Approval of Written Deliverables

2.256 Process for Approval of Services

2.257 Process for Approval of Physical Deliverables

2.258 Final Acceptance

2.260 Ownership

2.261 Ownership of Work Product by State

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

Scientific manuscripts published in scholarly journals and presentations made at academic

conferences be excluded from the definition of Work Product in this section and that title to copyright of such publications be retained by Professor Kurta.

2.262 Vesting of Rights (Deleted-Not Applicable)

2.263 Rights in Data (Deleted-Not Applicable)

2.264 Ownership of Materials

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

Hardware is not defined but is usually construed to mean computer equipment. EMU to keep personal safety equipment and clothing and supplies, however, surveillance or camera equipment belongs to the state if purchased with contract funds.

2.270 State Standards (Section Deleted-Not Applicable)

2.271 Existing Technology Standards

2.272 Acceptable Use Policy

2.273 Systems Changes

2.280 Extended Purchasing (Section Deleted-Not Applicable)

2.281 MIDEAL

2.282 State Employee Purchases

2.290 Environmental Provision (Section Deleted-Not Applicable)

2.291 Environmental Provision

2.300 Other Provisions

2.311 Forced Labor, Convict Labor, or Indentured Servitude Made Materials (Deleted-Not Applicable)

2.321 Knowledge of Child Labor for Listed End Products (Deleted-Not Applicable)

Attachment A, Price Proposal

Contractor's price proposal should be all-inclusive to complete the surveys and prepare annual reports. No other costs will be allowed. **This is a lump sum fixed price contract. Please provide the cost detail to allow the evaluation of the cost components.**

	2010-11	2011-12	2012-13	2013-14	2014-15	Total	
Wages	\$10,900	\$12,200	\$12,200	\$12,200	\$12,200	\$59,700	
A. Kurta (\$67.16/hour x 67 hours in Year 1; 74 hours/year thereafter - Additional hours each year are contributed in-kind by Dr. Kurta)	\$4,500	\$5,000	\$5,000	\$5,000	\$5,000		
S. Smith (160 hours/year @ \$40/hour in 1st year, then 180 hours/year thereafter)	\$6,400	\$7,200	\$7,200	\$7,200	\$7,200		
Fringe Benefits 8.15%	\$889	\$995	\$995	\$995	\$995	\$4,869	
Kurta	\$367	\$408	\$408	\$408	\$408		
Smith	\$522	\$587	\$587	\$587	\$587		
Travel (increased by 2%/year for inflation) EMU current mileage rate: \$0.51/mile lodging (\$65/night) per diem (\$41/day)	\$5,562	\$5,673	\$5,787	\$5,903	\$6,020	\$28,945	
Mileage	\$3,162	\$3,225	\$3,290	\$3,356	\$3,423		
Lodging	\$1,170	\$1,193	\$1,217	\$1,242	\$1,266		
Per Diem	\$1,230	\$1,255	\$1,280	\$1,305	\$1,331		
Field Equipment/supplies	\$2,086	\$1,200	\$750	\$750	\$750	\$5,536	
climbing gear (ropes, ascenders, harnesses, crampons, etc.), batteries, lights, oxygen sensor, cold-weather gear (snowshoes, gators, gloves, snowpants, warmers, etc.), decontamination supplies (chemicals, tubs, etc.), camera supplies, etc.							
Direct		\$19,437	\$20,068	\$19,732	\$19,848	\$19,965	\$99,050
Indirect costs	24%	\$4,665	\$4,816	\$4,736	\$4,763	\$4,792	\$23,772
Total		\$24,102	\$24,884	\$24,468	\$24,611	\$24,757	\$122,822