



Michigan Department of Natural Resources – Procurement Services
 P.O. Box 30028, Lansing, MI 48909
 OR
 525 W. Allegan, Lansing, MI 48933

NOTICE OF CONTRACT NO. 751B4300055
Between
STATE OF MICHIGAN
and

Required by authority of 1984 PA 431, as amended.

Name and Address of Contractor Michigan Technological University Sponsored Programs Office 1400 Townsend Drive Houghton, MI 49331	Primary Contact Lisa Jukkala	
	Email Lajukkal@mtu.edu	
	Telephone (906)487-2226	Contractor #, Mail Code *****5955/001

State Contact	Division	Name	Telephone	Email
DNR Project Manager	Parks & Recreation	Rob Strittmatter	(906)289-4215	StrittmatterR@michigan.gov
Buyer	Financial Services	Jana Harding-Bishop	(517) 284-5938	HardingJ3@michigan.gov

Contract Summary			
Description (Provide a basic but comprehensive description of services) Phase I and II Arch Surveys at Fort Wilkins State Park			
Initial Term 2 yrs – 6 months	Effective Date 7/1/2014	Initial Expiration Date 12/31/2016	Available Options 2 – 1 yr options
Payment Terms Net 30	F.O.B. N/A	Shipped N/A	Shipped From N/A
Minimum Delivery Requirements N/A	Alternate Payment Options <input type="checkbox"/> P-Card <input type="checkbox"/> Direct Voucher (DV)		Available to MiDeal Participants <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Miscellaneous Information The terms and conditions of this Contract are those of ITB #07511B0001985, this Contract Agreement and the vendor's quote. In the event of any conflicts between the specifications, and terms and conditions, indicated by the State and those indicated by the vendor, those of the ESTIMATED CONTRACT VALUE AT TIME OF EXECUTION: \$38,974.00			



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ESTIMATED CONTRACT VALUE AT TIME OF EXECUTION: \$38,974.00			

THIS IS NOT AN ORDER: This Contract Agreement is awarded on the basis of our inquiry bearing the ITB No. **075114B0001985**. Orders for delivery will be issued directly by the Michigan Department of Natural Resources through the issuance of a Purchase Order Form.

All terms and conditions of the invitation to bid are made a part hereof.

FOR THE CONTRACTOR:

Michigan Technological University

 Firm Name
 On-file in DNR Procurement

 Authorized Agent Signature
 Lisa Jukkala, Asst Director

 Authorized Agent (Print or Type)
 7/7/14

 Date

FOR THE STATE:

On-file in DNR Procurement

 Signature
 Jana Harding-Bishop, Buyer

 Name/Title
 Financial Services

 DNR/Procurement
 7/9/14

 Date

STATEMENT OF WORK CONTRACT ACTIVITIES

1.0 *Project Identification*

1.01 **Background/Project Description**

Fort Wilkins is located in Keweenaw County, at the northern tip of Michigan's Keweenaw Peninsula, one-mile east of the resort community of Copper Harbor.

The fort was built in 1844 by units of the fifth U.S. Infantry Regiment to keep order in the Michigan copper mining district. It was temporarily abandoned two years later and re-garrisoned from 1867 to 1870. Military service there was routine and uneventful.

During periods of military nonuse, (1847-1866 and 1871-1923) civilians frequently occupied fort buildings as residences and later as hunting camps and cottages.

The property became a state park in 1923. Extensive restoration work began during the 1920s, and continued under the direction of the Civilian Conservation Corps and Works Progress Administration. Under the management of the Department of Conservation (Natural Resources), the fort was restored.

In 1974, the Michigan Historical Museum became responsible for historical activities within the park. Today, there are nineteen historical buildings. Twelve are original structures dating from the 1840s and seven were reconstructed based on the historical and archaeological record. The fort complex interprets three primary themes: early Keweenaw copper mining (Pittsburgh and Boston Copper Harbor Mining Company mine sites); Lake Superior maritime history (Copper Harbor lighthouses); and 19th century military history (Fort Wilkins). Museum exhibits, audio-visual programs, and living history interpretation have helped make Fort Wilkins one of Michigan's most popular tourist attractions.

Archaeological research at Fort Wilkins was carried out under state contracts in 1975 (archaeological research planning); 1977 (on sites of two married enlisted men's quarters, ice house, and three officers' privies); 1984 (excavation of three extant army officers' quarters cellars); 1986 (site of the guardhouse and test excavation of a trench/dump site); 1991 (site of the blacksmith shop); 1993 (excavation of a trench/dump site); 1994 (site of 1848 Copper Harbor lighthouse); 1999 (quartermaster warehouse site); 2000 (Pittsburgh and Boston Copper Harbor Copper Harbor Company site); 2001 (Pittsburgh and Boston Copper Harbor Copper Mining Company blacksmith shop site); and in 2013 (Survey of 498-acres in the southern portion of the park).

The Department of Natural Resources (DNR), Parks and Recreation Division and Michigan Historical Center requested proposals from qualified industrial archaeologists possessing knowledge of nineteenth century copper mining material culture. The work performed will be phase I & II archaeological projects located within the northern boundary of Fort Wilkins State Park along the southern shore of Copper Harbor. There will be two sites for the archaeological investigation one will be the Pittsburgh and Boston Copper Harbor Mining Company site and the other Copper Harbor Range Light House as funding is available.

This multi-year contract is for work on the Pittsburg and Boston Copper Harbor Mining Company site which will be surveyed in 2014 and the Range Light Site in 2016 if funding becomes available.

1.02 **Contract Activities**

Task Description:

Background Research/Permits

1. Consult the state archaeological site file, and other appropriate sources and documents to compile information on the historic cultural resources of Fort Wilkins State Park. Particular attention should be given to copper mining sites. The background research shall inform the fieldwork.
2. Obtain all necessary permits prior to beginning fieldwork.

Field Work

1. Perform a Phase III archaeological investigation of mine sites within Fort Wilkins State Park.
2. Field work shall be conducted to locate all archaeological sites within the designated area.
3. Professional standards and field techniques are expected to be sufficiently rigorous to demonstrate the presence or absence of sites within the study area. The Department of Natural Resources Parks and

Recreation Division and Michigan Historical Center (DNR-PRD and DNR-MHC) understand, however, that even the most rigorously applied field methodology may not discover very small sites, such as single-artifact find spots.

4. If shovel testing is used, all shovel test holes shall be re-filled. Holes may not be left unattended until they are re-filled.
5. If human remains are discovered, work will halt and the discovery shall be immediately reported to the Project Manager. The Project Manager will notify the local police. Work will remain stopped in the vicinity of the discovery until the DNR Project Manager approves continuation of the work. Field investigation may continue in other areas of the park while the investigation is ongoing.
6. All artifacts recovered from the fieldwork at Fort Wilkins State Park are the property of the State of Michigan. All artifacts shall be handled and documented in a professional manner. Any artifact, which is removed from the site, must be documented and a list provided to the Project Manager before the artifact is removed from the site. After examination and analysis, all artifacts will be returned to the State Archaeologist, Michigan State Housing Development Authority and the Project Manager notified of their return by the Contractor.

Deliverables:

1. A draft report of the results shall be prepared in Microsoft Word format. The draft report should be sent to the DNR-PRD, the DNR-MHC, and the State Archaeologist within 120 days of the completion of the survey work and no later than October 20th. The DNR-PRD, DNR-MHC, and the State Archaeologist will return comments and changes to the Contractor within 30 calendar days.
2. Within 30 calendar days of draft report comments being provided to the Contractor a final report for the area examined shall be prepared in Microsoft Word. Four paper copies of a professional-quality printed report and one electronic PDF version on either CD-Rom or a flash drive of the report will be submitted to DNR-PRD. The report should include, but not necessarily be limited to:
 - A brief description of the project for which the project is being performed
 - A description of the physical environment of the project area
 - The results of the archival research
 - A description and justification/rationale for the field techniques employed, along with the total number of acres surveyed and/or the number units and shovel tests excavated at each location
 - Results of project, including descriptions of sites identified, legal descriptions and GPS coordinates for site locations, sketch maps of all sites within the project area, and interpretation and photos of diagnostic artifacts
 - Site locations plotted on the appropriate portion of a 7.5-minute USGS map
 - All appropriate and necessary maps and figures to illustrate the project area, recorded sites in the project area, newly discovered sites, etc.
 - DNR-PRD, DNR-MHC and State Archaeologist comments after review
 - Literature cited
3. The Final Report must be completed and submitted to DNR-PRD, for transmission to DNR-MHC, the State Archaeologist, and the Keweenaw National Historical Park Advisory Commission by December 30, 2014.

1.03 Out of Scope Activities

The scope of this work is limited to the area requested. Any work performed outside the physical boundaries set forth shall be considered out of scope and the contractor will not be reimbursed for.

1.04 State Review, Acceptance and Testing Process and Criteria

The State's Project Staff will review the draft report and provide feedback to the Contractor within 30 days of receipt.

1.05 Final Acceptance

Upon receipt and review of the final report the DNR Project Manager will provide written acceptance at which time the Contractor may bill the State.

2.0 Reserved

2.01 Reserved

2.02 Reserved

2.03 Reserved

3.0 Staffing

3.01 Reserved

3.02 Reserved

3.03 Reserved

3.04 Key Personnel

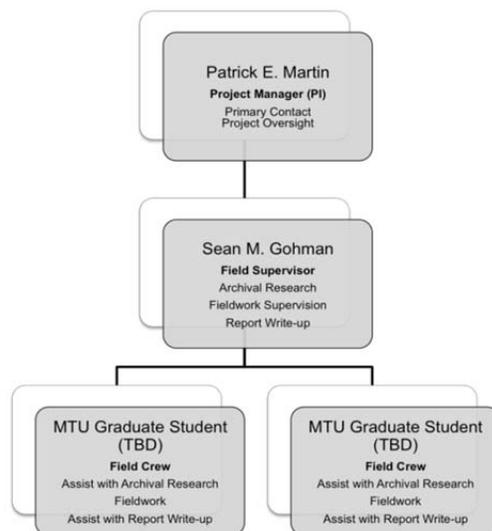
MTU has appointed Sean Gohman as the Field Supervisor and Dr. Patrick Martin as the Project Manager (Principle Investigator) to this project. The Field Supervisor will be directly responsible for the day-to-day operations of the Contract. The Project Manager will oversee the project as a whole. Both Key Personnel are specifically assigned to the State account, be knowledgeable on the contractual requirements, and respond to State inquires within 24 hours upon request.

Sean Gohman, Field Supervisor must be on-site at all times during the field portion of this project, Dr. Patrick Martin, the Project Manager must be on-site at Fort Wilkins at a minimum weekly during the field work phase as well as upon request of the DNR Project Manager for meetings. MTU may not remove or assign Key Personnel without the prior consent of the State. Prior consent is not required for reassignment for reasons beyond the Contractor's control, including illness, disability, death, leave of absence, personal emergency circumstances, resignation, or termination for cause. The State may request a résumé and conduct an interview before approving a change. The State may require a 30-calendar day training period for replacement personnel.

The Contractor must identify the Key Personnel, indicate where they will be physically located, describe the functions they will perform, and provide current chronological résumés. This information will be requested in Exhibit B Section 8.

3.05 Organizational Chart

MTU's organizational chart that details staff members, by name and title, and brief description of role is listed below.



3.06 Disclosure of Subcontractors – N/A

3.07 Security

The Contractor will be subject the following security procedures:

- A clearly identifying uniform item
- Name Badges

4.0 Project Management

4.01 Project Plan

The Contractor will carry out this project under the direction and control of the DNR, Parks, and Recreation Division. Specifically, the Project Manager (PM) will monitor the project and all correspondence shall be thru him. The Project Manager and contact information is listed below. Should the PM not be available he will provide an alternate contact.

The Contractor must contact the DNR PM within fifteen (15) business days after the project is awarded to set up a meeting to discuss the project timeline and deliverables.

The Project Manager shall be notified a minimum of 48 hours prior to the initiation of field work and within 24 hours following final completion of all field work at the park under this contract.

During the field work phase, the Contractor will meet with the DNR Project Manager weekly and keep him informed of the progress of the work. The update will include any real or anticipated problems (such as breakdowns, injuries, etc.) as they arise. The Contractor PM shall coordinate site visits with the DNR PM. The Contractor will also assign a field supervisor who will be on location throughout duration of the field work phase. The Contractor PM shall inform the DNR-MHC historian of any/all contract issues.

Project Manager:

Rob Strittmatter
Fort Wilkins State Park
14223 U.S. 41
Copper Harbor, MI 49918
(906) 289-4215
strittmatterR@michigan.gov

MHC Historian:

Barry C. James
Michigan Iron Industry Museum
73 Forge Road 14223 U.S. 41
Negaunee, MI 49866
(906) 475-7857
jamesb@michigan.gov

MTU's Project plan is as follows:

Contact Personnel

Primary:

Dr. Patrick E. Martin (Contractor Project Manager/PI)
(906) 487-2070
pemartin@mtu.edu

Secondary:

Sean M. Gohman (Field Supervisor)
(906) 869-1488
smgohman@mtu.edu

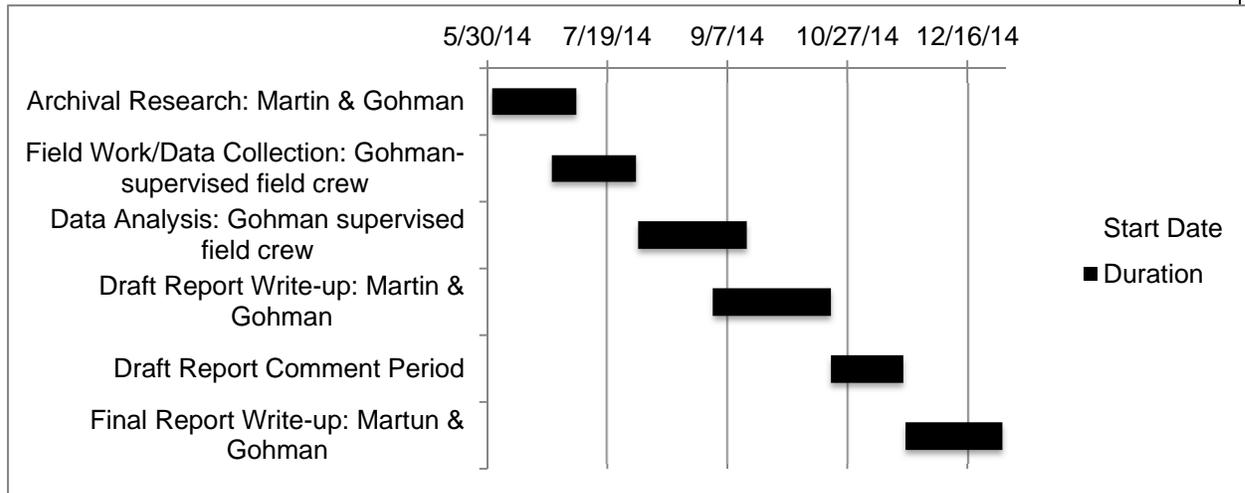
Contract Administrator:

Lisa Jukkala
(906) 487-2226
lajukkal@mtu.edu

Expected Updates/Review Process/Progress Reports

Martin and Gohman will provide weekly updates regarding progress made in the field, as well as preliminary findings based on archival research prior to the start of on-site fieldwork. These updates will be via email and sent to the DNR PM (Strittmatter) and MHC Historian (James). At the conclusion of fieldwork, progress reports and project updates can be made at bi-weekly intervals to the DNR PM and MHC Historian. Any questions regarding the awarded contract will be delivered to the MHC Historian (James) by the Contractor PM (Martin). The Contractor PM (Martin) is also the primary contact responsible for receiving/reacting to the requested information, and, if need arises, addressing any other issues/changes to the awarded contract, fieldwork, research, data analysis or report drafting.

Gantt Chart



Estimated Schedule of Work

Martin will contact the DNR PM within fifteen (15) business days after the project is awarded to set up a meeting to discuss the project timeline and deliverables.

June 2014:

Meeting with DNR PM to discuss deliverables and work schedule. Following, Martin and Gohman will submit an updated work plan and timeline for the Project Manager's approval. Sean Gohman will consult the state archaeological site file and data related to previous archaeological fieldwork conducted at Ft. Wilkins State Park and its immediate environs. Most of these data, including field notes and collections, are currently housed in the MTU Department of Social Sciences archaeological collections and archives. Patrick Martin will obtain necessary permits for fieldwork. Gohman will conduct archival research at MTU Archives and KNHP Archives related to the history of Fort Wilkins and the Pittsburgh and Boston Copper Harbor Mining Company and the French Copper Mining Company.

Late June-July 2014:

Gohman and a small field crew of MTU students will undertake on-site fieldwork research. The research team will conduct field survey of the project area. Fieldwork will consist of: pedestrian survey, photography, mapping, GPS recording, shovel testing (in selected areas), block excavation, and artifact collection. The research team will be comprised of Gohman and two additional graduate students. Team members will be paid on an hourly basis.

August-September 2014:

Upon completion of fieldwork, Gohman and the research team will process any artifacts collected, and begin writing a draft report of findings.

October 2014:

Martin and Gohman will submit a draft report of fieldwork to DNR-PRD, DNR-MHC, and the State Archaeologist.

November 2014:

Martin and Gohman will receive comments for the draft report comments within 30 days of the draft's

submission. The comments will result in a final draft written by Martin and Gohman.

December 2014:

Martin will submit the final report to DNR-PRD, for the transmission to DNR-MHC, the State Archaeologist, and the Keweenaw National Historical Park's Advisory Commission by December 30, 2014. The final report will be submitted as 4 paper copies prepared in Microsoft Word on professional-quality paper, as well as one electronic PDF version, on a CD-ROM or flash drive.

Budget Justification

The budgets and reasoning for the 2014 and 2016 surveys are identical and follow the same justification.

The bulk of the costs for this project are in staff support and logistics. The Principal Investigator, Patrick Martin, will be supervising the project as part of his normal University duties but will not be drawing any salary from the project, thus adding benefit without additional costs. Hourly graduate students from the Michigan Tech Industrial Heritage and Archaeology Program will conduct the field, archival, analysis and report preparation/write-up work. Rates for the hourly work are University standards. Students will all be covered by accident insurance, since the work will be a University function.

Logistical costs are primarily travel and supplies. We envision a daily commute to the survey area from Houghton, a distance of ~50 miles, for a period of 15 days. Funds for supplies will cover the purchase and/or replacement of field equipment and supplies in order to conduct proper archaeological testing, artifact processing and records management.

4.02 Meetings

The Contractor's Key Personnel must attend the following meetings:
An on-site kick-off meeting within 30 calendar days of the Effective Date.

The State may request other meetings, as it deems appropriate

4.03 Reporting

The Contractor must submit, to the DNR Project Manager the following written reports:

Draft Report within 120 days of field work completion or by October 20th.

Final Report within 30 days of DNR Project Manager providing comments on the draft report or by December 30th, whichever is sooner.

5.0 Pricing

5.01 Price Term

Pricing is firm for a 365 day period ("Pricing Period"). The first pricing period begins on the Effective Date. Adjustments may be requested, in writing, by either party and will take effect no earlier than the next Pricing Period.

5.02 Price Changes

Adjustments will be based on changes in actual Contractor costs. Any request must be supported by written evidence documenting the change in costs. The State may consider sources, such as the Consumer Price Index; Producer Price Index; other pricing indices as needed; economic and industry data; manufacturer or supplier letters noting the increase in pricing; and any other data the State deems relevant.

Following the presentation of supporting documentation, both parties will have 30 days to review the information and prepare a written response. If the review reveals no need for modifications, pricing will remain unchanged unless mutually agreed to by the parties. If the review reveals that changes are needed, both parties will negotiate such changes, for no longer than 30 days, unless extended by mutual agreement.

The Contractor remains responsible for Contract Activities at the current price for all orders received before the mutual execution of a Change Notice indicating the start date of the new Pricing Period.

6.0 Ordering

6.01 Authorizing Document

The state shall authorize and commit to the contractor by issuance of a Purchase Order

7.0 Invoice and Payment

7.01 Invoice Requirements

All invoices submitted to the State must include: (a) date; (b) purchase order; (c) quantity; (d) description of the Contract Activities; (e) unit price; (f) shipping cost (if any); and (g) total price.

7.02 Payment Methods

Payment will be made against and issued Purchase Order. The Contractor may bill at the following increments:

Field Work Complete – 40%

Draft Report – 40%

Final Report – 20%

7.03 Reserved

Liquidated Damages

Late or improper completion of the Contract Activities will cause loss and damage to the State and it would be impracticable and extremely difficult to fix the actual damage sustained by the State. Therefore, if there is late or improper completion of the Contract Activities the State is entitled to collect liquidated damages in the amount of \$5,000 and an additional \$100 per day for each day Contractor fails to remedy the late or improper completion of the Work.

Unauthorized Removal of Key Personnel will interfere with the timely and proper completion of the Contract, to the loss and damage of the State, and it would be impracticable and extremely difficult to fix the actual damage sustained by the State. Therefore, the State may assess liquidated damages against Contractor as specified below.

The State is entitled to collect \$1,000 per individual per day for the removal of any Key Personnel without prior approval of the State.

The State is entitled to collect \$1,000 per individual per day for an unapproved or untrained key personnel replacement.

PRICING

Price is lump sum for survey work. The lump sum includes all costs and be broken out into expenses which support the lump sum amount

Item #1 Pricing Proposal for Pittsburg and Boston Copper Harbor Mining Sites – work completed in 2014

Budget justification provided in Exhibit A.			
Staffing			
Name:	Hourly Rate	Number of Hours	Total
Patrick E. Martin	N/A	N/A	N/A
Sean M. Gohman	\$22.16	120	\$2660.00
Graduate RA's (TBD)	\$17.00	620	\$10540.00
Total Staffing			\$13200.00
Travel			
Meals (partial support for 3 field workers)			\$178.00
Lodging			\$0.00
Mileage (98 mile round trip for 15 trips at .74 cents/mile)			\$1088.00
Truck Rental – included in Mileage			\$0.00
Total Travel			\$1266.00
Equipment			
Supplies			\$600.00
Other - Publication/Documentation			\$400.00
Other - Facilities and Administrative costs @26% of MDTC			\$4021.00
Other			
Total Project Cost			\$19487.00

Item #2 Pricing Proposal for Copper Harbor Range Light House Site – work completed in 2016

Staffing			
Name:	Hourly Rate	Number of Hours	Total
Patrick E. Martin	N/A		
Sean M. Gohman	\$22.16	120	\$2660.00
Graduate RA's (TBD)	\$17.00	620	\$10540.00
Total Staffing			\$13200.00
Travel			
Meals (partial support for 3 field workers)			\$178.00
Lodging			\$0.00
Mileage (98 mile round trip for 15 trips at .74 cents/mile)			\$1088.00
Truck Rental – included in Mileage			\$0.00
Total Travel			\$1266.00
Equipment			\$0.00
Supplies			\$600.00
Other – Publication/Documentation			\$400.00
Other - Facilities and Administrative costs @ 26% of MTDC			\$4021.00
Total Project Cost			\$19487.00



STATE OF MICHIGAN

STANDARD CONTRACT TERMS

This STANDARD CONTRACT (“**Contract**”) is agreed to between the State of Michigan (the “**State**”) and Michigan Technological University (“**Contractor**”). This Contract is effective on July 1, 2014 (“**Effective Date**”), and unless terminated, expires on December 31, 2016.

This Contract may be renewed for up to two (2) additional one (1) year period(s). Renewal must be by written agreement of the parties.

The parties agree as follows:

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

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

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

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

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

If to State:

Jana Harding-Bishop
525 W Allegan Street
Lansing, MI 48933
HardingJ3@michigan.gov
(517) 284-5938

If to Contractor:

Lisa Jukkala
1400 Townsend Drive
Houghton, MI 49931
Lajukkal@mtu.edu
(906) 487-2226

3. **Contract Administrator.** The Contract Administrator for each party is the only person authorized to modify any terms and conditions of this Contract (each a “**Contract Administrator**”):

State:

Jana Harding-Bishop
525 W Allegan Street
Lansing, MI 48933
HardingJ3@michigan.gov
(517) 284-5938

Contractor:

Lisa Jukkala
1400 Townsend Drive
Houghton, MI 49931
Lajukkal@mtu.edu
(906)487-2226

4. **Project Manager.** The Project Manager for each party will monitor and coordinate the day-to-day activities of the Contract (each a “**Program Manager**”):

State:
 Rob Strittmatter
 14223 U.S. 41
 Copper Harbor, MI 49918]
StrittmatterR@michigan.gov
 (906) 289-4215

Contractor:
 Dr. Patrick Martin
 1400 Townsend Dr.
 Houghton, MI 49931
 pemartin@mtu.edu
 (906) 487-2070

5. **Performance Guarantee.** Contractor must at all times have financial resources sufficient, in the opinion of the State, to ensure performance of the Contract and must provide proof upon request. The State may require a performance bond (as specified in Exhibit A) if, in the opinion of the State, it will ensure performance of the Contract.
6. **Insurance Requirements.** Contractor must maintain the insurances identified below and is responsible for all deductibles. All required insurance must: (a) protect the State from claims that may arise out of, are alleged to arise out of, or result from Contractor's or a subcontractor's performance; (b) be primary and non-contributing to any comparable liability insurance (including self-insurance) carried by the State.
- 7.

Insurance Type	Additional Requirements
Commercial General Liability Insurance	
<u>Minimal Limits:</u> \$1,000,000 Each Occurrence Limit \$1,000,000 Personal & Advertising Injury Limit \$2,000,000 General Aggregate Limit \$2,000,000 Products/Completed Operations <u>Deductible Maximum:</u> \$50,000 Each Occurrence	Contractor must have their policy: (1) endorsed to add “the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees, and agents” as additional insureds using endorsement CG 20 10 11 85, or both CG 2010 07 04 and CG 2037 07 04; (2) include a waiver of subrogation; and (3) for a claims-made policy, provide 3 years of tail coverage.
Motor Vehicle Insurance	
<u>Minimal Limits:</u> \$1,000,000 Per Occurrence	
Workers' Compensation Insurance	
<u>Minimal Limits:</u> Coverage according to applicable laws governing work activities.	Waiver of subrogation, except where waiver is prohibited by law.
Employers Liability Insurance	
<u>Minimal Limits:</u> \$100,000 Each Accident \$100,000 Each Employee by Disease \$500,000 Aggregate Disease.	

Professional Liability (Errors and Omissions) Insurance	
<u>Minimal Limits:</u> \$1,000,000 Each Occurrence \$2,000,000 Annual Aggregate <u>Deductible Maximum:</u> \$50,000 Per Loss	

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

8. **Reserved.**
9. **Reserved**
10. **Independent Contractor.** Contractor is an independent contractor and assumes all rights, obligations and liabilities set forth in this Contract. Contractor, its employees, and agents will not be considered employees of the State. No partnership or joint venture relationship is created by virtue of this Contract. Contractor, and not the State, is responsible for the payment of wages, benefits and taxes of Contractor's employees and any subcontractors. Prior performance does not modify Contractor's status as an independent contractor.
11. **Subcontracting.** Contractor may not delegate any of its obligations under the Contract without the prior written approval of the State. Contractor must notify the State at least 90 calendar days before the proposed delegation, and provide the State any information it requests to determine whether the delegation is in its best interest. If approved, Contractor must: (a) be the sole point of contact regarding all contractual matters, including payment and charges for all Contract Activities; (b) make all payments to the subcontractor; and (c) incorporate the terms and conditions contained in this Contract in any subcontract with a subcontractor. Contractor remains responsible for the completion of the Contract Activities, compliance with the terms of this Contract, and the acts and omissions of the subcontractor. The State, in its sole discretion, may require the replacement of any subcontractor.
12. **Staffing.** The State's Contract Administrator may require Contractor to remove or reassign personnel by providing a notice to Contractor.
13. **Reserved.**
14. **Assignment.** Contractor may not assign this Contract to any other party without the prior approval of the State. Upon notice to Contractor, the State, in its sole discretion, may assign in whole or in part, its rights or responsibilities under this Contract to any other party. If the State determines that a novation of the Contract to a third party is necessary, Contractor will agree to the novation, provide all necessary documentation and signatures, and continue to perform, with the third party, its obligations under the Contract.
15. **Change of Control.** Contractor will notify, at least 90 calendar days before the effective date, the State of a change in Contractor's organizational structure or ownership. For purposes of this Contract, a change in control means any of the following: (a) a sale of more than 50% of Contractor's stock; (b) a sale of substantially all of Contractor's assets; (c) a change in a majority of Contractor's board members; (d) consummation of a merger or consolidation of Contractor with any other entity; (e) a change in ownership through a transaction or series of transactions; (f) or the board (or the stockholders) approves a plan of complete liquidation. A change of control does not include any consolidation or merger effected exclusively to change the domicile of Contractor, or any transaction or series of transactions principally for bona fide equity financing purposes.

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

16. **Ordering.** Contractor is not authorized to begin performance until receipt of an authorizing document as identified in Exhibit A.
17. **Acceptance.** Contract Activities are subject to inspection and testing by the State within 30 calendar days of the State's receipt of them ("**State Review Period**"), unless otherwise provided in Exhibit A. If the Contract Activities are not fully accepted by the State, the State will notify Contractor by the end of the State Review Period that either: (a) the Contract Activities are accepted, but noted deficiencies must be corrected; or (b) the Contract Activities are rejected. If the State finds material deficiencies, it may: (i) reject the Contract Activities without performing any further inspections; (ii) demand performance at no additional cost; or (iii) terminate this Contract in accordance with Section 24, Termination for Cause.

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

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

18. **Reserved.**
19. **Risk of Loss and Title.** Until final acceptance, title and risk of loss or damage to Contract Activities remains with Contractor. Contractor is responsible for filing, processing, and collecting all damage claims. The State will record and report to Contractor any evidence of visible damage. If the State rejects the Contract Activities, Contractor must remove them from the premises within 10 days after notification of rejection. The risk of loss of rejected or non-conforming Contract Activities remains with Contractor. Rejected Contract Activities not removed by Contractor within 10 days will be deemed abandoned by Contractor, and the State will have the right to dispose of it as its own property. Contractor must reimburse the State for costs and expenses incurred in storing or effecting removal or disposition of rejected Contract Activities.

20. Warranty Period.

The warranty period, if applicable, for Contract Activities is a fixed period commencing on the date specified in Exhibit A. If the Contract Activities do not function as warranted during the warranty period the State may return such non-conforming Contract Activities to the Contractor for a full refund.

21. **Terms of Payment.** Invoices must conform to the requirements agreed upon by the State and Contractor. All undisputed amounts are payable within 45 days of the State's receipt. Contractor may only charge for Contract Activities performed as specified in Exhibit A. Invoices must include an itemized statement of all charges. The State is exempt from State sales tax for direct purchases and may be exempt from federal excise tax, if Contract Activities purchased under the Contract are for the State's exclusive use. Prices are exclusive of all taxes, and Contractor shall be solely responsible for payment of any applicable taxes. The State has the right to withhold payment of any disputed amounts until the parties agree as to the validity of the disputed amount. The State will notify Contractor of any dispute within 30 days. Payment by the State will not constitute a waiver of any rights as to Contractor's continuing obligations, including claims for deficiencies or substandard Contract Activities. Contractor's acceptance of final payment by the State constitutes a waiver of all claims by Contractor against the State for payment under this Contract, other than those claims previously filed in writing on a timely basis and still disputed.

The State will only disburse payments under this Contract through Electronic Funds Transfer (EFT). Contractor must register with the State at <http://www.michigan.gov/cpexpress> to receive electronic fund transfer payments. If Contractor does not register, the State is not liable for failure to provide payment.

Without prejudice to any other right or remedy it may have, the State reserves the right to set off at any time any amount then due and owing to it by Contractor against any amount payable by the State to Contractor under this Contract.

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

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

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

25. **Termination for Convenience.** The State may immediately terminate this Contract in whole or in part without penalty and for any reason, including but not limited to, appropriation or budget shortfalls. The termination notice will specify whether Contractor must: (a) cease performance of the Contract Activities immediately, or (b) continue to perform the Contract Activities in accordance with Section 26, Transition Responsibilities. If the State terminates this Contract for convenience, the State will pay all reasonable costs, as determined by the State, for State approved "Transition Responsibilities."
26. **Transition Responsibilities.** Upon termination or expiration of this Contract for any reason, Contractor must, for a period of time specified by the State (not to exceed 90 days), provide all reasonable transition assistance requested by the State, to allow for the expired or terminated portion of the Contract Activities to continue without interruption or adverse effect, and to facilitate the orderly transfer of such Contract Activities to the State or its designees. Such transition assistance may include but is not limited to: (a) continuing to perform the Contract Activities at the established Contract rates; (b) taking all reasonable and necessary measures to transition performance of the work, including all applicable Contract Activities, training, equipment, software, leases, reports and other documentation, to the State or the State's designee; (c) taking all necessary and appropriate steps, or such other action as the State may direct, to preserve, maintain, protect, or return to the State all materials, data, property, and confidential information provided directly or indirectly to Contractor by any entity, agent, vendor, or employee of the State; (d) transferring title in and delivering to the State, at the State's discretion, all completed or partially completed deliverables prepared under this Contract as of the Contract termination date; and (e) preparing an accurate accounting from which the State and Contractor may reconcile all outstanding accounts (collectively, "**Transition Responsibilities**"). This Contract will automatically be extended through the end of the transition period.

27. General Indemnification.

Each party to this contract must seek its own legal representative and bear its own costs; including judgments, in any litigation that may arise from performance specific to each party's responsibilities. It is specifically understood and agreed that neither party will indemnify the other party in such litigation.

28. Information Release/Ownership.

News Releases

News releases pertaining to this Contract or the services, study, data, or project to which it relates will not be made without prior written State approval, which will not be unduly withheld.

Publication

The Contractor will not use, release, or publish any analyses, findings, results, or techniques developed under this agreement, or any information derived therefrom until such analyses, findings, or techniques have been reported to the State in the manner prescribed by this agreement and have become public domain. These analyses, findings or techniques will be considered in the public domain when: 1) they are submitted to the State and receive positive action, 2) they are formally accepted by the State, or 3) forty-five (45) days elapse after submission to the State, whichever of the three may occur first. No material may be published that is exempt from disclosure under Public Act No. 442 of 1976, known as the "Freedom of Information Act," without express permission from the State. The Contractor will provide the State, for its review, copies of all presentations or articles being submitted for publication at least thirty (30) days in advance. Review of materials will be handled expeditiously and approval will not be unduly withheld. Co-authorship on any presentations at professional meetings and publications resulting from this project will be agreed upon by the Co-PIs.

Acknowledgement of State Participation/Support

All publications or oral presentations concerning the analyses, findings, results, or techniques developed under this contract will contain an acknowledgement, of the State's participation and support unless the State requests in writing that their participation and support not be acknowledged. Furthermore, Contractor may not receive fees for any article in excess of the cost of preparation of published article and excluding the cost of the research and compilation that was compensated under the contract.

29. Limitation of Liability. The State is not liable for consequential, incidental, indirect, or special damages, regardless of the nature of the action.

30. Disclosure of Litigation, or Other Proceeding. Contractor must notify the State within 14 calendar days of receiving notice of any litigation, investigation, arbitration, or other proceeding (collectively, "**Proceeding**") involving Contractor, a subcontractor, or an officer or director of Contractor or subcontractor, that arises during the term of the Contract, including: (a) a criminal Proceeding; (b) a parole or probation Proceeding; (c) a Proceeding under the Sarbanes-Oxley Act; (d) a civil Proceeding involving: (1) a claim that might reasonably be expected to adversely affect Contractor's viability or financial stability; or (2) a governmental or public entity's claim or written allegation of fraud; or (e) a Proceeding involving any license that Contractor is required to possess in order to perform under this Contract.

31. Reserved.

32. State Data.

- a. Ownership. The State's data ("**State Data**," which will be treated by Contractor as Confidential Information) includes: (a) the State's data collected, used, processed, stored, or generated as the result of the Contract Activities; (b) personally identifiable information ("**PII**") collected, used, processed, stored, or generated as the result of the Contract Activities, including, without limitation, any information that identifies an individual, such as an individual's social security number or other government-issued identification number, date of birth, address, telephone number, biometric data, mother's maiden name, email address, credit card information, or an individual's name in combination with any other of the elements here listed; and, (c) personal health information ("**PHI**") collected, used, processed, stored, or generated as the result of the Contract Activities, which is

defined under the Health Insurance Portability and Accountability Act (HIPAA) and its related rules and regulations. State Data is and will remain the sole and exclusive property of the State and all right, title, and interest in the same is reserved by the State. This Section survives the termination of this Contract.

- b. Contractor Use of State Data. Contractor is provided a limited license to State Data for the sole and exclusive purpose of providing the Contract Activities, including a license to collect, process, store, generate, and display State Data only to the extent necessary in the provision of the Contract Activities. Contractor must: (a) keep and maintain State Data in strict confidence, using such degree of care as is appropriate and consistent with its obligations as further described in this Contract and applicable law to avoid unauthorized access, use, disclosure, or loss; (b) use and disclose State Data solely and exclusively for the purpose of providing the Contract Activities, such use and disclosure being in accordance with this Contract, any applicable Statement of Work, and applicable law; and (c) not use, sell, rent, transfer, distribute, or otherwise disclose or make available State Data for Contractor's own purposes or for the benefit of anyone other than the State without the State's prior written consent. This Section survives the termination of this Contract.
- c. Extraction of State Data. Contractor must, within one (1) business day of the State's request, provide the State, without charge and without any conditions or contingencies whatsoever (including but not limited to the payment of any fees due to Contractor), an extract of the State Data in the format specified by the State.
- d. Backup and Recovery of State Data. Unless otherwise specified in Exhibit A, Contractor is responsible for maintaining a backup of State Data and for an orderly and timely recovery of such data. Unless otherwise described in Exhibit A, Contractor must maintain a contemporaneous backup of State Data that can be recovered within two (2) hours at any point in time.
- e. Loss of Data. In the event of any act, error or omission, negligence, misconduct, or breach that compromises or is suspected to compromise the security, confidentiality, or integrity of State Data or the physical, technical, administrative, or organizational safeguards put in place by Contractor that relate to the protection of the security, confidentiality, or integrity of State Data, Contractor must, as applicable: (a) notify the State as soon as practicable but no later than twenty-four (24) hours of becoming aware of such occurrence; (b) cooperate with the State in investigating the occurrence, including making available all relevant records, logs, files, data reporting, and other materials required to comply with applicable law or as otherwise required by the State; (c) in the case of PII or PHI, at the State's sole election, (i) notify the affected individuals who comprise the PII or PHI as soon as practicable but no later than is required to comply with applicable law, or, in the absence of any legally required notification period, within five (5) calendar days of the occurrence; or (ii) reimburse the State for any costs in notifying the affected individuals; (d) in the case of PII, provide third-party credit and identity monitoring services to each of the affected individuals who comprise the PII for the period required to comply with applicable law, or, in the absence of any legally required monitoring services, for no less than twenty-four (24) months following the date of notification to such individuals; (e) perform or take any other actions required to comply with applicable law as a result of the occurrence; (f) without limiting Contractor's obligations of indemnification as further described in this Contract, indemnify, defend, and hold harmless the State for any and all claims, including reasonable attorneys' fees, costs, and expenses incidental thereto, which may be suffered by, accrued against, charged to, or recoverable from the State in connection with the occurrence; (g) be responsible for recreating lost State Data in the manner and on the schedule set by the State without charge to the State; and, (h) provide to the State a detailed plan within ten (10) calendar days of the occurrence describing the measures Contractor will undertake to prevent a future occurrence. Notification to affected individuals, as described above, must comply with applicable law, be written in plain language, and contain, at a minimum: name and contact information of Contractor's representative; a description of the nature of the loss; a list of the types of data involved; the known or approximate date of the loss; how such loss may affect the affected individual; what steps Contractor has taken to protect the affected individual; what steps the affected individual can take to protect himself or herself; contact information for major credit card reporting agencies; and, information regarding the credit and identity monitoring services to be provided by Contractor. This Section survives the termination of this Contract.

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

- a. Meaning of Confidential Information. For the purposes of this Contract, the term “**Confidential Information**” means all information and documentation of a party that: (a) has been marked “confidential” or with words of similar meaning, at the time of disclosure by such party; (b) if disclosed orally or not marked “confidential” or with words of similar meaning, was subsequently summarized in writing by the disclosing party and marked “confidential” or with words of similar meaning; and, (c) should reasonably be recognized as confidential information of the disclosing party. The term “Confidential Information” does not include any information or documentation that was: (a) subject to disclosure under the Michigan Freedom of Information Act (FOIA); (b) already in the possession of the receiving party without an obligation of confidentiality; (c) developed independently by the receiving party, as demonstrated by the receiving party, without violating the disclosing party’s proprietary rights; (d) obtained from a source other than the disclosing party without an obligation of confidentiality; or, (e) publicly available when received, or thereafter became publicly available (other than through any unauthorized disclosure by, through, or on behalf of, the receiving party). For purposes of this Contract, in all cases and for all matters, State Data is deemed to be Confidential Information.
- b. Obligation of Confidentiality. The parties agree to hold all Confidential Information in strict confidence and not to copy, reproduce, sell, transfer, or otherwise dispose of, give or disclose such Confidential Information to third parties other than employees, agents, or subcontractors of a party who have a need to know in connection with this Contract or to use such Confidential Information for any purposes whatsoever other than the performance of this Contract. The parties agree to advise and require their respective employees, agents, and subcontractors of their obligations to keep all Confidential Information confidential. Disclosure to a subcontractor is permissible where: (a) use of a subcontractor is authorized under this Contract; (b) the disclosure is necessary or otherwise naturally occurs in connection with work that is within the subcontractor's responsibilities; and (c) Contractor obligates the subcontractor in a written contract to maintain the State's Confidential Information in confidence. At the State's request, any employee of Contractor or any subcontractor may be required to execute a separate agreement to be bound by the provisions of this Section.
- c. Cooperation to Prevent Disclosure of Confidential Information. Each party must use its best efforts to assist the other party in identifying and preventing any unauthorized use or disclosure of any Confidential Information. Without limiting the foregoing, each party must advise the other party immediately in the event either party learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this Contract and each party will cooperate with the other party in seeking injunctive or other equitable relief against any such person.
- d. Remedies for Breach of Obligation of Confidentiality. Each party acknowledges that breach of its obligation of confidentiality may give rise to irreparable injury to the other party, which damage may be inadequately compensable in the form of monetary damages. Accordingly, a party may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies which may be available, to include, in the case of the State, at the sole election of the State, the immediate termination, without liability to the State, of this Contract or any Statement of Work corresponding to the breach or threatened breach.
- e. Surrender of Confidential Information upon Termination. Upon termination of this Contract or a Statement of Work, in whole or in part, each party must, within five (5) calendar days from the date of termination, return to the other party any and all Confidential Information received from the other party, or created or received by a party on behalf of the other party, which are in such party's possession, custody, or control; provided, however, that Contractor must return State Data to the State following the timeframe and procedure described further in this Contract. Should Contractor or the State determine that the return of any non-State Data Confidential Information is not feasible, such party must destroy the non-State Data Confidential Information and must certify the same in writing within five (5) calendar days from the date of termination to the other party.

34. Data Privacy and Information Security.

- a. Undertaking by Contractor. Without limiting Contractor's obligation of confidentiality as further described, Contractor is responsible for establishing and maintaining a data privacy and information security program, including physical, technical, administrative, and organizational safeguards, that is designed to: (a) ensure the security and confidentiality of the State Data; (b) protect against any anticipated threats or hazards to the security or integrity of the State Data; (c) protect against unauthorized disclosure, access to, or use of the State Data; (d) ensure the proper disposal of State Data; and (e) ensure that all employees, agents, and subcontractors of Contractor, if any, comply with all of the foregoing. In no case will the safeguards of Contractor's data privacy and information security program be less stringent than the safeguards used by the State, and Contractor must at all times comply with all applicable State IT policies and standards, which are available to Contractor upon request.
- b. Audit by Contractor. Currently, an annual audit of Michigan Tech's data security and privacy program is not performed. Reviews have been conducted in the past and will continue, however, a formal timeline has not been established for a formal audit.
- c. Right of Audit by the State. Without limiting any other audit rights of the State, the State has the right to review Contractor's data privacy and information security program prior to the commencement of Contract Activities and from time to time during the term of this Contract. During the providing of the Contract Activities, on an ongoing basis from time to time and without notice, the State, at its own expense, is entitled to perform, or to have performed, an on-site audit of Contractor's data privacy and information security program. In lieu of an on-site audit, upon request by the State, Contractor agrees to complete, within forty-five (45) days of receipt, an audit questionnaire provided by the State regarding Contractor's data privacy and information security program.
- d. Audit Findings. Contractor must implement any required safeguards as identified by the State or by any audit of Contractor's data privacy and information security program.
- e. State's Right to Termination for Deficiencies. The State reserves the right, at its sole election, to immediately terminate this Contract or a Statement of Work without limitation and without liability if the State determines that Contractor fails or has failed to meet its obligations under this Section.

35. Reserved

36. Reserved

37. **Records Maintenance, Inspection, Examination, and Audit.** Under MCL 18.1470, the State or its designee may audit Contractor to verify compliance with this Contract. Contractor must retain, and provide to the State or its designee and the auditor general upon request, all financial and accounting records related to the Contract through the term of the Contract and for 7 years after the latter of termination, expiration, or final payment under this Contract or any extension ("**Audit Period**"). If an audit, litigation, or other action involving the records is initiated before the end of the Audit Period, Contractor must retain the records until all issues are resolved.

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

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

- 38. Warranties and Representations.** Contractor represents and warrants: (a) Contractor is the owner or licensee of any Contract Activities that it licenses, sells, or develops and Contractor has the rights necessary to convey title, ownership rights, or licensed use; (b) all Contract Activities are delivered free from any security interest, lien, or encumbrance and will continue in that respect; (c) the Contract Activities will not infringe the patent, trademark, copyright, trade secret, or other proprietary rights of any third party; (d) Contractor must assign or otherwise transfer to the State or its designee any manufacturer's warranty for the Contract Activities; (e) the Contract Activities are merchantable and fit for the specific purposes identified in the Contract; (f) the Contract signatory has the authority to enter into this Contract; (g) all information furnished by Contractor in connection with the Contract fairly and accurately represents Contractor's business, properties, finances, and operations as of the dates covered by the information, and Contractor will inform the State of any material adverse changes; and (h) all information furnished and representations made in connection with the award of this Contract is true, accurate, and complete, and contains no false statements or omits any fact that would make the information misleading. A breach of this Section is considered a material breach of this Contract, which entitles the State to terminate this Contract under Section 24, Termination for Cause.
- 39. Conflicts and Ethics.** Contractor will uphold high ethical standards and is prohibited from: (a) holding or acquiring an interest that would conflict with this Contract; (b) doing anything that creates an appearance of impropriety with respect to the award or performance of the Contract; (c) attempting to influence or appearing to influence any State employee by the direct or indirect offer of anything of value; or (d) paying or agreeing to pay any person, other than employees and consultants working for Contractor, any consideration contingent upon the award of the Contract. Contractor must immediately notify the State of any violation or potential violation of these standards. This Section applies to Contractor, any parent, affiliate, or subsidiary organization of Contractor, and any subcontractor that performs Contract Activities in connection with this Contract.
- 40. Compliance with Laws.** Contractor must comply with all federal, state and local laws, rules and regulations.
- 41. Reserved.**
- 42. Nondiscrimination.** Under the Elliott-Larsen Civil Rights Act, 1976 PA 453, MCL 37.2101, *et seq.*, and the Persons with Disabilities Civil Rights Act, 1976 PA 220, MCL 37.1101, *et seq.*, Contractor and its subcontractors agree not to discriminate against an employee or applicant for employment with respect to hire, tenure, terms, conditions, or privileges of employment, or a matter directly or indirectly related to employment, because of race, color, religion, national origin, age, sex, height, weight, marital status, or mental or physical disability. Breach of this covenant is a material breach of this Contract.
- 43. Unfair Labor Practice.** Under MCL 423.324, the State may void any Contract with a Contractor or subcontractor who appears on the Unfair Labor Practice register compiled under MCL 423.322.
- 44. Governing Law.** This Contract is governed, construed, and enforced in accordance with Michigan law, excluding choice-of-law principles, and all claims relating to or arising out of this Contract are governed by Michigan law, excluding choice-of-law principles. Any dispute arising from this Contract must be resolved in Michigan Court of Claims. Contractor consents to venue in Ingham County, and waives any objections, such as lack of personal jurisdiction or *forum non conveniens*. Contractor must appoint agents in Michigan to receive service of process.
- 45. Non-Exclusivity.** Nothing contained in this Contract is intended nor shall be construed as creating any requirements contract with Contractor. This Contract does not restrict the State or its agencies from acquiring similar, equal, or like Contract Activities from other sources.
- 46. Force Majeure.** Neither party will be in breach of this Contract because of any failure arising from any disaster or acts of god that are beyond their control and without their fault or negligence. Each party will use commercially reasonable efforts to resume performance. Contractor will not be relieved of a breach or delay caused by its subcontractors. If immediate performance is necessary to ensure public health and safety, the State may immediately contract with a third party.
- 47. Dispute Resolution.** The parties will endeavor to resolve any Contract dispute in accordance with this provision. The dispute will be referred to the parties' respective Contract Administrators or Program Managers. Such referral must include a description of the issues and all supporting documentation. The parties must submit the dispute to a senior executive if unable to resolve the dispute within 15 business days. The parties will continue

performing while a dispute is being resolved, unless the dispute precludes performance. A dispute involving payment does not preclude performance.

Litigation to resolve the dispute will not be instituted until after the dispute has been elevated to the parties' senior executive and either concludes that resolution is unlikely, or fails to respond within 15 business days. The parties are not prohibited from instituting formal proceedings: (a) to avoid the expiration of statute of limitations period; (b) to preserve a superior position with respect to creditors; or (c) where a party makes a determination that a temporary restraining order or other injunctive relief is the only adequate remedy. This Section does not limit the State's right to terminate the Contract.

48. **Website Incorporation.** The State is not bound by any content on Contractor's website unless expressly incorporated directly into this Contract.
49. **Order of Precedence.** In the event of a conflict between the terms and conditions of the Contract, the exhibits, a purchase order, or an amendment, the order of precedence is: (a) the purchase order; (b) the amendment; (c) Exhibit A; (d) any other exhibits; and (e) the Contract.
50. **Severability.** If any part of this Contract is held invalid or unenforceable, by any court of competent jurisdiction, that part will be deemed deleted from this Contract and the severed part will be replaced by agreed upon language that achieves the same or similar objectives. The remaining Contract will continue in full force and effect.
51. **Waiver.** Failure to enforce any provision of this Contract will not constitute a waiver.
52. **Survival.** The provisions of this Contract that impose continuing obligations, including warranties and representations, termination, transition, insurance coverage, indemnification, and confidentiality, will survive the expiration or termination of this Contract.
53. **Entire Contract and Modification.** This Contract is the entire agreement and replaces all previous agreements between the parties for the Contract Activities. This Contract may not be amended except by signed agreement between the parties (a "**Contract Change Notice**").