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

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

NOTICE OF CONTRACT NO. 751B5500012

between

THE STATE OF MICHIGAN

and

NAME & ADDRESS OF CONTRACTOR:	PRIMARY CONTACT	EMAIL
Great Lakes Air, Inc.	Sheryl Schairer	sherylgla@yahoo.com
1220 N. State Street	**TELEPHONE**	**CONTRACTOR #, MAIL CODE**
St. Ignace, MI 49781	(906) 643-7165	*****5531/004

STATE CONTACTS	DIVISION	NAME	PHONE	EMAIL
PROJECT MANAGER:	FISHERIES	TRACY KOLB	(517) 284-5928	KOLBT@MICHIGAN.GOV
BUYER:	FINANCE AND OPERATIONS	JANA HARDING-BISHOP	(517) 284-5938	HARDINGJ3@MICHIGAN.GOV

CONTRACT SUMMARY:

DESCRIPTION: Descriptive Contract Title (Not always the same language as provided in MAIN)

Aerial Recreational Angler Survey Services

INITIAL TERM	EFFECTIVE DATE	INITIAL EXPIRATION DATE	AVAILABLE OPTIONS
3 YEARS	12/15/2014	12/14/2017	2 – 1 YEAR
PAYMENT TERMS	**F.O.B**	**SHIPPED**	**SHIPPED FROM**
NET 45	N/A	N/A	N/A

ALTERNATE PAYMENT OPTIONS:	AVAILABLE TO MiDEAL PARTICIPANTS
☐ P-card ☐ Direct Voucher (DV) ☐ Other	☐ YES ☒ NO

MINIMUM DELIVERY REQUIREMENTS:

N/A

MISCELLANEOUS INFORMATION:

ESTIMATED CONTRACT VALUE AT TIME OF EXECUTION:	$148,500.00

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P.O. BOX 30028, LANSING, MI 48909
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MINIMUM DELIVERY REQUIREMENTS:

N/A

MISCELLANEOUS INFORMATION:

ESTIMATED CONTRACT VALUE AT TIME OF EXECUTION:	$148,500.00

THIS IS NOT AN ORDER: This Contract Agreement is awarded on the basis of our inquiry bearing the solicitation #075115B0003558. Orders for delivery will be issued directly by the Department of Natural Resources through the issuance of a Purchase Order Form.

Contract #:

FOR THE CONTRACTOR:	**FOR THE STATE:**
Great Lakes Air, Inc	On-file in DNR Procurement
Firm Name	Signature
On-file in DNR Procurement	Laurie Gyorkos, Procurement Manager
Authorized Agent Signature	Name/Title
Paul S. Fullerton	Finance and Operations/Procurement Section
Authorized Agent (Print or Type)	Enter Name of Division
12-17-14	12-17-14
Date	Date

STATE OF MICHIGAN

Aerial Recreational Angler Survey Services

STATEMENT OF WORK
CONTRACT ACTIVITIES

1.0 **Project Identification**

1.01 Background/Project Description

The Department of Natural Resources is required to determine angler effort as a component of measuring recreational harvest from state fisheries. In situations where anglers access resources from areas other than public ramps and marinas, or where it is difficult to identify fishing vessels from land, the most reliable method for determining angler effort is an aerial survey.

Contractors for aerial recreational angler survey services are necessary to estimate fishing pressure and harvest for some of the state's most important fisheries. The aerial surveys enable Fisheries Division to measure the success or effectiveness of management efforts in these waters. The surveys also fulfill interagency/international agreements (legal mandate) to measure sport harvest in Michigan waters of Great Lakes fulfill requirements to measure angler harvest in 2000 Consent Decree waters and enable the state to earn Sport Fish Restoration funds from the US Fish and Wildlife Service.

1.02 Contract Activities

1. Survey Areas:

   a. Survey Area 1: Northern Lake Huron and the St. Mary's River, from Rockport to the Sault Ste. Marie Rapids:

      Service will be provided as scheduled, with a maximum of 150 flights anticipated per year of Contract.

      Conduct aerial boat and angler counts on Northern Lake Huron, St. Ignace to Chippewa Point, Drummond Island, Sault Ste. Marie Rapids (see site description below) based on a pre-arranged random schedule during the open water fishing seasons (April 1 through October 31) and occasionally the winter fishing season (Nov 30-March 31). It is estimated there will be a total of 150-200 flights during this time; the higher number flights is required if winter fishing season is surveyed. The average flight will be 1.3-2 hours in duration for flights from St. Ignace to Sault Ste. Marie while flights going to southern sites could average from 2.5-4 hours.

      During survey months, pilots will conduct counts at sites selected from the Upper St. Mary's River (Site 404) which is the northern most count site to the southernmost count site of Rockport (Site 225). Pilot will count various modes of fishing which may include boats (excluding sailboats or commercial boats), shore, pier, open ice, or shanty. For each fishing season, contractor will be supplied site specific information along with applicable modes to be counted at each site (all modes may not be required at a specific site) and not all sites (see site description below) will be sampled each season.

      SITE DESCRIPTIONS –The State of Michigan reserves the right to add, change or drop sites as required by survey design.

      Site 207: Sweets Point to Neebish Island Ferry
      Site 208: Lake George to Green Point, Include Little Lake George, Lake George Sugar Island Area
      Site 209/403: Neebish Island Ferry to the Rapids in Sault Ste. Marie, Includes Lake Nicolet
      Site 210: Drummond Island (Chippewa point)
      Site 211: St. Vitals Point to Detour
      Site 214: Cedarville-Hessel (Les Cheneaux Islands)
      Site 216: St. Ignace – St. Martin's Bay
      Site 404: Leigh Bay – Upper Sault Canal
      Site 405: St. Joseph Channel
      Site: 071: Mackinaw City
      Site 218: Cheboygan
      Site 219: Hammond Bay
      Site 224: Presque Isle

Site 225: Rockport

2. Survey Time frame:

The Contractor must conduct aerial boat and angler counts within the indicated survey area(s), based on a pre-arranged random schedule which will be provided by the DNR Project manager. Flights must be done according to the schedule and will be for the following time periods:

a. During open water (April thru October)

b. Ice fishing seasons (November thru March)

c. Flights will be scheduled five (5) days per week – with 3 weekday and 2 weekend flights required each week.

The Contractor will be required to provide all services as scheduled, provided safe flying conditions exist. If a pilot determines it is not safe to fly, they must immediately contact the DNR Project Manager and work with them reschedule the flight.

3. Flight Requirements:

The Contractor will receive a pre-arranged schedule that is generated randomly, as well as maps and instructions. The schedule provided will cover the entire season. The schedule will include the take-off times and starting direction for each flight. The Contractor must fly exactly according to the schedule provided without deviation. The schedule is designed to change surveys, north to south one day and south to north another day in order to eliminate any bias from the pilot entering into the survey design.

The Contractor must:

a. Fly the scheduled area and count the specified modes for each site area which may include all boats (excluding sailboats or commercial boats) as well as all shore and pier anglers within the survey area.

b. The survey must be an actual physical count of persons on shore, piers and boats engaged in fishing. Estimates are not acceptable to the State.

c. The Contractor must fly the survey sites in a pattern sufficient to count all persons and boats engaged in fishing on that day. As a general rule the count can usually be accomplished with one (1) pass over the survey site, however there may be days where the boats have ranged far enough from shore to necessitate a second pass farther out from shore to obtain an accurate total count.

d. Past experience has demonstrated that an observer in the aircraft has not been required to complete the task; however they are not prohibited provided the Contractor has notified the state of the extra person in the aircraft and identified them to the State as an observer.

e. Based on the conditions each day the pilot will determine what a safe altitude is to conduct the survey from in order to be able to count boats and/or shore and pier anglers.

f. The Contractor must complete the daily usage log/invoice and all data shall be recorded following instructions and using data forms provided by the DNR Project Manager.

g. Should the Contractor experience anything out of the ordinary during a flight, the Contractor must report the incident to the DNR Project Manager, who may require a written report be submitted. Incidents are items such as but not limited to delays in flights, unscheduled deviation from flight, unscheduled landings, accidents, etc.

1.03 Deleted

1.04 State Review, Acceptance and Testing Process and Criteria

The contractor will submit data and invoices the first week of each month for the previous month of flight activity. The State will review the data and flight invoices for accuracy and detail and if approved, will process payment.

1.05 Final Acceptance - Reserved

2.0 Contractor Responsibilities

2.01 Deleted

2.02 Deleted

2.03 Deleted

3.0 Staffing

3.01 Deleted

3.02 Deleted

3.03 Deleted

3.04 Key Personnel

The Contractor must appoint Key Personnel who will be directly responsible for the day-to-day operations of the Contract. The Key Personnel must be specifically assigned to the State account, be knowledgeable on the contractual requirements, and respond to State inquires within 24 hours.

The Contractor may not remove or assign a new 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.

Position	Name	Phone #	Email address
Project Manager/Pilot	Paul S. Fullerton	(906) 643-7165	sherylgla@yahoo.com

Pilot Requirements:

All pilots must meet the approval of DNR Program Manager, or designee. Contract pilots must be currently certified and capable of piloting aircraft for the types of mission to be flown, whether for airplane or helicopter. In addition to the general qualifications and the minimum flight experience requirements, Contract pilots may be required to demonstrate their flight proficiency on an actual "flight test", at Contractor's expense, if deemed necessary by the DNR Program Manager. Aircraft used for such flight tests will be equipped with dual controls.

Minimum flight experience requirements for Pilot:

FIXED WING	HOURS OF FLYING TIME
Total flying time	750
In each class of single-engine airplane to be flown	100
During preceding 12 months	100
Extended cross-country	200
Night flying	50
Operations in typical terrain and landing facilities, as applicable	200
In class to be flown, proceeding 30 days	5
Related type of flying	50
ROTARY WING	HOURS OF FLYING TIME
Total flying time of all aircraft, including fixed wing	1,000
HELICOPTER	HOURS OF FLYING TIME
Total flying time	500
Night flying	10
Typical terrain	50
In weight class to be flown (light, medium, or heavy)	100
Make and mode, preceding 60 days	10

a. Pilot must have a current, valid commercial pilot certificate with appropriate aircraft ratings as defined in Federal Air Regulations, Part 61.

b. Pilot must have a current Class II (minimum) FAA Medical Certificate and a current Flight Review, as specified in Federal Air Regulations, Part 61.

c. Pilot shall not permit any passenger to ride in the aircraft or any cargo to be loaded therein unless preauthorized by the DNR Program Manager.

d. Pilot is responsible for the safety of the aircraft, its occupants and cargo. Pilot will comply with the directions of the State only when, in his/her judgment such compliance will not be a violation of Federal Aviation Regulations.

e. Pilot shall comply with DNR Flight Duty Limitations along with all FAA and State laws and regulations.

3.05 Deleted

3.06 Disclosure of Subcontractors

Great Lakes Air will not be using Subcontractors under this contract

3.07 Deleted

4.0 Project Management

4.01 Project Plan

Project Control

The contractor will carry out this project under the direction and control of the Michigan Department of Natural Resources – Charlevoix Fisheries Research Station.

Although there will be continuous liaison with the contractor team, DNR's project manager will meet as necessary with the contractor's project manager for the purpose of reviewing progress and providing necessary guidance to the contractor in solving problems that arise.

The DNR reserves the rights to have a staff member fly with the Contractor at any time without prior notice.

4.02 Meetings

The Contractor must attend the following meetings: (attendance may be via conference call if approved by the DNR Project Manager:

Kick-off meeting within 5 calendar days of the Effective Date to discuss all technical provisions required under the contract are met and to review other administrative requirements (including billing, checking in and out of service, and documentation completion and submission requirements).

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: Proposal Manager must identify the type and frequency of reports required. (**OR**) The Contractor must explain its reporting capabilities and any reporting that is included in its proposal.

Name of Report	Frequency of Report
Daily Usage Log/Invoice Form (provided by DNR Project Manager) – Attachment A	To be completed with each flight and submitted monthly
Data Count Form – Attachment B	To be completed with each flight and submitted monthly with invoice
Incident Report	As needed/requested by the DNR Project Manager

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

The Contractor must submit the completed Daily Usage Log/Invoice and submit the first week of the month following flights.

7.02 Payment Methods

The State will process payment for services completed in the following manner:

- Payment against an existing Purchase Order

7.03 Additional Requirements

BASIC AIRCRAFT REQUIREMENTS:

One (1) aircraft shall be made available for duty during the period covered by the Contract and must meet the following requirements:

Airplane – high or low wing monoplane, capable of operating at speeds suitable for conducting a physical count of objects on the ground.

Prior to being awarded the contract and each year before starting work, the Contractor must supply to the State proof of current valid certification as listed below:

- Annual Inspection Airframe
- Annual Inspection Engine
- Aircraft radio license
- Aircraft registration
- Aircraft airworthiness certificate
- 100-Hour Inspection Record
- Aircraft Insurance Certificate, naming the State of Michigan as additional insured
- Business Insurance Certificate

Contractor must have a portable GPS unit available for use.

Exceeding TBO (time between overhaul) will not be allowed under this Contract. If the Contractor is unable to complete the flight without exceeding the TBO an alternate approved aircraft must be used. Documentation of the aircraft being in compliance of the State's requirement must be sent to the Contract administrator and chief pilot of the Department of Natural Resources.

Throughout the life of the Contract, it is the Contractor's sole responsibility to keep these documents current. The Contractor has no more than ten (10) days prior to expiration of a document to send a replacement to the Contract administrator and the DNR Chief Pilot. Failure to provide this information prior to its expiration date may result in contract cancellation.

8.0 Liquidated Damages

Unauthorized Removal of the Project Manager or Pilot which 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 the Project Manager 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.

STATE OF MICHIGAN

Aerial Recreational Angler Survey Services

PRICING

Price includes all costs, including but not limited to, fuel, oil and normal operating supplies, and servicing and repair of aircraft, and potential costs that Contractor may charge the State.

Survey Area 1: Northern Lake Huron and the St. Mary's River, from Rockport to the Sault Ste. Marie Rapids:		
Cost Per Hour for Pilot Services	**Cost Per Hour for Aircraft Rental**	**Total Cost Per Hour**
$33.00	$ 132.00	$ 165.00
Number of hours per year (Summer) 300 hours x 3 years =		900
Contract amount for Area 1 (cost per hour x 900)		$ 148,500.00
For informational purposes only:		
Of the total bid cost per hour for Pilot Services, what is the Pilot's wage per hour? $ 33.00_____	What is the cost per gallon of aviation fuel used for calculating the bid price for Aircraft Rental? $ 6.10_____ Of the total bid cost per hour for Aircraft Rental, what percentage is the cost of aviation fuel? 40%_____	

Attachment A

OFFICIAL DAILY AIRCRAFT USAGE LOG and INVOICE

Contractor Name: _____

Purchase Order # _____ **Invoice for MONTH** _____

Aircraft No.			Invoice No:		Invoice Date:
Tachometer or Hobbs Reading			Flight Times		
Date	Start	End	Start Time	Finish Time	Total Flight Hours

Total Hours Billed _____ X Hourly Rate_____ = Total Amount _____

_____

Printed Name

_____ _____

Signature Date

Attachment B

Sample Angler/Boat Count Data Form

id	WB	DATE	BEGHR	SITE	MODE	COUNT	WEATHER	NOTES
1	LakeHuron	04/02/2014	12:00 PM					
2								

Legend:

Excel datasheet for recording site counts will be provided to contractor along with the flight schedule at start of the work season.

- ID: Each row of data in a month needs a record ID and the records are numbered consecutively and start again at “1” the next month.
- WB: The general area of the survey – will be given to the contractor when they start
- DATE: Date of flight
- BEGHR: The time the pilot is instructed to make a count (taken from the provided schedule)
- SITE: The three digit code for the location the pilot is making counts over
- MODE: The mode of fishing the pilot is making the counts for (ex: counting “boats” or “pier anglers”, etc.)
- COUNT: How many of each mode the pilot counts at each site
- WEATHER: The weather conditions when the pilot is making the counts
- NOTES: Any comments the pilot wants to make

STATE OF MICHIGAN

STANDARD CONTRACT TERMS

This STANDARD CONTRACT ("**Contract**") is agreed to between the State of Michigan (the "**State**") and Great Lakes Air, Inc. ("**Contractor**"), a Michigan corporation. This Contract is effective December 12, 2014 ("**Effective Date**"), and unless terminated, expires on December 11, 2017.

This Contract may be renewed for up to two (2) additional one (1) year periods. 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:	If to Contractor:
Jana Harding-Bishop 525 W Allegan Street Lansing, MI 48909 HardingJ3@michigan.gov (517) 284-5938	Sheryl Schairer 1220 N. State St. St. Ignace, MI 49781 sherylgla@yahoo.com (906) 643-7165

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

If to State:	If to Contractor:
Jana Harding-Bishop 525 W Allegan Street	Paul S. Fullerton 1220 N. State Street

Lansing, MI 48933 HardingJ3@michigan.gov (517) 284-5938	St. Ignace, MI 49781 (906) 643-7165

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

If to State:	If to Contractor:
Tracy Kolb 525 W. Allegan St Lansing, MI 48933 KolbT@michigan.gov (517) 284-5829	Sheryl Schairer 1220 N. State St. St. Ignace, MI 49781 sherylgla@yahoo.com (906) 643-7165

5. **Performance Guarantee**. Contractor must at all times have financial resources sufficient, in the opinion of the State, to ensure performance of the Contract and must provide proof upon request. The State may require a performance bond (as specified in Exhibit A) if, in the opinion of the State, it will ensure performance of the Contract.

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

Insurance Type	Additional Requirements
Commercial General Liability Insurance	
Minimal Limits: $1,000,000 Each Occurrence Limit $1,000,000 Personal & Advertising Injury Limit $2,000,000 General Aggregate Limit $2,000,000 Products/Completed Operations Deductible Maximum: $50,000 Each Occurrence	Contractor must have their policy: (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.
Umbrella or Excess Liability Insurance	
Minimal Limits: $5,000,000 General Aggregate	Contractor must have their policy: (1) endorsed to add "the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees, and agents" as additional insureds, and (2) include a waiver of subrogation.
Motor Vehicle Insurance	
Minimal Limits: $1,000,000 Per Occurrence	
Workers' Compensation Insurance	
Minimal Limits: Coverage according to applicable laws governing work activities.	Waiver of subrogation, except where waiver is prohibited by law.
Employers Liability Insurance	
Minimal Limits: $100,000 Each Accident $100,000 Each Employee by Disease $500,000 Aggregate Disease.	

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

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

7. Reserved

8. Reserved

9. Independent Contractor. Contractor is an independent contractor and assumes all rights, obligations and liabilities set forth in this Contract. Contractor, its employees, and agents will not be considered employees of the State. No partnership or joint venture relationship is created by virtue of this Contract. Contractor, and not the State, is responsible for the payment of wages, benefits and taxes of Contractor's employees and any subcontractors. Prior performance does not modify Contractor's status as an independent contractor.

10. Subcontracting. Contractor may not delegate any of its obligations under the Contract without the prior written approval of the State. Contractor must notify the State at least 90 calendar days before the proposed delegation, and provide the State any information it requests to determine whether the delegation is in its best interest. If approved, Contractor must: (a) be the sole point of contact regarding all contractual matters, including payment and charges for all Contract Activities; (b) make all payments to the subcontractor; and (c) incorporate the terms and conditions contained in this Contract in any subcontract with a subcontractor. Contractor remains responsible for the completion of the Contract Activities, compliance with the terms of this Contract, and the acts and omissions of the subcontractor. The State, in its sole discretion, may require the replacement of any subcontractor.

11. Staffing. The State's Contract Administrator may require Contractor to remove or reassign personnel by providing a notice to Contractor.

12. Background Checks. Upon request, Contractor must perform background checks on all employees and subcontractors and its employees prior to their assignment. The scope is at the discretion of the State and documentation must be provided as requested. Contractor is responsible for all costs associated with the requested background checks. The State, in its sole discretion, may also perform background checks.

13. Assignment. Contractor may not assign this Contract to any other party without the prior approval of the State. Upon notice to Contractor, the State, in its sole discretion, may assign in whole or in part, its rights or responsibilities under this Contract to any other party. If the State determines that a novation of the Contract to a third party is necessary, Contractor will agree to the novation, provide all necessary documentation and signatures, and continue to perform, with the third party, its obligations under the Contract.

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

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

15. Ordering. Contractor is not authorized to begin performance until receipt of authorization as identified in Exhibit A.

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

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

accordance with the time response standards set forth in this Contract.

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

17. **Reserved**

18. **Reserved**

19. **Reserved**

20. **Terms of Payment.** Invoices must conform to the requirements communicated from time-to-time by the State. All undisputed amounts are payable within 45 days of the State's receipt. Contractor may only charge for Contract Activities performed as specified in Exhibit A. Invoices must include an itemized statement of all charges. The State is exempt from State sales tax for direct purchases and may be exempt from federal excise tax, if Services purchased under this Agreement are for the State's exclusive use. Notwithstanding the foregoing, all prices are inclusive of taxes, and Contractor is responsible for all sales, use and excise taxes, and any other similar taxes, duties and charges of any kind imposed by any federal, state, or local governmental entity on any amounts payable by the State under this Contract.

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

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

21. **Liquidated Damages.** Liquidated damages, if applicable, will be assessed as described in Exhibit A.

22. **Stop Work Order.** The State may suspend any or all activities under the Contract at any time. The State will provide Contractor a written stop work order detailing the suspension. Contractor must comply with the stop work order upon receipt. Within 90 calendar days, or any longer period agreed to by Contractor, the State will either: (a) issue a notice authorizing Contractor to resume work, or (b) terminate the Contract or purchase order. The State will not pay for Contract Activities, Contractor's lost profits, or any additional compensation during a stop work period.

23. **Termination for Cause.** The State may terminate this Contract for cause, in whole or in part, if Contractor, as determined by the State: (a) endangers the value, integrity, or security of any location, data, or personnel; (b) becomes insolvent, petitions for bankruptcy court proceedings, or has an involuntary bankruptcy proceeding filed against it by any creditor; (c) engages in any conduct that may expose the State to liability; (d) breaches any of its material duties or obligations; or (e) fails to cure a breach within the time stated in a notice of breach. Any reference to specific breaches being material breaches within this Contract will not be construed to mean that other breaches are not material.

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

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

24. **Termination for Convenience.** The State may immediately terminate this Contract in whole or in part without penalty and for any reason, including but not limited to, appropriation or budget shortfalls. The termination notice will specify whether Contractor must: (a) cease performance of the Contract Activities immediately, or (b) continue to

perform the Contract Activities in accordance with Section 25, Transition Responsibilities. If the State terminates this Contract for convenience, the State will pay all reasonable costs, as determined by the State, for State approved Transition Responsibilities.

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

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

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

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

    Any litigation activity on behalf of the State, or any of its subdivisions under this Section, must be coordinated with the Department of Attorney General. An attorney designated to represent the State may not do so until approved by the Michigan Attorney General and appointed as a Special Assistant Attorney General.

27. **Infringement Remedies.** If, in either party's opinion, any piece of equipment, software, commodity, or service supplied by Contractor or its subcontractors, or its operation, use or reproduction, is likely to become the subject of a copyright, patent, trademark, or trade secret infringement claim, Contractor must, at its expense: (a) procure for the State the right to continue using the equipment, software, commodity, or service, or if this option is not reasonably available to Contractor, (b) replace or modify the same so that it becomes non-infringing; or (c) accept its return by the State with appropriate credits to the State against Contractor's charges and reimburse the State for any losses or costs incurred as a consequence of the State ceasing its use and returning it.

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

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

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

31. Reserved

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

a. Meaning of Confidential Information. For the purposes of this Contract, the term "**Confidential Information**" means all information and documentation of a party that: (a) has been marked "confidential" or with words of similar meaning, at the time of disclosure by such party; (b) if disclosed orally or not marked "confidential" or with words of similar meaning, was subsequently summarized in writing by the disclosing party and marked "confidential" or with words of similar meaning; and, (c) should reasonably be recognized as confidential information of the disclosing party. The term "Confidential Information" does not include any information or documentation that was: (a) subject to disclosure under the Michigan Freedom of Information Act (FOIA); (b) already in the possession of the receiving party without an obligation of confidentiality; (c) developed independently by the receiving party, as demonstrated by the receiving party, without violating the disclosing party's proprietary rights; (d) obtained from a source other than the disclosing party without an obligation of confidentiality; or, (e) publicly available when received, or thereafter became publicly available (other than through any unauthorized disclosure by, through, or on behalf of, the receiving party). For purposes of this Contract, in all cases and for all matters, State Data is deemed to be Confidential Information.

b. Obligation of Confidentiality. The parties agree to hold all Confidential Information in strict confidence and not to copy, reproduce, sell, transfer, or otherwise dispose of, give or disclose such Confidential Information to third parties other than employees, agents, or subcontractors of a party who have a need to know in connection with this Contract or to use such Confidential Information for any purposes whatsoever other than the performance of this Contract. The parties agree to advise and require their respective employees, agents, and subcontractors of their obligations to keep all Confidential Information confidential. Disclosure to a subcontractor is permissible where: (a) use of a subcontractor is authorized under this Contract; (b) the disclosure is necessary or otherwise naturally occurs in connection with work that is within the subcontractor's responsibilities; and (c) Contractor obligates the subcontractor in a written contract to maintain the State's Confidential Information in confidence. At the State's request, any employee of Contractor or any subcontractor may be required to execute a separate agreement to be bound by the provisions of this Section.

c. Cooperation to Prevent Disclosure of Confidential Information. Each party must use its best efforts to assist the other party in identifying and preventing any unauthorized use or disclosure of any Confidential Information. Without limiting the foregoing, each party must advise the other party immediately in the event either party learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this Contract and each party will cooperate with the other party in seeking injunctive or other equitable relief against any such person.

d. Remedies for Breach of Obligation of Confidentiality. Each party acknowledges that breach of its obligation of confidentiality may give rise to irreparable injury to the other party, which damage may be inadequately compensable in the form of monetary damages. Accordingly, a party may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies which may be available, to include, in the case of the State, at the sole election of the State, the immediate termination, without liability to the State, of this Contract or any Statement of Work corresponding to the breach or threatened breach.

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

33. Reserved

34. Reserved

35. Reserved

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

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

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

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

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

39. Compliance with Laws. Contractor must comply with all federal, state and local laws, rules and regulations.

40. Reserved

41. Nondiscrimination. Under the Elliott-Larsen Civil Rights Act, 1976 PA 453, MCL 37.2101, *et seq*., and the Persons with Disabilities Civil Rights Act, 1976 PA 220, MCL 37.1101, *et seq*., Contractor and its subcontractors agree not to discriminate against an employee or applicant for employment with respect to hire, tenure, terms, conditions, or privileges of employment, or a matter directly or indirectly related to employment, because of race, color, religion, national origin, age, sex, height, weight, marital status, or mental or physical disability. Breach of this covenant is a material breach of this Contract.

42. Unfair Labor Practice. Under MCL 423.324, the State may void any Contract with a Contractor or subcontractor who appears on the Unfair Labor Practice register compiled under MCL 423.322.

43. Governing Law. This Contract is governed, construed, and enforced in accordance with Michigan law, excluding choice-of-law principles, and all claims relating to or arising out of this Contract are governed by Michigan law, excluding choice-of-law principles. Any dispute arising from this Contract must be resolved in Michigan Court of Claims. Contractor consents to venue in Ingham County, and waives any objections, such as lack of personal jurisdiction or *forum non conveniens*. Contractor must appoint agents in Michigan to receive service of process.

44. **Non-Exclusivity.** Nothing contained in this Contract is intended nor will be construed as creating any requirements contract with Contractor. This Contract does not restrict the State or its agencies from acquiring similar, equal, or like Contract Activities from other sources.

45. **Force Majeure.** Neither party will be in breach of this Contract because of any failure arising from any disaster or acts of god that are beyond their control and without their fault or negligence. Each party will use commercially reasonable efforts to resume performance. Contractor will not be relieved of a breach or delay caused by its subcontractors. If immediate performance is necessary to ensure public health and safety, the State may immediately contract with a third party.

46. **Dispute Resolution.** The parties will endeavor to resolve any Contract dispute in accordance with this provision. The dispute will be referred to the parties' respective Contract Administrators or Program Managers. Such referral must include a description of the issues and all supporting documentation. The parties must submit the dispute to a senior executive if unable to resolve the dispute within 15 business days. The parties will continue performing while a dispute is being resolved, unless the dispute precludes performance. A dispute involving payment does not preclude performance.

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

47. **Media Releases.** News releases (including promotional literature and commercial advertisements) pertaining to the Contract or project to which it relates must not be made without prior written State approval, and then only in accordance with the explicit written instructions of the State.

48. **Website Incorporation.** The State is not bound by any content on Contractor's website unless expressly incorporated directly into this Contract.

49. **Order of Precedence.** In the event of a conflict between the terms and conditions of the Contract, the exhibits, a purchase order, or an amendment, the order of precedence is: (a) the purchase order; (b) the amendment; (c) Exhibit A; (d) any other exhibits; and (e) the Contract.

50. **Severability.** If any part of this Contract is held invalid or unenforceable, by any court of competent jurisdiction, that part will be deemed deleted from this Contract and the severed part will be replaced by agreed upon language that achieves the same or similar objectives. The remaining Contract will continue in full force and effect.

51. **Waiver.** Failure to enforce any provision of this Contract will not constitute a waiver.

52. **Survival.** The provisions of this Contract that impose continuing obligations, including warranties and representations, termination, transition, insurance coverage, indemnification, and confidentiality, will survive the expiration or termination of this Contract.

53. **Entire Contract and Modification.** This Contract is the entire agreement and replaces all previous agreements between the parties for the Contract Activities. This Contract may not be amended except by signed agreement between the parties (a "**Contract Change Notice**").