



STATE OF MICHIGAN PROCUREMENT

Department of Natural Resources

525 West Allegan, Lansing MI, 48933

CONTRACT CHANGE NOTICE

Change Notice Number **4**
to
Contract Number **20000000831**

CONTRACTOR	Keweenaw Bay Aviation, LLC
	13111 Waisanen Rd
	L'Anse, MI 49946
	Mike Roth
	906-524-7671
	kbaviation@up.net
	CV0140968

STATE	Program Manager	Kevin Jacobs	DNR
		989-275-5151	
		jacobsk@michigan.gov	
STATE	Contract Administrator	Samantha Fusco	DNR
		517-388-5956	
		fuscoss@michigan.gov	

CONTRACT SUMMARY				
DESCRIPTION: Aerial Fire Detection – Upper Peninsula				
INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW	
4/24/2020	4/23/2023	3 – 1-year	4/23/25	
PAYMENT TERMS		DELIVERY TIMEFRAME		
Net 45		NA		
ALTERNATE PAYMENT OPTIONS			EXTENDED PURCHASING	
<input type="checkbox"/> P-card <input type="checkbox"/> Payment Request (PRC) <input type="checkbox"/> Other			<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
MINIMUM DELIVERY REQUIREMENTS				
NA				
DESCRIPTION OF CHANGE NOTICE				
OPTION	LENGTH OF OPTION	EXTENSION	LENGTH OF EXTENSION	REVISED EXP. DATE
<input checked="" type="checkbox"/>	1-year	<input type="checkbox"/>		4/23/26
CURRENT VALUE		VALUE OF CHANGE NOTICE	ESTIMATED AGGREGATE CONTRACT VALUE	
\$50,000.00		\$0.00	\$50,000.00	
DESCRIPTION: Effective 4/28/25, the contractor administrator has been changed to Samantha Fusco and the DNR is exercising the third option year. The new expiration of the contract will be 4/23/26. All other terms, conditions, specifications, and pricing remain the same. Per contractor and agency agreement, and DTMB Central Procurement Services approval.				

FOR THE CONTRACTOR:

Keweenaw Bay Aviation, LLC
Company Name

Authorized Agent Signature

Mike Roth
Authorized Agent (Print or Type)

Date

FOR THE STATE:

Signature

Samantha Fusco WOC Buyer Manager
Name & Title

Department of Natural Resources
Agency

Date



STATE OF MICHIGAN PROCUREMENT

Department of Natural Resources

525 West Allegan, Lansing MI, 48933

CONTRACT CHANGE NOTICE

Change Notice Number **3**
to
Contract Number **20000000831**

CONTRACTOR	Keweenaw Bay Aviation, LLC
	13111 Waisanen Rd
	L'Anse, MI 49946
	Mike Roth
	906-524-7671
	kbaviation@up.net
	CV0140968

STATE	Program Manager	Kevin Jacobs	DNR
		989-275-5151	
	jacobsk@michigan.gov		
	Contract Administrator	Melisa Potts	DNR
517-388-9905			
Pottsm2@michigan.gov			

CONTRACT SUMMARY				
DESCRIPTION: Aerial Fire Detection – Upper Peninsula				
INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW	
4/24/2020	4/23/2023	3 – 1-year	4/23/24	
PAYMENT TERMS		DELIVERY TIMEFRAME		
Net 45		NA		
ALTERNATE PAYMENT OPTIONS			EXTENDED PURCHASING	
<input type="checkbox"/> P-card <input type="checkbox"/> Payment Request (PRC) <input type="checkbox"/> Other			<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
MINIMUM DELIVERY REQUIREMENTS				
NA				
DESCRIPTION OF CHANGE NOTICE				
OPTION	LENGTH OF OPTION	EXTENSION	LENGTH OF EXTENSION	REVISED EXP. DATE
<input checked="" type="checkbox"/>	1-year	<input type="checkbox"/>		4/23/25
CURRENT VALUE		VALUE OF CHANGE NOTICE	ESTIMATED AGGREGATE CONTRACT VALUE	
\$50,000.00		\$0.00	\$50,000.00	
DESCRIPTION: Effective 4/10/24, the contractor administrator has been changed to Melisa Potts and the DNR is exercising the second option year. The new expiration of the contract will be 4/23/25. All other terms, conditions, specifications, and pricing remain the same. Per contractor and agency agreement, and DTMB Central Procurement Services approval.				

FOR THE CONTRACTOR:

Keweenaw Bay Aviation, LLC
Company Name

Authorized Agent Signature

Mike Roth
Authorized Agent (Print or Type)

Date

FOR THE STATE:

Signature

Kip Conley, Lead Buyer
Name & Title

Department of Natural Resources
Agency

Date



STATE OF MICHIGAN PROCUREMENT

Department of Natural Resources

525 West Allegan, Lansing MI, 48933

CONTRACT CHANGE NOTICE

Change Notice Number **2**
to
Contract Number **20000000831**

CONTRACTOR	Keweenaw Bay Aviation, LLC
	13111 Waisanen Rd
	L'Anse, MI 49946
	Mike Roth
	906-524-7671
	kbaviation@up.net
	CV0140968

STATE	Program Manager	Kevin Jacobs	DNR
		989-275-5151	
	jacobsk@michigan.gov		
	Contract Administrator	Kip Conley	DNR
517-388-5956			
Conleyk1@michigan.gov			

CONTRACT SUMMARY				
DESCRIPTION: Aerial Fire Detection – Upper Peninsula				
INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW	
4/24/2020	4/23/2023	3 – 1-year	4/23/24	
PAYMENT TERMS		DELIVERY TIMEFRAME		
Net 45		NA		
ALTERNATE PAYMENT OPTIONS			EXTENDED PURCHASING	
<input type="checkbox"/> P-card <input type="checkbox"/> Payment Request (PRC) <input type="checkbox"/> Other			<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
MINIMUM DELIVERY REQUIREMENTS				
NA				
DESCRIPTION OF CHANGE NOTICE				
OPTION	LENGTH OF OPTION	EXTENSION	LENGTH OF EXTENSION	REVISED EXP. DATE
<input type="checkbox"/>	1-year	<input type="checkbox"/>		
CURRENT VALUE		VALUE OF CHANGE NOTICE	ESTIMATED AGGREGATE CONTRACT VALUE	
\$50,000.00		\$0.00	\$50,000.00	
DESCRIPTION: Effective 4/10/23, the has updated the Schedule B. All other terms, conditions, specifications, and pricing remain the same. Per contractor and agency agreement, and DTMB Central Procurement Services approval.				

FOR THE CONTRACTOR:

Keweenaw Bay Aviation, LLC
Company Name

Authorized Agent Signature

Mike Roth
Authorized Agent (Print or Type)

Date

FOR THE STATE:

Signature

Kip Conley, Lead Buyer
Name & Title

Department of Natural Resources
Agency

Date

**SCHEDULE B
PRICING**

Detection Area: Upper Peninsula		
Cost Per Hour for Pilot Services	Cost Per Hour for Aircraft	Total Cost Per Hour
\$ <u>50.00 (Flight)</u>	\$ NA	\$ <u>50.00 (Flight)</u>
\$ <u>25.00 (Standby at CMX)</u>		\$ <u>25.00 (Standby at CMX)</u>
Annual Service Fee: \$1,300.00		



STATE OF MICHIGAN PROCUREMENT

Department of Natural Resources

525 West Allegan, Lansing MI, 48933

CONTRACT CHANGE NOTICE

Change Notice Number **1**
to
Contract Number **20000000831**

CONTRACTOR	Keweenaw Bay Aviation, LLC
	13111 Waisanen Rd
	L'Anse, MI 49946
	Mike Roth
	906-524-7671
	kbaviation@up.net
	CV0140968

STATE	Program Manager	Kevin Jacobs	DNR
		989-275-5151	
	jacobsk@michigan.gov		
	Contract Administrator	Kip Conley	DNR
517-388-5956			
Conleyk1@michigan.gov			

CONTRACT SUMMARY				
DESCRIPTION: Aerial Fire Detection – Upper Peninsula				
INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW	
4/24/2020	4/23/2023	3 – 1-year	4/23/23	
PAYMENT TERMS		DELIVERY TIMEFRAME		
Net 45		NA		
ALTERNATE PAYMENT OPTIONS			EXTENDED PURCHASING	
<input type="checkbox"/> P-card <input type="checkbox"/> Payment Request (PRC) <input type="checkbox"/> Other			<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
MINIMUM DELIVERY REQUIREMENTS				
NA				
DESCRIPTION OF CHANGE NOTICE				
OPTION	LENGTH OF OPTION	EXTENSION	LENGTH OF EXTENSION	REVISED EXP. DATE
<input checked="" type="checkbox"/>	1-year	<input type="checkbox"/>		4/23/24
CURRENT VALUE		VALUE OF CHANGE NOTICE	ESTIMATED AGGREGATE CONTRACT VALUE	
\$50,000.00		\$0.00	\$50,000.00	
DESCRIPTION: Effective 3/20/24, the State is exercising the first option year. The revised contract expiration date is 4/23/24. All other terms, conditions, specifications, and pricing remain the same. Per contractor and agency agreement, and DTMB Central Procurement Services approval.				

FOR THE CONTRACTOR:

Keweenaw Bay Aviation, LLC
Company Name

Authorized Agent Signature

Mike Roth
Authorized Agent (Print or Type)

Date

FOR THE STATE:

Signature

Kip Conley, Lead Buyer
Name & Title

Department of Natural Resources
Agency

Date



STATE OF MICHIGAN PROCUREMENT

Department of Natural Resources

525 West Allegan, Lansing, MI 48933
PO Box 30028

NOTICE OF CONTRACT

NOTICE OF CONTRACT NO. **200000000831**

between

THE STATE OF MICHIGAN

and

CONTRACTOR	Keweenaw Bay Aviation, LLC
	13111 Waisanen RD
	L'Anse, MI 49946
	Mike Roth
	906-524-7671
	kbaviation@up.net
	CV0140968

STATE	Program Manager	Kevin Jacobs	DNR
		jacobsk@michigan.gov	
	989-275-5151		
	Contract Administrator	Kip Conley	DNR
517-284-5975			
Conleyk1@michigan.gov			

CONTRACT SUMMARY

DESCRIPTION: Aerial Fire Detection – Upper Peninsula

INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW
4/24/2020	4/23/2023	3 – 1-year	
PAYMENT TERMS		DELIVERY TIMEFRAME	
Net 45		NA	
ALTERNATE PAYMENT OPTIONS			EXTENDED PURCHASING
<input type="checkbox"/> P-card <input type="checkbox"/> Payment Request (PRC) <input type="checkbox"/> Other			<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
MINIMUM DELIVERY REQUIREMENTS			
NA			
MISCELLANEOUS INFORMATION			
The terms and conditions of this Contract are those of RFP 200000001412. This Contract Agreement and the vendor's quote dated April 1, 2020. 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 State take precedence.			
ESTIMATED CONTRACT VALUE AT TIME OF EXECUTION			\$50,000.00

FOR THE CONTRACTOR:

Keweenaw Bay Aviation LLC
Company Name


Authorized Agent Signature

Michael L. Roth
Owner
Authorized Agent (Print or Type)

4-24-2020
Date

FOR THE STATE:


Signature

Kip Conley, Lead Buyer
Name & Title

Department of Natural Resources
Agency

4/24/2020
Date

SCHEDULE A STATEMENT OF WORK CONTRACT ACTIVITIES

SCOPE

The detection area covered by this Contract are: Upper Peninsula. Baraga, Chippewa, Delta, Dickenson, Houghton, Iron, Keweenaw, Luce, Mackinac, Marquette, Menominee, Ontonagon and Schoolcraft Counties.

REQUIREMENTS

Contractor must provide Deliverables/Services and staff, and otherwise do all things necessary to conduct aerial surveillance for the purpose of fire control, aerial detection, and general administration. Contractor will be required to provide all such services as requested by the DNR. Typical services Contractor will be required to perform, but not limited to, are:

- a. Patrolling the Detection Area(s) in search of forest fires.
- b. Surveillance of forest fires for the purpose of providing information to ground support units.
- c. Mapping and photographing forest fires.

1. General Requirements

1.1. Pilot Requirements

Pilot must meet the approval of DNR Program Manager, or designee. Contract pilot 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 pilot 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.

- a. 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

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

- c. Pilot must have a current Class II (minimum) FAA Medical Certificate and a current Flight Review, as specified in Federal Air Regulations, Part 61.
- d. Pilot performing fire detection services must have one (1) season of fire detection experience.
- e. DNR shall request services as needed and notify Contractor by 6:00 p.m. Eastern Time one day prior to the day services will be required. Contractor will be advised a specific time where the pilot must report for service or if the pilot must be "on-call" during the service day. If "on-call", DNR will contact Contractor during the service day and pilot shall be available and ready for flight within 30 minutes of DNR contact. Pilot will be given flight instructions at the time of notification.
- f. Under optimum conditions, typical hours for service are between 1:00 p.m. and 6:00 p.m. Eastern time. However, emergency cases and weather conditions affect hours of service and DNR reserves the right to request services at any time during the 24-hour day.
- g. DNR may request pilot fly fire detection outside the contracted Detection Area.
- h. 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.
- i. 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.
Note: Low altitude flying is not required for fire detection purposes. The "low altitude waiver" authorized by the FAA to the Michigan DNR, does not include contract pilots and Contractor shall not to use DNR's waiver as rationale for low altitude flying.
- j. The DNR reserves the right, during high fire hazard periods, to require the pilot to take rest and refueling breaks at an airport located within the flight zone involved, or one within twenty-five miles of zone boundary.
- k. Pilot shall comply with DNR Flight Duty Limitations (See Attachment 1) along with all FAA and State laws and regulations.

1.2. Additional Contractor Responsibilities

- a. Contractor shall provide sectional aeronautical charts or equivalent.
- b. Contractor shall provide to the State the documentation and/or proof of compliance of Contract requirements and terms. It is Contractor's sole responsibility to keep documents current throughout the Contract Term. Contractor has not more than ten (10) days prior to expiration of a document to send in the replacement to the DNR Program Manager. Failure to provide current documentation prior to expiration date may result in the Contract being terminated.

Contractor must provide and keep current the following documents:

- i. Medical certificate, 2nd class or higher.
- ii. Drug screening test, if requested by DNR (provided at State expense).
- iii. Commercial pilot license.
- iv. Flight review.
- v. Annual inspection, airframe.
- vi. Annual inspection, engine.
- vii. Aircraft registration.
- viii. Aircraft airworthiness certificate.
- ix. 100 hour Inspection record.

1.3. State Responsibilities

- a. The State will provide continuing education or training, as necessary, to Contractor's pilot(s) in fire detection, fire scouting, radio operation, and other special duties. An observer will occasionally be furnished by the State to accompany the pilot on such flights as may be designated by the State.
- b. The State will provide an 800 and high band radio to be installed in aircraft.
- c. The State will provide maps of flight areas.
- d. The State will provide drug screening of pilot(s) if DNR requires screening.

2. Acceptance

2.1. Acceptance, Inspection and Testing

The State will use the following criteria to determine acceptance of the Contract Activities: See Section 16, Acceptance, of the Standard Contract Terms.

3. Staffing

3.1. Contractor Representative

The Contractor must appoint contract representative, specifically assigned to State of Michigan accounts, that will respond to State inquiries regarding the Contract Activities, answering questions related to ordering and delivery, etc. (the "Contractor Representative").

The Contractor must notify the Contract Administrator at least 15 calendar days before removing or assigning a new Contractor Representative.

Contract Representative: Michael Roth
Phone: 906-395-1197 (Cell), 906-524-7671 (Home)
E-Mail: kbaviation@up.net

3.2. Customer Service Number

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

Contract Representative: Michael Roth
Phone: 906-395-1197 (Cell), 906-524-7671 (Home)
E-Mail: kbaviation@up.net

3.3. Work Hours

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

3.4. Disclosure of Subcontractors

If the Contractor intends to utilize subcontractors, the Contractor must disclose the following:

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

The relationship of the subcontractor to the Contractor.

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

A complete description of the Contract Activities that will be performed or provided by the subcontractor.

3.5. Security

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

The contract will access the DNR hanger at KCMX will be provided by airport maintenance personnel when necessary for flight. Annual security training conducted at airport for access to airside. Access code is required to enter airside.

4. Project Management

4.1. Meetings

The Contractor must contact DNR Program Manager a minimum of 24 hours after the contract is awarded to schedule a meeting to insure that 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.

4.2. Reporting

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

- a. Contractor shall complete Daily Report forms (provided by DNR) after each flight to include date flown, Hobbs or tachometer start and end readings, daily flight hours, name of DNR officer who authorized service, and signature of pilot. Daily Reports are to be submitted, accompanied by Contractor's invoice, at the end of each month to DNR Program Manager.
- b. In order to protect life and health and to prevent damage in the performance of this service, Contractor will use due diligence in preventing accidents and will comply with all applicable provisions of Federal and State laws and regulations. Contractor will maintain a record of all cases of death, injury or disease arising out of, or in the course of, employment work under the Contract. This record will be available upon the request of the State.

5. Pricing

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

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. Ordering

6.1. Authorizing Document

The appropriate authorizing document for the Contract will be a Delivery Order for the fiscal year.

7. Invoice and Payment

7.1. Invoice Requirements

Invoices shall be submitted on a monthly basis and include the following: (a) date; (b) Delivery Order number; (c) quantity (number of hours); (d) description of the Contract Activities; (e) unit price; and (f) total price. All invoices must be accompanied by a Daily Report form.

7.2. Payment Methods

The State will make payment for Contract Activities through Electronic Funds Transfer (EFT).

7.3. Payment Terms

Payment terms are Net 45 Days



STATE OF MICHIGAN

STANDARD CONTRACT TERMS

This STANDARD CONTRACT (“**Contract**”) is agreed to between the State of Michigan (the “**State**”) and Keweenaw Bay Aviation (“**Contractor**”), a Michigan limited liability company. This Contract is effective on April 24, 2020 (“**Effective Date**”), and unless terminated, expires on April 23, 2023.

This Contract may be renewed for up to 3 additional 1-year option period(s). Renewal is at the sole discretion of the State and will automatically extend the Term of this Contract. The State will document its exercise of renewal options via Contract Change Notice.]

The parties agree as follows:

- 1. Duties of Contractor.** Contractor must perform the services and provide the deliverables described in **Schedule 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 Schedule 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:
Kip Conley	Michael Roth
525 West Allegan	13111 Waisanen Rd.
Lansing, MI 48933	L’Anse, MI 49946

Conleyk1@michigan.gov 517-284-5975	kbaviation@up.net 906-524-7671
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3. **Contract Administrator.** The Contract Administrator for each party is the only person authorized to modify any terms of this Contract, and approve and execute any change under this Contract (each a “**Contract Administrator**”):

State:	Contractor:
Kip Conley 525 West Allegan Lansing, MI 48933 Conleyk1@michigan.gov 517-284-5975	Michael Roth 13111 Waisanen Rd. L’Anse, MI 49946 kbaviation@up.net 906-524-7671

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

State:	Contractor:
Kevin Jacobs 8717 North Roscommon Rd Roscommon, MI 48653 jacobsk@michigan.gov 989-275-5151	Michael Roth 13111 Waisanen Rd. L’Anse, MI 49946 kbaviation@up.net 906-524-7671

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 Schedule A) if, in the opinion of the State, it will ensure performance of the Contract.

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

Required Limits	Additional Requirements
Commercial General Liability Insurance	
<u>Minimum Limits:</u> \$500,000 Each Occurrence Limit	Contractor policy must: (1) cover property damage and bodily injury; and (2) be endorsed to add “the State of Michigan, its departments, divisions, agencies, offices,

\$500,000 General Aggregate Limit	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.
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If any of the required policies provide **claims-made** coverage, the Contractor must: (a) provide coverage with a retroactive date before the effective date of the contract or the beginning of Contract Activities; (b) maintain coverage and provide evidence of coverage for at least three (3) years after completion of the Contract Activities; and (c) if coverage is cancelled or not renewed, and not replaced with another claims-made policy form with a retroactive date prior to the contract effective date, Contractor must purchase extended reporting coverage for a minimum of three (3) years after completion of work.

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

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

- 7. **Reserve.**
- 8. **Reserve.**
- 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.** Pursuant to Michigan law, all agencies subject to IRS Pub. 1075 are required to ask the Michigan State Police to perform fingerprint background checks on all employees, including Contractor and Subcontractor employees, who may have access to any database of information maintained by the federal government that contains confidential or personal information, including, but not limited to, federal tax information. Further, pursuant to Michigan law, any agency described above is prohibited from providing Contractors or Subcontractors with the result of such background check. For more information, please see Michigan Public Act 427 of 2018. Upon request, or as may be specified in Schedule A, 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 and provide all necessary documentation and signatures.
14. **Change of Control.** Contractor will notify within 30 days of any public announcement or otherwise once legally permitted to do so, 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 Schedule 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 Schedule 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 Schedule 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. All prices are exclusive 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/SIGMAVSS> 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. Reserved.

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 delivery 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 and Disclaimer of Damages. IN NO EVENT WILL THE STATE'S AGGREGATE LIABILITY TO CONTRACTOR UNDER THIS CONTRACT, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY OR BY STATUTE OR OTHERWISE, FOR ANY CLAIM RELATED TO OR ARISING UNDER THIS CONTRACT, EXCEED THE MAXIMUM AMOUNT OF FEES PAYABLE UNDER THIS CONTRACT.** 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 Confidential Information is not feasible, such party must destroy the Confidential Information and must certify the same in writing within 5 calendar days from the date of termination to the other party. However, the State's legal ability to destroy Contractor data may be restricted by its retention and disposal schedule, in which case Contractor's Confidential Information will be destroyed after the retention period expires.

33. Reserved.

34. Reserved.

35. Reserved.

- 36. Records Maintenance, Inspection, Examination, and Audit.** The State or its designee may audit Contractor to verify compliance with this Contract. Contractor must retain and provide to the State or its designee and the auditor general upon request, all financial and accounting records related to the Contract through the term of the Contract and for 4 years after the latter of termination, expiration, or final payment under this Contract or any extension ("**Audit Period**"). If an audit, litigation, or other action involving the records is initiated before the end of the Audit Period, Contractor must retain the records until all issues are resolved.

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

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

- 37. Warranties and Representations.** Contractor represents and warrants: (a) Contractor is the owner or licensee of any Contract Activities that it licenses, sells, or develops and Contractor has the rights necessary to convey title, ownership rights, or licensed use; (b) all Contract Activities are delivered free from any security interest, lien, or encumbrance and will continue in that respect; (c) the Contract Activities will not infringe the patent, trademark, copyright, trade secret, or other proprietary rights of any third party; (d) Contractor must assign or otherwise transfer to the State or its designee any manufacturer's warranty for the Contract Activities; (e) the Contract Activities are merchantable and fit for the specific purposes identified in the Contract; (f) the Contract signatory has the authority to enter into this Contract; (g) all information furnished by Contractor in connection with the Contract fairly and accurately represents Contractor's business, properties, finances, and operations as of the dates covered by the information, and Contractor will inform the State of any material adverse changes; (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; and that (i) Contractor is neither currently engaged in nor will engage in the boycott of a person based in or doing business with a strategic partner as described in 22 USC 8601 to 8606. 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. **Reserved.**
42. **Nondiscrimination.** Under the Elliott-Larsen Civil Rights Act, 1976 PA 453, MCL 37.2101, *et seq.*, the Persons with Disabilities Civil Rights Act, 1976 PA 220, MCL 37.1101, *et seq.*, and Executive Directive 2019-09. 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 (as defined in Executive Directive 2019-09), height, weight, marital status, partisan considerations, any mental or physical disability, or genetic information that is unrelated to the person's ability to perform the duties of a particular job or position. 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 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.
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. **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.
- 49. **Website Incorporation.** The State is not bound by any content on Contractor's website unless expressly incorporated directly into this Contract.
- 50. **Schedules.** All Schedules and Exhibits that are referenced herein and attached hereto are hereby incorporated by reference. The following Schedules are attached hereto and incorporated herein:

Schedule A	Statement of Work
Schedule B	Pricing Matrix

- 51. **Entire Agreement and Order of Precedence.** This Contract, which includes Schedule A – Statement of Work, and schedules and exhibits which are hereby expressly incorporated, is the entire agreement of the parties related to the Contract Activities. This Contract supersedes and replaces all previous understandings and agreements between the parties for the Contract Activities. If there is a conflict between documents, the order of precedence is: (a) first, this Contract, excluding its schedules, exhibits, and Schedule A – Statement of Work; (b) second, Schedule A – Statement of Work as of the Effective Date; and (c) third, schedules expressly incorporated into this Contract as of the Effective Date. NO TERMS ON CONTRACTOR'S INVOICES, ORDERING DOCUMENTS, WEBSITE, BROWSE-WRAP, SHRINK-WRAP, CLICK-WRAP, CLICK-THROUGH OR OTHER NON-NEGOTIATED TERMS AND CONDITIONS PROVIDED WITH ANY OF THE CONTRACT ACTIVITIES WILL CONSTITUTE A PART OR AMENDMENT OF THIS CONTRACT OR IS BINDING ON THE STATE FOR ANY PURPOSE. ALL SUCH OTHER TERMS AND CONDITIONS HAVE NO FORCE AND EFFECT AND ARE DEEMED REJECTED BY THE STATE, EVEN IF ACCESS TO OR USE OF THE CONTRACT ACTIVITIES REQUIRES AFFIRMATIVE ACCEPTANCE OF SUCH TERMS AND CONDITIONS.
- 52. **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.
- 53. **Waiver.** Failure to enforce any provision of this Contract will not constitute a waiver.
- 54. **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.
- 55. **Contract Modification.** This Contract may not be amended except by signed agreement between the parties (a "**Contract Change Notice**"). Notwithstanding the foregoing, no subsequent Statement of Work or Contract Change Notice executed after the Effective Date will be construed to amend this Contract unless it specifically states its intent to do so and cites the section or sections amended.

**SCHEDULE B
PRICING**

Detection Area: Upper Peninsula		
Cost Per Hour for Pilot Services	Cost Per Hour for Aircraft	Total Cost Per Hour
\$ <u>40.00 (Flight)</u>	\$ NA	\$ <u>40.00 (Flight)</u>
\$ <u>20.00 (Standby at CMX)</u>		\$ <u>20.00 (Standby at CMX)</u>
Annual Service Fee: \$1,300.00		