



STATE OF MICHIGAN PROCUREMENT
 Department of Natural Resources
 525 West Allegan, Constitution Hall, Third Floor
 Lansing, MI 48933

CONTRACT CHANGE NOTICE

Change Notice Number **1**
 to
 Contract Number **230000000372**

CONTRACTOR	JetCo Packaging Solutions, LLC d/b/a JetCo Federal
	5575 Kraft Avenue SE, Suite 100
	Grand Rapids, MI 49512
	Sue Tellier, President
	616-588-2492
	Sue@jetcofederal.com
	VS0265981

STATE	Program Manager	Lt. Joseph Molnar	DNR
		231-922-5280	
		MolnarJ@michigan.gov	
Contract Administrator		Brooke Jones	DNR
		517-388-6833	
		Jonesb30@michigan.gov	

CONTRACT SUMMARY				
DESCRIPTION: Flotation and Hypothermia Apparel – Mustang Brand – For DNR Law Enforcement Division				
INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW	
January 1, 2023	September 30, 2025	FIVE 1-Year Options to Renew	September 30, 2025	
PAYMENT TERMS		DELIVERY TIMEFRAME		
Net 45		Per Schedule A – Statement of Work, Section 2 Service Levels		
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				
FIVE (5) Items, Any Combination				
DESCRIPTION OF CHANGE NOTICE				
OPTION	LENGTH OF OPTION	EXTENSION	LENGTH OF EXTENSION	REVISED EXP. DATE
<input checked="" type="checkbox"/>	1 Year	<input type="checkbox"/>		September 30, 2026
CURRENT VALUE		VALUE OF CHANGE NOTICE	ESTIMATED AGGREGATE CONTRACT VALUE	
\$166,999.27			\$166,999.27	
DESCRIPTION: Effective July 7th, 2025 the DNR is exercising the first available option year, making the revised expiration date September 30th, 2026. The Contract Administrator has been updated to Brooke Jones. All other terms, conditions and specifications remain the same.				

FOR THE CONTRACTOR:

JetCo Packaging Solutions, LLC
Company Name

Signed copy with DNR Procurement

Authorized Agent Signature

Sue Tellier
Authorized Agent (Print or Type)

Date

FOR THE STATE:

Signed copy with DNR Procurement

Signature

Brooke Jones, Buyer
Name & Title

Department of Natural Resources
Agency

Date



STATE OF MICHIGAN PROCUREMENT

Department of Natural Resources

525 West Allegan, Constitution Hall, Third Floor
Lansing, MI 48933

NOTICE OF CONTRACT

NOTICE OF CONTRACT NO. **230000000372**

between
THE STATE OF MICHIGAN
and

CONTRACTOR	JetCo Solutions, LLC
	5575 Kraft Avenue SE, Suite 100
	Grand Rapids, MI 49512
	John Tellier, President
	616-570-0067
	jtellier@jetcosolutions.com
	CV0136480

STATE	Program Manager	Lt. Joseph Molnar	DNR
		231-922-5280	
	MolnarJ@michigan.gov		
	Contract Administrator	Lisa Crozier-Green	DNR
517-388-6626			
CrozierGreenL@michigan.gov			

CONTRACT SUMMARY			
DESCRIPTION: Flotation and Hypothermia Apparel – Mustang Brand – For DNR Law Enforcement Division			
INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW
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PAYMENT TERMS		DELIVERY TIMEFRAME	
Net 45		Per Schedule A – Statement of Work, Section 2 Service Levels	
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			
FIVE (5) Items, Any Combination			
MISCELLANEOUS INFORMATION			
<p>The terms and conditions of this Contract are those of RFP 200000002065, MA 200000002091, this Contract Agreement, the prior vendor's quote dated August 19, 2020, and any executed change notices. In the event of any conflicts between the specifications and / or terms and conditions indicated by the State and those indicated by the vendor, those of the State take precedence.</p>			
ESTIMATED CONTRACT VALUE AT TIME OF EXECUTION			\$166,999.27

FOR THE CONTRACTOR:

JetCo Solutions, LLC

Company Name

Authorized Agent Signature

John Tellier, President

Authorized Agent (Print or Type)

Date

FOR THE STATE:

Signature

Laura L. Gyorkos, Procurement Section Manager

Name & Title

Michigan Department of Natural Resources

Agency

Date

STATE OF MICHIGAN

Contract Number 230000000372
Department of Natural Resources
Law Enforcement Division
Mustang Survival Brand Flotation and Hypothermia Apparel

SCHEDULE A - STATEMENT OF WORK

REQUIREMENTS

1. General Requirements

1.1. Product Specifications

The Contractor agrees to provide all personnel, equipment, tools, materials, supervision, other items and services necessary to perform the Contract Activities included in Section 1.1 Product Specifications

A. Hydrostatic Inflator Technology (HIT) inflatable Personal Flotation Device (PFD) for Law Enforcement

- i. Mustang Survival MD3183 LE
- ii. Olive / Black
- iii. No Customization

B. Four-Pocket Flotation Vest

- i. Mustang Survival MV3128 T2
- ii. Orange Only
- iii. No Customization
- iv. STANDARD SIZES: S, M, L, XL, 2XL
- v. EXTENDED SIZES: 3XL

C. Flotation Bomber Jacket with Reflective Tape

- i. Mustang Survival MJ6214 T1
- ii. Orange Only
- iii. No Customization
- iv. STANDARD SIZES: S, M, L, XL, 2XL
- v. EXTENDED SIZES: 3XL

D. Anti-Exposure Coverall and Worksuit

- i. Mustang Survival - MS2175
- ii. Orange and Black Only
- iii. No Customization
- iv. STANDARD SIZES: XS, S, M, L, XL, 2XL
- v. EXTENDED SIZES: 3XL

E. HIT Inflatable Compact Tactical Life Preserver

- i. Mustang Survival MD3196
- ii. Black
- iii. No Customization

1.2. Warranties

A. Manufacturer Warranty:

1. Products with defects in materials or workmanship will be replaced or repaired at the discretion of Mustang Survival for the defined warranty period of the product.
2. The warranty excludes products damaged due to normal wear and tear, unauthorized modifications, embellishments or alterations, improper use, improper maintenance, accident, misuse, negligence, damage, or if the product is used for a purpose for which it was not designed, or used not in accordance with the product instruction.
3. Unauthorized product modification automatically voids the Mustang Survival warranty. Damage due to wear and tear may be repaired at a reasonable charge.
4. Mustang Survival and the Contractor will use reasonable discretion to determine the validity of warranty claims. Each situation is different and is up to the discretion of the Manufacturer to determine whether a product has a manufacturing defect or if it is suffering wear and tear. In the case that a product does have a manufacturing defect as determined by the Manufacturer, and the defect is repairable, the Manufacturer or Contractor may choose to not replace but to repair the product free of charge. The decision on whether to repair or replace a product is solely up to the discretion of the Manufacturer and the Contractor.
5. The warranty applies to the original purchaser only and proof of purchase is required.

6. This warranty applies to recreational and commercial/industrial products. Note: A recreational product used in a commercial/industrial environment will only be covered for 1 year against defects in materials or workmanship.
7. Practical Product Lifespan means the usual and customary wearable life of the product and does not mean the lifetime of the wearer, or an indefinite time period. Product use and storage may affect the usual and customary wearable life of the product, as materials will deteriorate and fade over time and parts will wear. Practical Product Lifespan will be determined in the reasonable discretion of a Manufacturer's Customer Service Representative who shall, at a minimum, consider the type and nature of the product, the use of the product, the issue involved, and age of the product.
8. The warranty for products supplied under government or special contracts depends solely on the warranty agreed to as part of that contract.
9. The Contractor will be responsible for the replacement, at no cost to the State, of any items damaged during shipment from the Contractor to the State.
10. The State reserves the right to require additional warranties other than those identified by the Contractor.

B. Warranty Process:

1. Contact the Contractor first if inspection is required. Please have the model number and lot number ready for each product needing inspection and/or repair. If you are unable to find these numbers, please have the item "in hand" so the Contractor can assist in locating the information.
2. Items with a manufacturing date in excess of 6 years should not be returned for repair, unless specifically authorized by the Contractor or the Manufacturer.
3. Items sent for inspection / repair must be clean and marked with a Return Authorization (RA) number marked on the outside of the box and include any paperwork shipped with the product. Items received without a Return Authorization number, or items that have not been cleaned, will be refused. Please keep a copy of your RA number for reference when calling about your repair.
4. The State is responsible for shipping cost on Items sent for inspection / repair.
5. Upon receipt, the Contractor's or Manufacturer's Quality Assurance Department will inspect the item. Items under warranty will be repaired or replaced at the sole discretion of the Contractor / Manufacturer. Warranted items will be repaired or replaced at no charge to the State.
6. If an item is no longer under warranty, the Contractor / Manufacturer will contact the State with a repair estimate. Pre-payment is required for repair to non-warranted items. Inspection fees will apply for all products that are considered non-warranty or free from defect.
7. Warranted items will be repaired and returned to the State free of charge.

1.3. Recall Requirements and Procedures

- A. The Contractor agrees to notify the Contract Administrator and / or Program manager of any recall from the Manufacturer. Recall procedure is contingent on the circumstances surrounding the recall.

1.4. Quality Assurance Program

- A. The Contractor is committed to continuous quality improvement, are ISO9001:2012 registered, and their Vice President of Operations is charged with operationalizing quality requirements into their supply chain, communication with suppliers, and ensuring each delivery location has pre-qualified primary and alternate sources of supply. This helps the Contractor maintain continuous, uninterrupted service. Suppliers are required to provide documentation that pricing is inclusive of all requirements, scheduling and quality processes are comprehensive and in line with Contractor standards. Each supplier has three individuals assigned to the Contractor's account: one for accounting functions, one for quality and scheduling and one for customer service and participates in contract-specific training with the Contractor's team to ensure all expectations are met and requirements are adhered to. The supplier receives detailed written instructions on the purchase orders to remind them of the requirements covered in training. Quality issues are addressed with suppliers using a formal corrective action process, where the issue and root cause are documented.

1.5. Incentives

- A. The Contractor is not offering special incentives or quick payment terms.

2. Service Levels

2.1. Time Frames

- A. All Contract Activities must be delivered within 45 calendar days from receipt of Delivery Order.
- B. Due to COVID-19, initial delivery may be up to 90 days ARO and will revert to State Standard Terms when COVID-19 delays are no longer applicable.
- C. The receipt of order date is pursuant to Section 2, Notices, of the Standard Contract Terms.

2.2. Delivery

- A. Delivery will be made to various locations throughout the Upper and Lower Peninsulas, per Delivery Order requirements.

2.3. Installation - RESERVED

2.4. Technical Support and Repairs - RESERVED

2.5. Maintenance - RESERVED

2.6. Training - RESERVED

2.7. Reporting

- A. The Contractor agrees to submit the following written reports to the Program Manager:
 - i. Quarterly sales reports including items sold, quantities, sizes, delivery locations, etc.
 - ii. Annual sales reports including items sold, quantities, sizes, delivery locations, etc.
 - iii. Other reports required by the State.

2.8. Meetings

- A. The Contractor agrees to attend any meetings requested by the State.
- B. Meetings may be in-person or virtual, as required.

3. Staffing

3.1. Contractor Representative

- A. The Contractor agrees to appoint ONE (1) individual, specifically assigned to this State of Michigan account, who will respond to State inquiries regarding the Contract Activities, answering questions related to ordering and delivery, etc. (the "Contractor Representative").
- B. The Contractor agrees to notify the Contract Administrator at least TEN (10) calendar days before removing or assigning a new Contractor Representative.

Contractor Representative: Sue Tellier
Email: stellier@jetcosolutions.com
Phone: 616-570-0067
Days Available: Monday – Friday
Times Available: 9:00 AM – 5:00 PM

3.2. Key Personnel

- A. The Contractor agrees to appoint ONE (1) individual who will be directly responsible for the day to day operations of the Contract ("Key Personnel").
- B. Key Personnel shall be:
 - 1. Specifically assigned to the State account,
 - 2. Knowledgeable on the contractual requirements, and
 - 3. Respond to State inquiries within FOUR (4) business hours.
- C. The Contractor agrees not to remove or assign Key Personnel without the prior consent of the State. Prior consent is not required for reassignment for reasons beyond the Contractor's control, including illness, disability, death, leave of absence, personal emergency circumstances, resignation, or termination for cause.
- D. The State may request a résumé and conduct an interview before approving a change to Key Personnel.
- E. The State may require a 30-calendar day training period for replacement Key Personnel.
- F. The Contractor agrees to identify the Key Personnel, indicate where they will be physically located, describe the functions they will perform, and provide current chronological résumés.

Key Personnel: Sue Tellier
Email: stellier@jetcosolutions.com
Phone: 616-570-0067
Days Available: Monday – Friday
Times Available: 9 AM – 5 PM
Physical Location: 5575 Kraft Ave SE, Suite 100, Grand Rapids, MI 49512

3.3. Non-Key Personnel - RESERVED

3.4. Organizational Chart - RESERVED

3.5. Customer Service Toll-Free Number - RESERVED

3.6. Technical Support, Repairs and Maintenance - RESERVED

3.7. Disclosure of Subcontractors

- A. The Contractor intends to utilize subcontractors for a portion of the Contract Activities and has agreed to disclose the following:
 - 1. 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.
 - 2. The relationship of the subcontractor to the Contractor.
 - 3. Whether the Contractor has a previous working experience with the subcontractor and details of that previous relationship.

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

Subcontractor Information:

1. Mustang Survival Inc
1215 Old Fairhaven Parkway
Suite C
Bellingham, WA 98225
Phone: (360) 603-5135
Mustang Survival has been designing and manufacturing inspired technical marine solutions since 1967. Mustang will provide manufacturing services for products required for this contract.
2. Mustang Survival is a manufacturing partner to Patriot Solutions LLC.
3. We have established a distributor agreement with Mustang to supply to government agencies throughout the State of Michigan.
4. Manufacturing of personal flotation devices and hypothermia apparel.

3.8. Security

- A. The Contractor's employees will not be entering State facilities.

4. Pricing

4.1. Price Term

- A. Pricing is firm for a 365-day period ("Pricing Period").
- B. The first pricing period begins on the Effective Date of the Contract.
- C. Adjustments may be requested in writing by either party.
- D. Approved adjustments will take effect at the beginning of the next Pricing Period.

4.2. Price Changes

- A. Adjustments will be based on changes in actual Contractor costs.
- B. Any request must be supported by written evidence documenting the change in costs, i.e. invoices for supplies or materials, etc.
- C. 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.
- D. Following the presentation of supporting documentation, both parties will have 30 days to review the information and prepare a written response.
- E. If the review reveals no need for modifications, pricing will remain unchanged unless mutually agreed to by the parties.
- F. 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.
- G. 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.

5. Ordering

5.1. Authorizing Document

- A. The appropriate authorizing document for the Contract will be a properly executed Delivery Order (DO).
- B. The Contractor's Minimum Order Requirement is FIVE (5) ITEMS, any combination.

5.2 Order Verification

- A. The Contractor agrees to have internal controls, approved by DNR Procurement Services, to verify abnormal orders and to ensure that only authorized individuals place orders.

6. Delivery

6.1. Delivery Programs

- A. The Contractor intends to utilize small parcel (UPS), less than truckload (LTL) or full truckload delivers as required.

6.2. Packaging and Palletizing

- A. Packaging must be optimized to permit the lowest freight rate.
- B. Shipments must be palletized whenever possible using manufacturer's standard 4-way shipping pallets.

7. Acceptance

7.1. Acceptance, Inspection and Testing

- A. Acceptance is pursuant to Sections 14, 15 and 16 of the of the Standard Contract Terms.
- B. Items delivered to any DNR warehouse location are subject to applicable Sections of the Standard Contract Terms until such time as items are removed from storage and / or deployed to field staff.

8. Invoice and Payment

8.1. Invoice Requirements

- A. Invoices are subject to Section 18, Terms of Payment, of the Standard Contract Terms.
- B. All invoices submitted to the State must include:
 - (a) date
 - (b) delivery order number (document I.D.)
 - (c) quantity
 - (d) description of the Contract Activities
 - (e) unit price
 - (f) shipping cost (if any); and
 - (g) total price.

8.2. Payment Methods

- A. The State will make payment for Contract Activities by Electronic Funds Transfer (EFT) only.

9. Project Plan

- A. The Contractor will carry out this project under the direction and control of the Program Manager.
- B. Within THIRTY (30) calendar days of the Effective Date, the Contractor will submit a project plan to the Program Manager for final approval. The plan must include: (a) the Contractor's organizational chart with names and title of personnel assigned to the project, which must align with the staffing stated in accepted proposals; and (b) the project breakdown showing sub-projects, tasks, and resources required.

10. Licensing Agreement - RESERVED

11. Liquidated Damages

- A. Late or improper completion of the Contract Activities will cause loss and damage to the State and it would be impracticable and extremely difficult to fix the actual damage sustained by the State.
- B. If there is late or improper completion of the Contract Activities the State is entitled to collect liquidated damages in the amount of \$500 and an additional \$100 per day for each day Contractor fails to remedy the late or improper completion of the Work.
- C. Unauthorized Removal of Key Personnel will interfere with the timely and proper completion of the Contract, to the loss and damage of the State, and it would be impracticable and extremely difficult to fix the actual damage sustained by the State. The State may assess liquidated damages against Contractor as specified below.
 - 1. The State is entitled to collect \$1,000 per individual per day for the removal of any Key Personnel without prior approval of the State.
 - 2. The State is entitled to collect \$1,000 per individual per day for an unapproved or untrained key personnel replacement.

STATE OF MICHIGAN

Contract Number 230000000372
Department of Natural Resources
Law Enforcement Division
Mustang Survival Brand Flotation and Hypothermia Apparel

SCHEDULE B PRICING

1. The Contractor is not offering quick payment terms.

Quick payment terms: N/A % discount off invoice if paid within N/A days after receipt of invoice.

Item	Mustang Model	Description	Price Each
1	MD3183 LE	HIT inflatable PFD for Law Enforcement. No Customization Olive/Black Size: 1 size fits most. Price includes delivery F.O.B. Destination	\$350.12
2	MV3128 T2	Flotation Vest with four (4) front pockets. No Customization Orange Only Standard Sizes: XS, S, M, L, XL, 2XL Extended Sizes: 3XL Price includes delivery F.O.B. Destination	\$60.66
3	MJ6214 T1	Classic Flotation Bomber Jacket <u>with</u> reflective tape No Customization Orange Only Standard Sizes: XS, S, M, L, XL, 2XL Extended Sizes: 3XL Price includes delivery F.O.B. Destination	\$292.94
4	MS2175	Coverall and Flotation Work Suit No Customization Orange and Black Only Standard Sizes: XS, S, M, L, XL, 2XL Extended Sizes: 3XL Price includes delivery F.O.B. Destination	\$580.66
5	MD3196	HIT inflatable Compact Tactical Life Preserver No Customization Black Size: 1 size fits most Price includes delivery F.O.B. Destination	\$445.55
6	MSD674 TO	Sentinel Tactical Dry Suit - No Customization Sepia or Black Standard Sizes: XS, XS, XS, S, M, L, XL, 2XL - Short (S), Regular (R) or Long (L) Extended Sizes: 3XL - - Short (S), Regular (R) or Long (L) May also note XL feet sizing Price includes delivery F.O.B. Destination	\$2,201.50
7	MSL600 GS	Sentinel Dry Suit Liner - No Customization Black Standard Sizes: XS, XS, XS, S, M, L, XL, 2XL Extended Sizes: 3XL Price includes delivery F.O.B. Destination	\$240.47



STATE OF MICHIGAN

STANDARD CONTRACT TERMS

This STANDARD CONTRACT (“Contract”) is agreed to between the State of Michigan (the “State”) and JetCo Solutions, LLC (“Contractor”), a Michigan Limited Liability Corporation. This Contract is effective on January 1, 2023 (“Effective Date”), and unless terminated, expires on September 30, 2025.

This Contract may be renewed for up to FIVE (5) 1-Year Options to Renew. 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:

- Duties of Contractor.** Contractor agrees to 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.

The Contractor agrees to 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.

The Contractor agrees to: (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.

The Contractor agrees to be clearly identifiable while on State property by wearing identification issued by the State, and clearly identify themselves whenever contacting the State.

- Notices.** All notices and other communications required or permitted under this Contract shall be in writing (email is acceptable) 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: Lisa Crozier-Green 525 West Allegan, Constitution Hall, Third Floor, Pillar A1 Lansing, Michigan 48933 CrozierGreenL@michigan.gov 517-284-5938	If to Contractor: Sue Tellier 5575 Kraft Ave SE, Suite 100 Grand Rapids, MI 49512 stellier@jetcosolutions.com 616-570-0067
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- 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: Lisa Crozier-Green 525 West Allegan, Constitution Hall, Third Floor, Pillar A1 Lansing, Michigan 48933 CrozierGreenL@michigan.gov 517-284-5938	Contractor: Sue Tellier 5575 Kraft Ave SE, Suite 100 Grand Rapids, MI 49512 stellier@jetcosolutions.com 616-570-0067
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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: Lt. Joseph Molnar MolnarJ@michigan.gov 231-922-5280	Contractor: Sue Tellier 5575 Kraft Ave SE, Suite 100 Grand Rapids, MI 49512 stellier@jetcosolutions.com 616-570-0067
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5. **Performance Guarantee.** The Contractor agrees to maintain adequate financial resources sufficient at all times, in the opinion of the State, to ensure performance of the Contract and agrees to 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.** The Contractor agrees to maintain the insurances identified below and remain responsible for all deductibles. All required insurance shall: (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> \$1,000,000 Each Occurrence Limit \$1,000,000 Personal & Advertising Injury Limit \$2,000,000 General Aggregate Limit \$2,000,000 Products/Completed Operations <u>Deductible Maximum:</u> \$50,000 Each Occurrence	Contractor must have their policy 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.
Umbrella or Excess Liability Insurance	
<u>Minimum Limits:</u> \$5,000,000 General Aggregate	Contractor must have their policy follow form.
Automobile Liability Insurance	
<u>Minimum Limits:</u> \$1,000,000 Per Accident	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 Hired and Non-Owned Automobile coverage.
Workers' Compensation Insurance	
<u>Minimum Limits:</u> Coverage according to applicable laws governing work activities.	Waiver of subrogation, except where waiver is prohibited by law.
Employers Liability Insurance	
<u>Minimum Limits:</u> \$500,000 Each Accident \$500,000 Each Employee by Disease \$500,000 Aggregate Disease.	

If any of the required policies provide **claims-made** coverage, the Contractor agrees to: (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 agrees to purchase extended reporting coverage for a minimum of three (3) years after completion of work.

The Contractor agrees to: (a) provide insurance certificates to the Contract Administrator, containing the Master Agreement (MA or Contract Number) at Contract formation and within twenty (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 five (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. **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.
8. **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.
9. **Staffing.** The State's Contract Administrator may require Contractor to remove or reassign personnel by providing a notice to Contractor.
10. **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.
11. **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.
12. **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.

13. **Ordering.** Contractor is not authorized to begin performance until receipt of authorization identified in Schedule A.
14. **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 21, 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.

15. **Delivery.** Contractor must deliver all Contract Activities F.O.B. destination, within the State premises with transportation and handling charges paid by Contractor, unless otherwise specified in Schedule A. All containers and packaging become the State's exclusive property upon acceptance.
16. **Risk of Loss and Title.** Until final acceptance, title and risk of loss or damage to Contract Activities remains with Contractor. Contractor is responsible for filing, processing, and collecting all damage claims. The State will record and report to Contractor any evidence of visible damage. If the State rejects the Contract Activities, Contractor must remove them from the premises within 10 calendar days after notification of rejection. The risk of loss of rejected or non-conforming Contract Activities remains with Contractor. Rejected Contract Activities not removed by Contractor within 10 calendar days will be deemed abandoned by Contractor, and the State will have the right to dispose of it as its own property. Contractor must reimburse the State for costs and expenses incurred in storing or effecting removal or disposition of rejected Contract Activities.
17. **Warranty Period.** The warranty period, if applicable, for Contract Activities is a fixed period commencing on the date specified in Schedule A. If the Contract Activities do not function as warranted during the warranty period, the State may return such non-conforming Contract Activities to the Contractor for a full refund.
18. **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.

19. **Liquidated Damages.** Liquidated damages, if applicable, will be assessed as described in Schedule A.
20. **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.

- 21. 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 22, 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.

- 22. 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 23, 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.
- 23. 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 120 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.
- 24. 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.

25. **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.
26. **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.
27. **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.
28. **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.
29. **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.

- 30. 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.

- 31. 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 21, Termination for Cause.

- 32. 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.

33. **Compliance with Laws.** Contractor must comply with all federal, state and local laws, rules and regulations.
34. **Prevailing Wage.** Contractor must comply with prevailing wage requirements, to the extent applicable to this Contract.
35. **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.
36. **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.
37. **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.
38. **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.
39. **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.
40. **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.
41. **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.
42. **Website Incorporation.** The State is not bound by any content on Contractor's website unless expressly incorporated directly into this Contract.
43. **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
Schedule B

Statement of Work
Pricing

- 44. 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.
- 45. 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.
- 46. Waiver.** Failure to enforce any provision of this Contract will not constitute a waiver.
- 47. 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.
- 48. 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.

Federal Provisions Addendum

The provisions in this addendum may apply if the purchase will be paid for in whole or in part with funds obtained from the federal government. If any provision below is not required by federal law for this Contract, then it does not apply and must be disregarded. If any provision below is required to be included in this Contract by federal law, then the applicable provision applies, and the language is not negotiable. If any provision below conflicts with the State's terms and conditions, including any attachments, schedules, or exhibits to the State's Contract, the provisions below take priority to the extent a provision is required by federal law; otherwise, the order of precedence set forth in the Contract applies. Hyperlinks are provided for convenience only; broken hyperlinks will not relieve Contractor from compliance with the law.

1. Federally Assisted Construction Contracts. If this contract is a “**federally assisted construction contract**” as defined in [41 CFR Part 60-1.3](#), and except as otherwise may be provided under [41 CFR Part 60](#), then during performance of this Contract, the Contractor agrees as follows:

(1) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:

Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(2) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

(3) The Contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the Contractor's legal duty to furnish information.

(4) The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(5) The Contractor will comply with all provisions of [Executive Order 11246](#) of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(6) The Contractor will furnish all information and reports required by [Executive Order 11246](#) of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(7) In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this Contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in [Executive Order 11246](#) of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in [Executive Order 11246](#) of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(8) The Contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of [Executive Order 11246](#) of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, that in the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

2. Davis-Bacon Act (Prevailing Wage)

- a. If applicable, the Contractor (and its Subcontractors) for **prime construction contracts** in excess of \$2,000 must comply with the Davis-Bacon Act ([40 USC 3141-3148](#)) as supplemented by Department of Labor regulations ([29 CFR Part 5](#), "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction").
- b. The Contractor (and its Subcontractors) shall pay all mechanics and laborers employed directly on the site of the work, unconditionally and at least once a week, and without subsequent deduction or rebate on any account, the full amounts accrued at time of payment, computed at wage rates not less than those stated in the advertised specifications, regardless of any contractual relationship which may be alleged to exist between the Contractor or subcontractor and the laborers and mechanics;
- c. The Contractor will post the scale of wages to be paid in a prominent and easily accessible place at the site of the work;
- d. There may be withheld from the Contractor so much of accrued payments as the contracting officer considers necessary to pay to laborers and mechanics employed by the Contractor or any Subcontractor on the work the difference between the rates of wages required by the Contract to be paid laborers and mechanics on the work and the rates of wages received by the laborers and mechanics and not refunded to the Contractor or Subcontractors or their agents.

3. **Copeland "Anti-Kickback" Act.** If applicable, the Contractor must comply with the [Copeland "Anti-Kickback" Act \(40 USC 3145\)](#), as supplemented by Department of Labor regulations ([29 CFR Part 3](#), "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"), which prohibits the Contractor and subrecipients from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled.

4. **Contract Work Hours and Safety Standards Act.** If the Contract is **in excess of \$100,000** and **involves the employment of mechanics or laborers**, the Contractor must comply with [40 USC 3702](#) and [3704](#), as supplemented by Department of Labor regulations ([29 CFR Part 5](#)), as applicable.

5. **Rights to Inventions Made Under a Contract or Agreement.** If the Contract is funded by a federal "funding agreement" as defined under 37 CFR §401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the recipient or subrecipient must comply with 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

6. **Clean Air Act.** If this Contract is **in excess of \$150,000**, the Contractor must comply with all applicable standards, orders, and regulations issued under the Clean Air Act (42 USC 7401-7671q) and the Federal Water Pollution Control Act (33 USC 1251-1387). Violations must be reported to the federal awarding agency and the regional office of the Environmental Protection Agency.

7. **Debarment and Suspension.** A "contract award" (see [2 CFR 180.220](#)) must not be made to parties listed on the government-wide exclusions in the [System for Award Management \(SAM\)](#), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), "Debarment and Suspension." SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

8. **Byrd Anti-Lobbying Amendment.** If this Contract **exceeds \$100,000**, bidders and the Contractor must file the certification required under [31 USC 1352](#).
9. **Procurement of Recovered Materials.** Under [2 CFR 200.322](#), a non-Federal entity that is a state agency or agency of a political subdivision of a state **and its contractors** must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at [40 CFR part 247](#) that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

Byrd Anti-Lobbying Certification

The following certification and disclosure regarding payments to influence certain federal transactions are made under FAR 52.203-11 and 52.203-12 and [31 USC 1352](#), the "Byrd Anti-Lobbying Amendment." Hyperlinks are provided for convenience only; broken hyperlinks will not relieve Contractor from compliance with the law.

1. [FAR 52.203-12](#), "Limitation on Payments to Influence Certain Federal Transactions" is hereby incorporated by reference into this certification.
2. The bidder, by submitting its proposal, hereby certifies to the best of his or her knowledge and belief that:
 - a. No federal **appropriated** funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress on his or her behalf in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any federal contract, grant, loan, or cooperative agreement;
 - b. If any funds **other than federal appropriated funds** (including profit or fee received under a covered federal transaction) have been paid, or will be paid, to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress on his or her behalf **in connection with this solicitation**, the bidder must complete and submit, with its proposal, [OMB standard form LLL, Disclosure of Lobbying Activities](#), to the Solicitation Manager; and
 - c. He or she will include the language of this certification in all subcontract awards at any tier and require that all recipients of subcontract awards in excess of \$150,000 must certify and disclose accordingly.
3. This certification is a material representation of fact upon which reliance is placed at the time of Contract award. Submission of this certification and disclosure is a prerequisite for making or entering into this Contract under [31 USC 1352](#). Any person making an expenditure prohibited under this provision or who fails to file or amend the disclosure form to be filed or amended by this provision is subject to a civil penalty of not less than \$10,000, and not more than \$100,000, for each such failure.

Signed by:

Jon Tellier, Vice President
Patriot Solutions, LLC

Date: 8/12/2020