

GENERAL PROVISIONS – PRIVATE, NON-PROFIT AND PRIVATE, PROPRIETARY

A. Options to Renew

At the discretion of DHS, this Agreement may be renewed in writing by an amendment not less than 30 days before its expiration. This Agreement may be renewed for up to two additional one-year periods.

B. Amendment

1. Federal or State Laws or Regulations

The Contractor shall, upon request of DHS and receipt of a proposed amendment, amend this Agreement, if and when required in the opinion of DHS, due to the revision of federal or state laws or regulations. If the Contractor refuses to sign such amendment within 15 days after receipt, this Agreement shall terminate upon such refusal. This Agreement may otherwise be amended only by the written consent of all the parties hereto.

2. Change Requests

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

If the Contractor does not so notify DHS, the Contractor has no right to claim thereafter that it is entitled to additional compensation in accordance with this Agreement for performing that service or providing that deliverable.

Change Requests:

- a. By giving Contractor written notice within a reasonable time, DHS must be entitled to accept a Contractor proposal for change, to reject it, or to reach another agreement with Contractor. Should the parties agree on carrying out a change, a written amendment must be prepared and issued under this Agreement, describing the change and

its effects on the services and any affected components of this Agreement.

- b. No proposed change must be performed until the proposed change has been specified in a duly executed amendment issued by DHS.
- c. If DHS requests or directs the Contractor to perform any activities that Contractor believes constitute a change, the Contractor must notify DHS that it believes the requested activities are a change before beginning to work on the requested activities. If the Contractor fails to notify DHS before beginning to work on the requested activities, then the Contractor waives any right to assert any claim for additional compensation or time for performing the requested activities. If the Contractor commences performing work outside the scope of this Agreement and then ceases performing that work, the Contractor must, at the request of DHS, retract any out-of-scope work that would adversely affect this Agreement.

C. Subcontracts

The Contractor shall not assign this Agreement or subcontract this Agreement to other parties without obtaining prior written approval of the DHS Office of Contracts and Purchasing. DHS, as a condition of granting such approval, shall require that such assignees or subcontractors shall be subject to all conditions and provisions of this Agreement including Criminal Record and Central Registry background checks when applicable. The Contractor shall be responsible for the performance of all assignees or subcontractors.

If the Contractor is a subrecipient and creates a subrecipient through subcontracting, the Contractor must monitor the subcontractor to ensure compliance with federal requirements.

If subcontracting, the Contractor must obligate the subcontractors to maintain the confidentiality of DHS' client information in conformance with state and federal requirements. At DHS' request, any employee of the Contractor and of any subcontractor having access or continued access to DHS' confidential information may be required to execute an acknowledgment that the employee has been advised of the Contractor's and the subcontractor's obligations under this section and of the employee's obligation to DHS, the Contractor or subcontractor, as the case may be, to protect such confidential information from unauthorized use or disclosure.

D. Confidentiality

1. The Contractor and DHS each acknowledge that the other possesses and will continue to possess confidential information that has been developed or received by it. As used in this section, "confidential information" of

the Contractor must mean all non-public proprietary information of the Contractor (other than confidential information of DHS as defined below) which is marked confidential, restricted, proprietary or with a similar designation. Confidential information of DHS must mean any information which is retained in confidence by DHS (or otherwise required to be held in confidence by DHS under applicable federal, state and local laws and regulations) or which, in the case of tangible materials provided to the Contractor by DHS under its performance under this Agreement, is marked as confidential, proprietary or with a similar designation by DHS. Confidential information includes information made privileged or confidential under federal and state laws and excludes any information (including this Agreement) that is publicly available under the Michigan Freedom of Information Act.

2. DHS and the Contractor will each use at least the same degree of care to prevent disclosing to third parties the confidential information of the other as it employs to avoid unauthorized disclosure, publication or dissemination of its own confidential information of like character, but in no event less than reasonable care. Neither the Contractor nor DHS will (i) make any use of the confidential information of the other except as contemplated by this Agreement, (ii) acquire any right in or assert any lien against the confidential information of the other, or (iii) if requested to do so, refuse for any reason to promptly return the other party's confidential information to the other party. Each party will limit disclosure of the other party's confidential information to employees and subcontractors who must have access to fulfill the purposes of this Agreement. Disclosure to, and use by, a subcontractor is permissible where (A) use of a subcontractor is authorized under this Agreement, (B) the disclosure is necessary or otherwise naturally occurs in connection with work that is within the subcontractor's scope of responsibility, and (C) the Contractor obligates the subcontractor in a written contract to maintain DHS's confidential information in confidence. At DHS's request, any employee of the Contractor and of any subcontractor having access or continued access to DHS's confidential information may be required to execute an acknowledgement that the employee has been advised of the Contractor's and the subcontractor's obligations under this section and of the employee's obligation to the Contractor or subcontractor, as the case may be, to protect the confidential information from unauthorized use or disclosure. Promptly upon termination or cancellation of this Agreement for any reason, the Contractor must certify to DHS that the Contractor has destroyed all DHS confidential information.

E. Compliance with Rules and Regulations

1. Compliance with Federal and State Requirements

The Contractor shall comply with all federal, state and local statutes, regulations and administrative rules, and any amendments thereto, as they may apply to the performance of this Agreement. This shall include, but shall not be limited to, those laws and regulations that could have a material effect on the federal program.

In addition, the Contractor shall comply with all federal grant agreements, provisions stated within the Catalog of Federal Domestic Assistance (CFDA), and state and federal laws and other rules and regulations related to this funding source that occur over the term of the Agreement.

The Contractor shall comply with all Federal Office of Management and Budget circulars that apply to the federal funding provided under this Agreement, which include but are not limited to:

- A-122 for cost principles, Relocated to 2 CFR, Part 230
- A-110 for administrative requirements, Relocated to 2 CFR, Part 215
- A-133 for audit requirements
- Special Federal Grant Provisions

The Contractor shall keep informed of federal, state, and local laws, ordinances, rules, regulations, orders, and decrees of bodies or tribunals having any jurisdiction/authority that in any manner affects those engaged in or employed on the work done under this Agreement or that in any manner affects the conduct of the work done under this Agreement.

Section 291 of the fiscal year 2013 Omnibus Budget, PA 200 of 2012, requires verification that all new employees of the Contractor and all new employees of any approved subcontractor, working under this Agreement, are legally present to work in the United States. The Contractor shall perform this verification using the E-verify system (<http://www.uscis.gov/portal/site/uscis>). The Contractor's signature on this Agreement is the Contractor's certification that verification has and will be performed.

2. Civil Service Rules and Regulations

The state of Michigan is obligated to comply with Article XI, Section 5, of the Michigan Constitution and applicable civil service rules and

regulations. Other provisions of this Agreement notwithstanding, the state personnel director is authorized to disapprove contractual disbursements for personal services if the state personnel director determines that this Agreement violates Article XI, Section 5 of the Michigan Constitution or applicable civil service rules and regulations.

3. Compliance with Civil Rights, Other Laws

The Contractor shall not discriminate against any employee or applicant for employment with respect to hire, tenure, terms, conditions, or privileges of employment, or a matter directly or indirectly related to employment, because of race, color, religion, national origin, age, sex, height, weight or marital status pursuant to Title VI and VII of the Civil Rights Act, 42 USC 2000d et seq., and the Elliott-Larsen Civil Rights Act, MCL 37.2101 et seq.

The Contractor shall also comply with the provisions of:

- The Americans with Disabilities Act of 1990, 42 USC 12101 et seq.
- The Michigan Persons with Disabilities Civil Rights Act, MCL 37.1101 et seq.
- Section 504 of the Federal Rehabilitation Act of 1973, 29 USC 791 et seq., which states that no employee or client or otherwise qualified handicapped individual shall, solely by reason of this handicap, be excluded from participation, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.
- HIPAA regulations at 42 CFR Part 160 and Part 164.

4. Freedom of Information Act

All information in this Agreement is subject to the provisions of the Freedom of Information Act. 1976 Public Act 442, as amended, MCL 15.231, et seq.

5. Prohibition Against Using Funds to Support Religious Activities

The Contractor shall not use financial funds administered by the state or federal government to support inherently religious activities, such as worship, religious instruction, or proselytization. If the Contractor engages in such activities, it must offer them separately, in time or location, from the programs or services funded with state or federal assistance, and participation must be voluntary for the beneficiaries of the state or federally funded programs or services.

The Contractor shall strictly adhere to provisions of federal law and regulation, including those found in 42 USC 604a.

F. Examination and Maintenance of Records

The Contractor shall permit DHS or any of its authorized agents access to the facilities being utilized at any reasonable time to observe the operation of the program. Further, the Contractor shall retain all books, records or other documents relevant to this Agreement for six years after final payment, at the Contractor's cost, and shall send copies of said books, records or other documents to DHS upon request. Federal auditors and any persons duly authorized by DHS shall have full access to and the right to examine and audit any of said material during said period. If an audit is initiated prior to the expiration of the six-year period and extends past that period, all documents shall be maintained until the audit is completed. DHS shall provide findings and recommendations of audits to the Contractor. DHS shall adjust future payments or final payment if the findings of an audit indicate over payment to the Contractor in any period prior to the audit. If no payments are due and owing the Contractor, the Contractor shall refund all amounts which may be due DHS within 60 days notice by DHS. The Contractor shall assure, as a condition of any sale or transfer of ownership of the Contractor agency, that the new purchasers or owner maintains the above-described books, records or other documents for any unexpired portion of the six-year period after final payment under this Agreement or the Contractor shall otherwise maintain said records as DHS may direct. If business operations cease, the Contractor shall maintain records as DHS may direct. The Contractor shall notify DHS when and if the Contractor operations cease during the six-year period after final payments and provide for appropriate storage of records at the Contractor's expense.

The Contractor shall, as a provision of this Agreement, assure that DHS may make reasonable inquiries of the auditor relating to audit workpapers and, furthermore, that DHS may review the auditor's workpapers in support of the audit.

G. Reporting and Monitoring

1. Reporting

The Contractor shall comply with all program and fiscal reporting procedures as are or may hereinafter be established by DHS. The Contractor shall also comply with all reporting procedures established by DHS in completion of progress reports at time intervals, on forms, in formats, and by means specified by DHS. In particular, reports or billing documents denoting event dates shall record month, day and year as specified by DHS. In all electronic filings, four digits shall be used to

designate year. Any additional reports as deemed necessary by DHS shall be made and submitted by the Contractor upon request.

2. Monitoring Requirements

DHS reserves the right to perform scheduled and unscheduled on-site visits during normal business hours, to monitor the Contractor's activities under this Agreement at any time, either during the term, or within three years after termination of the Agreement. The Contractor shall cooperate with DHS during the monitoring process by making available all records, facilities, and other resources necessary to perform the review.

If DHS detects noncompliance with this Agreement, and/or questioned costs during the course of its review, these items shall be identified and conveyed to the Contractor in an exit conference. DHS shall provide the Contractor with a detailed written report of these findings within 60 days of the exit conference. The Contractor is required to address each item in DHS' report by providing a Corrective Action Plan (CAP) to eliminate or correct each issue of noncompliance. The Contractor shall submit the CAP to DHS within 60 days from issuance of DHS' report.

If DHS identifies questioned costs that cannot be substantiated, DHS may, at its discretion, and after consultation with the Contractor, require the Contractor to submit a revised "Statement of Expenditures" to reflect adjustment for disallowed costs. Submission of revised billings to DHS shall be made within a time schedule established by DHS and the Contractor. If the Contractor fails to comply with monitoring requirements as set forth in this Agreement, and within allotted time frames mutually established, DHS may, at its discretion, invoke sanctions on the Contractor, which may include, but are not limited to, actions to collect disallowed costs and/or cancellation of the Agreements.

3. Audit Reports that Contain a Going Concern Statement

If an audit firm conducts an audit of the Contractor and issues an audit report with a finding of a Going Concern, the Contractor must submit this audit report to the DHS Office of Monitoring and Internal Controls within 10 days from the date of the audit report. The submission of this audit report to DHS is required regardless of whether an audit is required under this Agreement.

A Contractor receiving a Going Concern must submit a financial plan to the DHS Office of Monitoring and Internal Controls no later than 25 days from the date of the audit report issued by the audit firm. The financial plan must be approved by DHS. Failure of the Contractor to either timely submit the audit report with the Going Concern, or timely

submit a financial plan, or DHS' rejection of the Contractor's financial plan, are grounds for immediately terminating this Agreement.

H. Fees and Other Sources of Funding

The Contractor guarantees that any claims made to DHS under this Agreement shall not be financed by any source other than DHS under the terms of this Agreement. If funding is received through any other source, the Contractor agrees to deduct from the amount billed to DHS the greater of either the fee amounts, or the actual costs of the services provided.

The Contractor may not accept reimbursement from a client unless the Agreement specifically authorizes such reimbursement in the "Contractor Responsibility" section. In such case, a detailed fee scale and criteria for charging the fee must be included. If the Contractor accepts reimbursement from a client in accordance with the terms of the Agreement, the Contractor shall deduct these fees from billings to DHS.

Other third party funding sources, e.g., insurance companies, may be billed for contracted client services. Third party reimbursement shall be considered payment in full unless the third party fund source requires a co-pay, in which case DHS may be billed for the amount of the co-pay. No supplemental billing is allowed.

I. Publication - Approval and Copyright

The state of Michigan shall have copyright, property and publication rights in all written or visual material or other work products developed in connection with this Agreement. The Contractor shall not publish or distribute any printed or visual material relating to the services provided under this Agreement without prior written permission of the state of Michigan.

If the Contractor or an agent of the Contractor creates and/or reproduces under this Agreement materials which are developed for consumption by the general public or as a general information tool and which are funded in whole or in part with state of Michigan funds, the Contractor or its agent must include one of the statements referenced below, as they apply:

- This program is funded by the state of Michigan, or
- This program is funded in part by the state of Michigan

News releases (including promotional literature and commercial advertisements) pertaining to this Agreement shall not be made without prior written DHS approval, and then only in accordance with the explicit written instructions from DHS. No results of the activities associated with the Agreement are to be released without prior written approval of DHS and then only to persons designated.

J. Agreement Inclusiveness

This Agreement contains all the terms and conditions agreed upon by the parties. No other understanding, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind any of the parties hereto.

K. Certifications Regarding Lobbying

As required by section 1352, Title 31 of the U.S. Code, and implemented at 28 CFR Part 69, for persons entering into a grant or cooperative agreement over \$100,000, as defined at 28 CFR Part 69, the Contractor certifies to the best of its knowledge that:

1. No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any persons influencing or attempting to influence an officer or employee of an department, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the making of any federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal grant or cooperative agreement.
2. If any funds other than 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 department, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this federal grant or cooperative agreement, the undersigned shall complete and submit Standard form – LLL, “Disclosure of Lobbying Activities,” in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including sub-grants, contracts under grants and cooperative agreements, and subcontracts) and that all sub-recipients shall certify and disclose accordingly.

L. Certification Regarding Debarment, Suspension, and Other Responsibility Matters

The Contractor certifies to the best of its knowledge that they and their principals:

1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, sentenced to a denial of federal benefits by a state or federal court, or voluntarily excluded from covered transactions by any federal or state department or agency.

2. Have not within a three-year period preceding this Agreement been convicted of or had civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or contract under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property.
3. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state, or local) with commission of any of the offenses enumerated in 28 CFR 67, et sec.
4. Have not within a three-year period preceding this Agreement had one or more public transactions (federal, state or local) terminated for cause and default.

Where the parties are unable to certify to any of the statements in this certification, the Contractor shall attach an explanation to this Agreement.

The Contractor shall promptly notify DHS of any criminal litigation, investigations or proceeding which may have arisen or may arise involving the Contractor or any of the Contractor's subcontractors, or any of the foregoing entities' then current officers or directors during the term of this Agreement and three years thereafter.

All notices shall be provided in writing to DHS within 15 business days after the Contractor learns about any such criminal or civil investigations and within 15 days after the commencement of any proceeding, litigation, or arbitration, as otherwise applicable. Details of settlements, which are prevented from disclosure by the terms of the settlement, shall be annotated as such. However, the Contractor shall disclose if any terms of such settlement would impede the Contractor's performance of this Agreement. The Contractor may rely on similar good faith certifications of its subcontractors, which certification shall be available for inspection at the option of DHS.

The Contractor certifies to the best of its knowledge that within the past three years, the Contractor has not;

1. Failed to substantially perform a state contract or subcontract according to its terms, conditions, and specifications within specified time limits.
2. Refused to provide information or documents required by a contract including, but not limited to information or documents necessary for monitoring contract performance.

3. Failed to respond to requests for information regarding contract compliance, or accumulated repeated substantiated complaints regarding performance of a contract.
4. Failed to perform a state contract or subcontract in a manner consistent with any applicable state or federal law, rule, regulation, order, or decree.

The Contractor shall include Section O. (Certification Regarding Debarment, Suspension, and Other Responsibility Matters) language as written above in all subcontracts with other parties.

The Contractor shall require each primary subcontractor, whose subcontract will exceed \$25,000, to disclose to the Contractor, in writing, whether at the time of the award of the subcontract, the subcontractor, or its principals, is or is not debarred, suspended, or proposed for debarment by the state of Michigan. The Contractor shall then inform DHS of the subcontractor's status and reasons for the Contractor's decision to use such subcontractor, if the Contractor so decides.

If it is determined that the Contractor knowingly rendered an erroneous certification under this provision, in addition to the other remedies available to the state, DHS may immediately terminate this Agreement.

If the state finds that grounds to debar exist, it shall send notice to the Contractor of proposed debarment indicating the grounds for proposed debarment and the procedures for requesting a hearing. If the Contractor does not respond with a written request for a hearing within 20 calendar days, the state shall issue the decision to debar without a hearing. The debarment period may be of any length up to eight years. After the debarment period expires, the Contractor may reapply for inclusion on bidder lists through the regular application process by authority of Executive Order 2003-1.

M. Governing Law

This Agreement shall in all respects be governed by, and construed in accordance with, the laws of the state of Michigan. Any dispute arising herein shall be resolved in the state of Michigan.

N. Severability

Each provision of this Agreement shall be deemed to be severable from all other provisions of this Agreement and, if one or more of the provisions of this Agreement shall be declared invalid, the remaining provisions of this Agreement shall remain in full force and effect.

O. Reporting of Retiree Employment

All other provisions of this Agreement notwithstanding, the Contractor shall provide written notification within 15 days of hiring to DHS Office of Human

Resources (HR) the name, social security number, and work site of any state of Michigan retiree under their employ. Failure to notify HR within the allotted time period may result in the disallowance of all costs related to this Agreement up to the time the proper notification is received by HR.

P. Disputes

The Contractor shall notify DHS in writing of intent to pursue a claim against DHS for breach of any terms of this Agreement. No suit may be commenced by the Contractor for breach of this Agreement prior to the expiration of 90 days from the date of such notification. Within this 90 day period, the Contractor, at the request of DHS, must meet with the Director of DHS or designee for the purpose of attempting resolution of the dispute.

Q. Termination/Cancellation

1. Notice and Right to Cure

If the Contractor breaches this Agreement, and DHS, in its sole discretion, determines that the breach is curable, then DHS must provide the Contractor with written notice of the breach and a time period (not less than 30 days) to cure the breach. The notice of breach and opportunity to cure is inapplicable for successive or repeated breaches or if DHS determines, in its sole discretion, that the breach poses a serious and imminent threat to the health and safety of any person or the imminent loss, damage, or destruction of any real or tangible personal property.

2. Termination for Cause

DHS may terminate this Agreement, for cause, by notifying the Contractor in writing, if the Contractor (a) breaches any of its material duties or obligations under this Agreement, or (b) fails to cure a breach within the time period specified in the written notice of breach provided by DHS.

If this Agreement is terminated for cause, the Contractor must pay all costs incurred by DHS in terminating this Agreement, including but not limited to, state administrative costs, reasonable attorneys' fees and court costs, and any reasonable additional costs DHS may incur to procure the services/deliverables required by this Agreement from other sources.

3. Termination for Convenience

DHS may terminate this Agreement for its convenience, in whole or part, if DHS determines that a termination is in DHS's best interest. Reasons for the termination must be left to the sole discretion of DHS and may include, but not necessarily be limited to (a) DHS no longer

needs the services or products specified in this Agreement, (b) relocation of office, program changes, changes in laws, rules, or regulations make implementation of the services no longer practical or feasible, (c) unacceptable prices for additional services or new work requested by DHS, or (d) falsification or misrepresentation, by inclusion or non-inclusion, of information material to a response to any RFP issued by DHS. DHS may terminate this Agreement for its convenience, in whole or in part, by giving Contractor written notice at least 30 days before the date of termination.

4. Termination for Non-Appropriation

- a. Contractor acknowledges that, if this Agreement extends for several fiscal years, continuation of this Agreement is subject to appropriation or availability of funds for this Agreement. If funds to enable DHS to effect continued payment under this Agreement are not appropriated or otherwise made available, DHS must terminate this Agreement and all affected statements of work, in whole or in part, at the end of the last period for which funds have been appropriated or otherwise made available by giving written notice of termination to Contractor. DHS must give Contractor at least 30 days advance written notice of termination for non-appropriation or unavailability (or the time as is available if DHS receives notice of the final decision less than 30 days before the funding cutoff).
- b. If funding for this Agreement is reduced by law, or funds to pay Contractor for the agreed-to level of the services or production of deliverables to be provided by Contractor are not appropriated or otherwise unavailable, DHS may, upon 30 days written notice to Contractor, reduce the level of the services or change the production of deliverables in the manner and for the periods of time as DHS may elect. The charges payable under this Agreement will be equitably adjusted to reflect any equipment, services or commodities not provided by reason of the reduction.
- c. If DHS terminates this Agreement, eliminates certain deliverables, or reduces the level of services to be provided by Contractor under this section, DHS must pay Contractor for all work-in-process performed through the effective date of the termination or reduction in level, as the case may be and as determined by DHS, to the extent funds are available. This section will not preclude Contractor from reducing or stopping services/deliverables or raising against DHS in a court of competent jurisdiction, any claim for a shortfall in payment for services performed or deliverables finally accepted before the effective date of termination.

5. Termination for Criminal Conviction

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

6. Rights and Obligations upon Termination

- a. If DHS terminates this Agreement for any reason, the Contractor must stop all work as specified in the notice of termination, and take any action to mitigate and limit any potential damages, or requests for Contractor adjustment or termination settlement costs, to the maximum practical extent, including terminating or limiting as otherwise applicable those subcontracts and outstanding orders for material and supplies resulting from the terminated Agreement.
- b. If DHS terminates this Agreement before its expiration for its own convenience, DHS must pay Contractor for all charges due for services provided before the date of termination and, if applicable, as a separate item of payment under this Agreement, for work in process, on a percentage of completion basis at the level of completion determined by DHS. All completed or partially completed deliverables prepared by Contractor under this Agreement, at the option of DHS, becomes DHS's property, and Contractor is entitled to receive equitable fair compensation for the deliverables. Regardless of the basis for the termination, DHS is not obligated to pay, or otherwise compensate, Contractor for any lost expected future profits, costs or expenses incurred with respect to services not actually performed for DHS.
- c. Upon a good faith termination, DHS may assume, at its option, any subcontracts and agreements for services and deliverables provided under this Agreement, and may further pursue completion of the services/deliverables under this Agreement by replacement contract or otherwise as DHS may in its sole judgment deem expedient.

7. Reservation of Rights

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

8. Termination by Contractor

If DHS breaches this Agreement, and the Contractor in its sole discretion determines that the breach is curable, then the Contractor will provide

DHS with written notice of the breach and a time period (not less than 30 days) to cure the breach. The notice of breach and opportunity to cure is inapplicable for successive and repeated breaches.

The Contractor may terminate this Agreement if DHS (a) materially breaches its obligation to pay the Contractor undisputed amounts due and owing under the Agreement, (b) breaches its other obligations under the Agreement to an extent that makes it impossible or commercially impracticable for the Contractor to perform the services, or (c) does not cure the breach within the time period specified in a written notice of breach. But the Contractor must discharge its obligations under Section III. P. Disputes before it terminates the Agreement.

R. Transition Responsibilities

If DHS terminates this Agreement, for convenience or cause, or if this Agreement is otherwise dissolved, voided, rescinded, nullified, expires or rendered unenforceable, the Contractor agrees to comply with direction provided by DHS to assist in the orderly transition of equipment, services, software, leases, etc. to DHS or a third party designated by DHS. If this Agreement expires or terminates, the Contractor agrees to make all reasonable efforts to effect an orderly transition of services within a reasonable period of time.

The Contractor must work with DHS, or a specified third party, to develop a transition plan setting forth the specific tasks and schedule to be accomplished by the parties to effect an orderly transition. The Contractor must allow as many personnel as practicable to remain on the job to help DHS, or a specified third party, maintain the continuity and consistency of the services required by this Agreement.

The Contractor must deliver to DHS any remaining owed reports and documentation still in Contractor's possession subject to appropriate payment by DHS.

If the transition results from a termination for any reason, reimbursement must be governed by the termination provisions of this Agreement.

S. Stop Work

1. Stop Work Orders

DHS may, at any time, by written stop work order to the Contractor, require that the Contractor stop all, or any part, of the work called for by this Agreement for a period of up to 90 calendar days after the stop work order is delivered to the Contractor, and for any further period to which the parties may agree. The stop work order shall be specifically

identified as such and shall indicate that it is issued under this section of the Agreement. Upon receipt of the stop work order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the stop work order during the period of work stoppage. Within the period of the stop work order, DHS may either: (a) cancel the stop work order; or (b) terminate the work covered by the stop work order as provided in Section III. Q. Termination/Cancellation.

2. Cancellation or Expiration of Stop Work Order

If a stop work order issued under this section of the Agreement is canceled or the period of the stop work order or any extension thereof expires, the Contractor shall resume work. The parties shall agree upon an equitable adjustment in the services to be delivered, the Agreement price, or both, and the Agreement shall be modified, in writing, accordingly, if: (a) the stop work order results in an increase in the time required for, or in the Contractor's cost properly allocable to the performance of any part of this Agreement; and (b) the Contractor asserts its right to an equitable adjustment within 30 calendar days after the end of the period of work stoppage, provided that, if DHS decides the facts justify the action, DHS may receive and act upon a Contractor proposal submitted at any time before final payment under the Agreement. Any adjustment must conform to the requirements of Section III. B. Amendment.

T. Closeout Responsibilities

1. Closeout

When this Agreement is concluded or terminated, for any reason, the Contractor shall provide DHS, within 30 days of conclusion or termination, with all financial, performance and other reports required as a condition of this Agreement. DHS shall within the limit of this Agreement reimburse the Contractor for allowable costs not previously reimbursed. The Contractor shall immediately refund to DHS any payments or funds advanced to the Contractor in excess of allowable reimbursable expenditures.

2. Fixed Assets

DHS reserves the right to obtain or transfer title to all fixed assets, real or personal, included in the approved budget of this Agreement, billed in full or in part to DHS by the Contractor. Fixed asset costs billed to DHS shall be limited to straight-line determination or a use charge pre-

approved by DHS and shall be used only for the performance of the Agreement unless another use is authorized in writing by DHS.

At least 60 days prior to the end date of this Agreement (which includes cancellation of the Agreement) the Contractor shall report to DHS the book value of all fixed assets and non-consumables purchased with DHS funds and not fully utilized by the end of the Agreement. The Contractor shall request written instructions regarding the disposal of these fixed assets and consumable and/or non-consumable supplies that have been acquired with funds under this Agreement. Any gain on the sale or disposition of fixed assets before completion of this Agreement must be immediately reported and refunded to DHS.

No disposal, sale or transfer of fixed assets purchased under this Agreement in whole or part, may occur without the express written consent of DHS.

3. Continuing Responsibilities

Termination, conclusion, or cancellation of this Agreement shall not be construed as terminating the ongoing responsibilities of the Contractor or rights of DHS contained in Section III, "Examination and Maintenance of Records" and Section III, "Closeout" of this Agreement.

U. Recoupment of Funding and Repayment of Debts.

1. Recoupment of Funding

If the Contractor fails to comply with requirements as set forth in this Agreement, or fails to submit a revised "Statement of Expenditures" within allotted time frames established by DHS in consultation with the Contractor, DHS may, at its discretion, recoup or require the Contractor to reimburse payments made under this Agreement which DHS has determined that the Contractor has been overpaid. The Contractor is liable for any cost incurred by DHS in the recoupment of any funding.

Upon notification by DHS that repayment is required, the Contractor shall make payment directly to DHS within 30 days or DHS may withhold current or future payments made under this or any other agreements, current or future, between DHS and the Contractor.

If the Contractor fails to: (1) correct noncompliance activities identified by DHS, (2) submit revised billings as requested as part of a Corrective Action Plan when required; or (3) remit overpayments or make arrangements to have the overpayments deducted from future payments within 30 days, such failure shall constitute grounds to terminate immediately any or all of DHS' agreements with the Contractor. DHS

shall also report noncompliance of the Contractor to Michigan's Department of Technology, Management and Budget. Such report may result in the Contractor's debarment from further contracts with the state of Michigan.

2. Repayment of Debts and Other Amounts due DHS

By entering into this Agreement, the Contractor agrees to honor all prior repayment agreements established by DHS with the Contractor or Contractor's predecessors. If the Contractor has an outstanding debt due to DHS but does not have a repayment agreement, the Contractor agrees to make monthly payments to DHS at an amount not less than 5% of any outstanding balance and to begin on the date this Agreement is executed.

If the Contractor fails to honor prior repayment agreements, or the Contractor fails to begin repayment on an obligation due DHS that is not subject to a repayment agreement, DHS will initiate the administrative process to reduce payments to the Contractor under this Agreement to recoup the debt. The payment reduction will be made at the amount originally established in the repayment agreement or at an amount not less than 5% of any outstanding balance effective on the date this Agreement is executed.

V. Insurance Coverage

The Contractor must provide proof that it has obtained the minimum levels of insurance coverage indicated or required by law, whichever is greater. The insurance must protect DHS from claims which may arise out of, or result from, or are alleged to arise out of, or result from, the Contractor's performance of services under the terms of this Agreement, whether the services are performed by the Contractor, or by any subcontractor, or by anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable.

The Contractor waives all rights against DHS, its departments, divisions, agencies, offices, commissions, officers, employees and agents for the recovery of damages that are covered by the insurance policies the Contractor is required to maintain under this Agreement. The Contractor's failure to obtain and maintain the required insurance will not limit this waiver.

All insurance coverage provided relative to this Agreement is primary and non-contributing to any comparable liability insurance (including self-insurance) carried by the state.

DHS, in its sole discretion, may approve the use of a fully-funded self-insurance program in place of any specified insurance identified in this Agreement.

Unless DHS approves otherwise, the insurers selected by the Contractor must have an A.M. Best rating of A or better and a financial size of VII or better, or if those ratings are not available, a comparable rating from an insurance rating agency approved by DHS. All policies of insurance required in this Agreement must be issued by companies that have been approved to do business in the state. See www.michigan.gov/lara.

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

The Contractor must maintain all required insurance coverage throughout the term of this Agreement and any extensions. However, in the case of claims-made Commercial General Liability policies, the Contractor must secure tail coverage for at least three years following the termination of this Agreement.

The Contractor must provide, within five business days, written notice to the director of the Office of Contracts and Purchasing (OCP) if any policy required under this Agreement is cancelled. The notice must include the applicable contract number.

The minimum limits of coverage specified are not intended, and may not be construed, to limit any liability or indemnity of the Contractor to any indemnified party or other persons.

The Contractor is responsible for the payment of all deductibles.

If the Contractor fails to pay any premium for a required insurance policy, or if any insurer cancels or significantly reduces any required insurance without DHS's approval, DHS may, after giving the Contractor at least 30 days' notice, pay the premium or procure similar insurance coverage from another company or companies. DHS may deduct any part of the cost from any payment due the Contractor, or require the Contractor to pay that cost upon demand.

In the event DHS approves the representation of DHS by the insurer's attorney, the attorney may be required to be designated as a Special Assistant Attorney General by the Michigan Attorney General.

The Contractor is required to pay for and provide the following types and amounts of insurance:

1. Commercial General Liability with the following minimum coverage:
 - \$2,000,000 General Aggregate Limit other than Products/Completed Operations
 - \$2,000,000 Products/Completed Operations Aggregate Limit
 - \$1,000,000 Personal & Advertising Injury Limit

- \$1,000,000 Each Occurrence Limit
- Deductible maximum: \$50,000 Each Occurrence

The Contractor must list the state of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees and agents as additional insureds on the Commercial General Liability certificate. The Contractor also agrees to provide evidence that insurance policies contain a waiver of subrogation by the insurance company.

2. If a motor vehicle is used in relation to the Contractor's performance under this Agreement, the Contractor must have vehicle liability insurance on the motor vehicle, including owned, hired and non-owned vehicles, for bodily injury and property damage as required by law.

The Contractor must list the state of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees and agents as additional insureds on the vehicle liability certificate. The Contractor also agrees to provide evidence that insurance policies contain a waiver of subrogation by the insurance company.

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

The Contractor must provide the applicable certificates of insurance and a list of states where the coverage is applicable. Contractor must provide proof that the Workers' Compensation insurance policies contain a waiver of subrogation by the insurance company, except where such a provision is prohibited or limited by the laws of the jurisdiction in which the work is to be performed.

4. Employers liability insurance with the following minimum limits:
 - \$100,000 each incident
 - \$100,000 each employee by disease
 - \$500,000 aggregate disease

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

5. Employee Fidelity insurance must cover Forgery and Alteration, Theft of Money and Securities, Robbery and Safe Burglary, Computer Fraud, Funds Transfer Fraud, Money Order and Counterfeit Currency in a minimum amount of \$1,000,000.00 with a maximum deductible of \$50,000.00.

The Contractor must list the state of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees, and agents as Loss Payees on the certificate.

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

The Contractor must list the state of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees, and agents as additional insureds on the certificate. The Contractor also agrees to provide evidence that insurance policies contain a waiver of subrogation by the insurance company.

7. Professional Liability (Errors and Omissions) Insurance with the following minimum coverage:

- \$3,000,000.00 each occurrence, and
- \$3,000,000.00 annual aggregate.
- Deductible maximum: \$50,000 Per Loss

8. Medical Malpractice insurance with the following minimum limits:

Small Provider:

- \$200,000 each occurrence
- \$600,000 annual aggregate

Large Provider:

- \$1,000,000 each occurrence
- \$3,000,000 annual aggregate

Deductible Maximum:

- \$5,000 Each Occurrence

9. Property Insurance covering any loss or damage to the state-owned office space used by Contractor for any reason under this Agreement, and the state-owned equipment, software and other contents of the office space, including without limitation, those contents used by Contractor to provide the services to DHS, up to its replacement value, where the office space and its contents are under the care, custody and control of

Contractor. DHS must be endorsed on the policy as a loss payee as its interests appear.

10. Cyber Liability insurance covering (a) unauthorized acquisition, access, use, physical taking, identity theft, mysterious disappearance, release, distribution or disclosures of personal and corporate information; (b) transmitting or receiving malicious code via the insured's computer system; (c) denial of service attacks or the inability to access websites or computer systems.

Minimal Limits:

\$1,000,000 Each Occurrence

\$1,000,000 Annual Aggregate

The Contractor must list the state of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees, and agents as additional insureds on the certificate.

Subcontractor Insurance Coverage

Except where DHS has approved a subcontract with other insurance provisions, the Contractor must require any subcontractor under this Agreement to purchase and maintain the insurance coverage as described in this section for the Contractor in connection with the performance of work by those subcontractors. Alternatively, the Contractor may include any subcontractors under the Contractor's insurance on the coverage required in this section. Failure of subcontractors to comply with insurance requirements does not limit the Contractor's liability or responsibility.

Certificates of Insurance and Other Requirements

Before this Agreement is signed, and not less than 20 days before the insurance expiration date every year thereafter, the Contractor must provide evidence that the state of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees, and agents are listed as additional insureds as required. The Contractor must provide OCP with all applicable certificates of insurance verifying insurance coverage or providing, if approved, satisfactory evidence of self-insurance as required in this section. Each certificate must be on the standard ACORD form or equivalent. **THE CONTRACT NUMBER MUST BE SHOWN ON THE CERTIFICATE OF INSURANCE TO ASSURE CORRECT FILING.**

W. Indemnification

1. General Indemnification

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

2. Code Indemnification

To the extent permitted by law, the Contractor must indemnify, defend and hold harmless DHS from any claim, loss, or expense arising from Contractor's breach of the No Surreptitious Code Warranty.

3. Employee Indemnification

In any claims against the state of Michigan, its departments, divisions, agencies, sections, commissions, officers, employees and agents, by any employee of the Contractor or any of its subcontractors, the indemnification obligation under this Agreement must not be limited in any way by the amount or type of damages, compensation or benefits payable by or for the Contractor or any of its subcontractors under worker's disability compensation acts, disability benefit acts or other employee benefit acts. This indemnification clause is intended to be comprehensive. Any overlap in provisions, or the fact that greater specificity is provided as to some categories of risk, is not intended to limit the scope of indemnification under any other provisions.

4. Patent/Copyright Infringement Indemnification

To the extent permitted by law, the Contractor must indemnify, defend and hold harmless DHS from and against all losses, liabilities, damages (including taxes), and all related costs and expenses (including reasonable attorneys' fees and costs of investigation, litigation, settlement, judgments, interest and penalties) incurred in connection with any action or proceeding threatened or brought against DHS to the extent that the action or proceeding is based on a claim that any piece of equipment, software, commodity or service supplied by the Contractor or its subcontractors, or the operation of the equipment, software, commodity or service, or the use or reproduction of any documentation provided with the equipment, software, commodity or service infringes

any United States patent, copyright, trademark or trade secret of any person or entity, which is enforceable under the laws of the United States.

In addition, should the equipment, software, commodity, or service, or its operation, become or in DHS's or Contractor's opinion be likely to become the subject of a claim of infringement, the Contractor must at the Contractor's sole expense (i) procure for DHS the right to continue using the equipment, software, commodity or service or, if the option is not reasonably available to the Contractor, (ii) replace or modify to DHS's satisfaction the same with equipment, software, commodity or service of equivalent function and performance so that it becomes non-infringing, or, if the option is not reasonably available to Contractor, (iii) accept its return by DHS with appropriate credits to DHS against the Contractor's charges and reimburse DHS for any losses or costs incurred as a consequence of DHS ceasing its use and returning it.

Notwithstanding the foregoing, the Contractor has no obligation to indemnify or defend DHS for, or to pay any costs, damages or attorneys' fees related to, any claim based upon (i) equipment developed based on written specifications of DHS; (ii) use of the equipment in a configuration other than implemented or approved in writing by the Contractor, including, but not limited to, any modification of the equipment by DHS; or (iii) the combination, operation, or use of the equipment with equipment or software not supplied by the Contractor under this Agreement.

5. Continuation of Indemnification Obligations

The Contractor's duty to indemnify under this section continues in full force and effect, notwithstanding the expiration or early cancellation of this Agreement, with respect to any claims based on facts or conditions that occurred before expiration or cancellation.

6. Indemnification Procedures

The procedures set forth below must apply to all indemnity obligations under this Agreement.

- a. After DHS receives notice of the action or proceeding involving a claim for which it will seek indemnification, DHS must promptly notify Contractor of the claim in writing and take or assist Contractor in taking, as the case may be, any reasonable action to avoid the imposition of a default judgment against Contractor. No failure to notify the Contractor relieves the Contractor of its indemnification obligations except to the extent that the Contractor can prove damages attributable to the failure. Within 10 days following receipt

of written notice from DHS relating to any claim, the Contractor must notify DHS in writing whether Contractor agrees to assume control of the defense and settlement of that claim (a “Notice of Election”). After notifying Contractor of a claim and before DHS receiving Contractor’s Notice of Election, DHS is entitled to defend against the claim, at the Contractor’s expense, and the Contractor will be responsible for any reasonable costs incurred by DHS in defending against the claim during that period.

- b. If Contractor delivers a Notice of Election relating to any claim: (i) DHS is entitled to participate in the defense of the claim and to employ counsel at its own expense to assist in the handling of the claim and to monitor and advise DHS about the status and progress of the defense; (ii) the Contractor must, at the request of DHS, demonstrate to the reasonable satisfaction of DHS, the Contractor’s financial ability to carry out its defense and indemnity obligations under this Agreement; (iii) the Contractor must periodically advise DHS about the status and progress of the defense and must obtain the prior written approval of DHS before entering into any settlement of the claim or ceasing to defend against the claim and (iv) to the extent that any principles of Michigan governmental or public law may be involved or challenged, DHS has the right, at its own expense, to control the defense of that portion of the claim involving the principles of Michigan governmental or public law. But DHS may retain control of the defense and settlement of a claim by notifying the Contractor in writing within 10 days after DHS’s receipt of Contractor’s information requested by DHS under clause (ii) of this paragraph if DHS determines that the Contractor has failed to demonstrate to the reasonable satisfaction of DHS the Contractor’s financial ability to carry out its defense and indemnity obligations under this section. Any litigation activity on behalf of DHS, or any of its subdivisions under this section, must be coordinated with the Department of Attorney General. In the event the insurer’s attorney represents DHS under this section, the insurer’s attorney may be required to be designated as a Special Assistant Attorney General by the Michigan Attorney General.
- c. If Contractor does not deliver a Notice of Election relating to any claim of which it is notified by DHS as provided above, DHS may defend the claim in the manner as it may deem appropriate, at the cost and expense of Contractor. If it is determined that the claim was one against which Contractor was required to indemnify DHS, upon request of DHS, Contractor must promptly reimburse DHS for all the reasonable costs and expenses.

X. Limitation of Liability

Neither the Contractor nor DHS is liable to each other, regardless of the form of action, for consequential, incidental, indirect, or special damages. This limitation of liability does not apply to claims for infringement of United States patent, copyright, trademark or trade secrets; to claims for personal injury or damage to property caused by the gross negligence or willful misconduct of the Contractor; to claims covered by other specific provisions of this Contract calling for liquidated damages; or to court costs or attorneys' fees awarded by a court in addition to damages after litigation based on this Contract.