

Midwest Energy Resources Company **Terms and Conditions for Consulting** **Services**

DEFINITIONS

The following terms shall have the following meanings:

- A. *Agreement* means these Terms and Conditions, the document called the Purchase Order and/or Contract as executed by the parties, and all of the documents listed in the Purchase Order and/or Contract which are specifically incorporated into this Agreement.
- B. *Buyer* is Company's purchasing representative whose name appears on the face of the Purchase Order and/or Contract and who is the only Company representative authorized to issue Changes Orders.
- C. *Change Order* is the document issued by Buyer that alters, amends or modifies the Agreement.
- D. *Company* means the DTE Energy entity stated on the first page of the Purchase Order and/or Contract.
- E. *Contract Administrator* is Company's principal representative who has the responsibility to coordinate and administer the Agreement.
- F. *Contractor* means the person or legal entity with whom Company has entered into the Agreement.
- G. *Services* means the specific service(s) agreed to by Company and Contractor and set forth in the Agreement.
- H. *Third Party Work* means any original works of authorship or inventions or designs created or owned by a third party and used in performing any Services under this Agreement, as identified in writing in sufficient detail in the Agreement so as to distinguish them from Work developed or created under any Agreement.
- I. *Work* means all materials, tools and information used by Contractor in performing the Services and everything delivered to Company under this Agreement (other than Third Party Work), including, but not limited to all notes, reports, documentation, computer programs in object code and fully-commented source code, other literary works, all graphical works, all performances or displays, and any derivatives; all inventions, formulae, designs, processes, machines, manufactures, compositions of matter devices, and any improvements on any of them; all Company Confidential Information, and any Work in progress of any type.

1. ENTIRE AGREEMENT

- A. The Purchase Order and/or Contract, together with these Terms and Conditions and all documents referenced and specifically incorporated into the Purchase Order and/or Contract are the entire agreement between the parties respecting the Work and no modification of the Agreement shall be effective unless by a Change Order issued by Buyer. Any agreements, negotiations or understandings of the parties prior or contemporaneous to the date of the Agreement, whether written or oral, are superseded hereby.
- B. Any document submitted by Contractor (including any Contractor document referenced in the Agreement) is used

solely for the purpose of describing the Scope of Work and, to the extent containing any terms in addition to or inconsistent with the terms of the Agreement, or a rejection of any terms of the Agreement, shall be deemed to be a counter offer to Company and shall not be binding upon Company unless specifically accepted in writing by Buyer. In the absence of written acceptance of such counter offer by Company, commencement of performance by Contractor shall be deemed to be an agreement by Contractor to perform in accordance with the terms of the Agreement and an acceptance hereof, notwithstanding any prior dealings or usage of trade.

2. SCOPE OF WORK

Contractor agrees to furnish services and perform the Work as specified in the Agreement. Contractor may not perform extra work except by Change Order issued by Buyer.

3. TERM OF AGREEMENT

This Agreement shall be effective and terminate on the dates specified in the Purchase Order and/or Contract.

4. INDEPENDENT CONTRACTOR

A. Contractor and all its employees, Subcontractors and Suppliers are, with respect to Company, independent contractors. Except as otherwise expressly provided herein, Contractor shall perform all services, furnish all labor and supervision, do all work, and provide all equipment, materials, tools and supplies as are necessary or incidental to the complete performance of its obligations as required and described in the Agreement. Contractor shall be solely responsible for the performance, general direction, supervision and efficient administration of the Work of its employees, Subcontractors, Suppliers and those under its control. Any rights to inspect, reject, approve or otherwise oversee the Work or Services, or other similar provisions regarding the conduct of the Work or Services, including safety rules and practices, are for Company's benefit only (and not for any other person or entity) and do not relieve Contractor of its responsibilities.

B. Contractor shall be responsible for any and all wages, taxes, or benefits that are due and owing to its employees, including personnel or compensation records, computation of compensation, unemployment compensation, overtime and fringe benefits or performance of such other duties and obligations as are required to comply with any and all applicable federal state and local laws, ordinances, rules and regulations. Contractor shall require the same of its Subcontractors and Suppliers.

5. LAWS, REGULATIONS AND PERMITS

Contractor shall keep itself fully informed of and shall observe and comply with all federal, state and local laws, ordinances, codes and regulations including, but not limited to, environmental and pollution control; laws orders and decrees of bodies or tribunals having any jurisdiction or authority over the Work; and any rules or regulations of Company relating to health, safety or performance of the Work which in any manner affect those engaged or employed for any Work and/or Services, the materials and equipment used in any Work, or the performance of any Services. If any discrepancy or inconsistency should be discovered between the Agreement and any such law, ordinance, code, regulation, order, rule or decree, Contractor

shall immediately report the same in writing to Buyer. Contractor shall be responsible for the compliance by its employees, Subcontractors and Suppliers of all tiers with the above provisions and shall be liable for all fines levied in violation of any laws, ordinances, codes, and/or regulations.

6. FEDERAL CONTRACTING REQUIREMENTS

A. The following Federal Acquisition Regulation ("FAR") clauses, as amended, are incorporated by reference in these terms and conditions unless Contractor is exempt thereunder: Equal Opportunity, FAR 52.222-26 (applies to all orders); Prohibition on Segregated Facilities, FAR 52.222-21 (applies to all orders); Affirmative Action for Workers with Disabilities-FAR 52.222-36 (applies to orders of \$10,000 or more) Anti-Kickback Procedures, FAR 52.203-7 (applies to all orders over \$100,000); Affirmative Action for Special Disabled and Vietnam Era Veterans-FAR 52.222-35 (applies to orders of \$25,000 or more); and Employment Reports on Disabled Veterans and Veterans of the Vietnam Era-FAR 52.222-37 (applies to orders of \$25,000 or more). The terms "Contractor," "Government," and "Contracting Officer" as used in the FAR clauses shall be deemed to refer to "Contractor," "Company" and "Contract Administrator."

B. Except to the extent that this Agreement is exempt from any of the requirements set out below, Contractor agrees to be bound by and comply with the clauses set forth at 48 CFR 52.219-8 (Utilization of Small Business Concerns) (only if this Agreement exceeds \$100,000) and 48 CFR 52.219-9 (Small Business Subcontracting Plan) (only if this Agreement exceeds \$500,000 and if Company requests submission of a Small Business Subcontracting Plan).

7. CONFIDENTIALITY

A. Contractor recognizes and acknowledges that all information Company discloses to Contractor or which Contractor may have access during Contractor's performance of the Agreement is considered proprietary and confidential by Company, unless designated otherwise. This Confidential Information is and shall, at all times, remain the property of Company. Contractor shall limit the disclosure of the information or any portion thereof to those of its employees, Subcontractors and Suppliers who are required to perform the Work and/or Services and who have a strict need to know such information. Contractor shall advise such persons of the existence of this Agreement, of the confidential nature of the information and of Contractor's obligations regarding same under this Agreement. Contractor, its employees, Subcontractors and Suppliers and their employees shall not, without permission of Company, disclose such proprietary or confidential information to any third party for any reason or purpose whatsoever. In the event of a breach or threatened breach of this Section by Contractor or those under its control, Company shall be entitled to an injunction restraining such conduct. Nothing herein shall be construed as prohibiting Company from pursuing any other remedies available to Company for such breach or threatened breach.

B. Contractor and its employees shall not be required to protect or hold in confidence any such information which (1) becomes known to the public through no act or omission of Contractor or its employees; (2) is ordered to be disclosed by a court or administrative agency; or (3) is thereafter developed independently by Contractor. In the event that Contractor is requested or required under compulsion of legal process to disclose such information, Contractor shall

not, unless required by law, disclose the information until Company has first (i) received prompt written notice of such request or requirements to disclose and (ii) had an adequate opportunity to obtain a protective order or other reliable assurance that confidential treatment shall be accorded to the Confidential Information. Contractor shall not oppose actions by Company to assure such confidential treatment.

C. No publications or advisements concerning the subject matter of the Agreement, Company's name and/or logo or photographs of the Work and/or Services or Company property or portions thereof shall at any time be made by or on behalf of Contractor, its Subcontractors, or Suppliers, unless prior written authorization therefore is obtained from Buyer.

8. TAXES

A. Contractor accepts exclusive liability for all payroll taxes now or hereafter imposed by the United States or any state or local government, and any penalties and interest on such payroll taxes, resulting from amounts paid to any persons used by Contractor in performing the Services under this Agreement. Such persons shall in no event be the employees of Company. Contractor agrees to indemnify Company for any such payroll taxes, penalties and interest levied against Company or which Company may be required to pay.

B. Contractor agrees to indemnify Company from any and all taxes under Section 4980B of the Internal Revenue Code of 1986, as amended, and any penalties and interest thereon, resulting from the failure of Contractor to satisfy the continuation coverage requirements provided in such section with respect to persons used by Contractor in performing under this Agreement.

C. Contractor shall pay all income, single business, property, sales and use, excise and any other taxes now or hereafter imposed by the United States or any state or local government, and any penalties and interest on such taxes, arising out of Contractor's performance of the Work and/or Services, and shall indemnify Company for all such taxes, penalties and interest levied against Company or which Company may be required to pay.

9. INSURANCE

a. To protect Contractor and Company against liability for damage, loss, or expense arising out of, or in connection with, or resulting from the performance of the Services, Contractor shall at all times during the progress of the Services carry, at its own expense, and on such forms and terms as will protect Contractor and Company, with reliable insurance companies acceptable to Company and authorized to do business in the State of Wisconsin, insurance coverage, the type and amounts of which are customary in Contractor's business, including without limitation, the following:

(1) Worker's Compensation Insurance (Coverage A) for statutory requirements including Occupational Disease Insurance and protection for liability under the Jones Act, Federal Longshoreman's and Harborworkers Compensation Act, as amended, as required by law. **Employer's Liability Insurance (Coverage B)** with limits of One Million Dollars (\$1,000,000) covering location of all work places.

(2) Comprehensive Automobile Liability Insurance covering owned, non-owned and hired vehicles with limits of not less than Two Million Dollars (\$2,000,000) Combined

Single Limit per occurrence for injuries to or death of more than one person and Property Damage Liability.

(3) Commercial General Liability Insurance including Products/Completed Operations Coverage and Blanket Contractual Coverage with Full Defense Coverage for Company, and Contingent Liability with respect to subcontractors, with a limit of not less than Two Million Dollars (\$2,000,000) Combined Single Limit Coverage covering injuries to or death of one or more persons and property damage liability.

(4) Professional Liability (Errors & Omissions) Insurance with a limit of not less than Three Million Dollars (\$3,000,000) per claim (if applicable to the Work and/or Services being performed as determined by Company).

b. All the above described insurance policies (except Workers' Compensation and Professional Liability) shall name Company, and its officers, agents and employees as an Additional Insured without limitation and all such policies (including Workers' Compensation) shall contain provisions that the insurance companies will have no right of recovery or subrogation against Company, or its officers, agents or employees, it being the intention of the parties hereto that the insurance so effected shall protect all parties and be primarily liable for any and all losses covered by the above described insurance.

c. All policies providing coverage hereunder shall contain provisions that no cancellation or material changes in the policies shall become effective except on 30 days advance written notice thereof to the Company.

d. Prior to the start of the Services, Contractor shall provide Company with Certificate(s) of Insurance evidencing that insurance coverage of the types, amounts, and conditions specified are in effect. Contractor affirms to Company that such insurance coverage shall remain in effect during the life of the Agreement.

10. INDEMNIFICATION

A. Contractor covenants and agrees that it shall defend, indemnify and hold Company, and all of its officers, agents and employees harmless for any claim, loss, damage, cost, charge, expense, lien, settlement or judgment, including interest thereon, whether to any person, including employees of Contractor, its Subcontractors and Suppliers, or property or both, arising directly or indirectly out of or in connection with Contractor's or any of its Subcontractor's or Supplier's performance of the Agreement or in connection with the performance of the Work, to which Company or any of its officers, agents or employees may be subject or put by reason of any act, action, neglect or omission on the part of Contractor, any of its Subcontractors or Suppliers or Company, or any of their respective officers, agents and employees. Without limiting the foregoing, said obligation includes claims involving Contractor's, Supplier's or Subcontractor's employees injured while going to and from Project.

B. In the event any suit or other proceedings for any claim, loss, damage, cost, charge or expense covered by Contractor's foregoing indemnity should be brought against Company or any of its officers, agents or employees, Contractor hereby covenants and agrees to assume the defense thereof and defend the same at Contractor's own expense and to pay any and all costs, charges, attorney's

fees, and other expenses, and any and all judgments that may be incurred by or obtained against Company or any of its officers, agents, or employees in such suits or other proceedings. In the event of any judgment or other lien being placed upon the property of Company in such suits or other proceedings, Contractor shall at once cause the same to be dissolved and discharged by giving bond or otherwise.

11. HIRING AND SUBCONTRACTING

A. Contractor shall not hire aliens who are unauthorized or ineligible for U.S. employment at Contractor, pursuant to the Immigration and Nationality Act as amended (INA). Contractor shall comply with the INA verification and retention requirements for its employees hired after November 6, 1986, and with such other applicable requirements of employers as have been or will be issued, pursuant to the INA, or pursuant to the authority of the Department of Homeland Security and U. S. Citizenship and Immigration Services (USCIS) or their successors.

B. Contractor shall not commence any Work prior to notifying Company of any Subcontractors and/or Suppliers, ensuring that its Subcontractors and/or Suppliers meet Company safety requirements and receiving Company's concurrence of such Subcontractor and/or Supplier for performance of the Work. Any assignment, delegation or subcontract shall not relieve Contractor of its responsibility to complete the Services in accordance with the terms of this Agreement or its liability for any Services performed by its subcontractors, employees or agents.

C. Contractor shall incorporate the obligations of this Agreement into its respective subcontracts, agreements and purchase orders (a copy of which is to be submitted to Company upon request). Company is the intended third party beneficiary of all contracts for design, engineering or consulting services, all trade contracts, subcontracts, purchase orders and other agreements between Contractor and third parties. Contractor shall fully defend, indemnify and hold Company harmless from all acts or omissions of its subcontractors.

D. Contractor shall require its Subcontractors to carry insurance in the amount, type and form of insurance required by the Agreement. If its Subcontractors do not obtain such coverage, Contractor shall insure the activities of its Subcontractors.

12. CONTRACTOR'S EMPLOYEES, AGENTS, SUBCONTRACTORS

A. Contractor's agents, employees and Subcontractors who are working on Company premises shall comply with all federal, state and local laws, ordinances, codes and regulations, and Company policies prohibiting unlawful discrimination and harassment. Contractor shall be responsible to Company for compliance by its employees, agents and Subcontractors with the above provisions.

B. At Company's request, Contractor shall remove any employee, agent or Subcontractor that Company deems incompetent, disorderly, insubordinate, careless or otherwise objectionable, without cause, at any time.

13. PAYMENT

A. Invoices for Services performed shall be submitted on a timely basis, in the manner, frequency and form, and with such supporting documentation, including acknowledgment

of receipt of work by Company, as required by the Agreement. Company shall pay approved invoices in accordance with the payment terms specified in the Agreement or shall notify Contractor of its reasons for disapproval of such invoices. Company shall have no liability for any costs or expenses, including travel expenses, incurred by Contractor without the prior written authorization of Buyer.

B. Contractor shall promptly pay its Subcontractors and Suppliers upon receipt of each payment, the respective amounts allowed Contractor on account of the Services performed to the extent of each such Subcontractor's and/or Supplier's interest therein.

C. Contractor shall defend, indemnify and hold harmless Company from any and all claims, demands, causes of action and/or costs, including reasonable attorney fees, attributable to Contractor's failure to make any payments required by this Section. Nothing in this Agreement shall imply or infer an obligation of Company to make payment to any party other than Contractor.

14. SET OFF

Company shall be entitled at any time to set off any sums owing by Contractor or any of Contractor's affiliated companies, to Company or to any of Company's affiliated companies, against sums payable by Company.

15. CHANGES

A. During performance of the Work, changes to the Work may be made requiring a substitution for, an addition to, or deletion of any Work or a change in the method or manner of the Work, schedule or other requirement. Company may make changes at any time by written order, designated to be a Change Order, without invalidating the Agreement.

B. Contractor shall submit a written proposal for accomplishing the Change within ten (10) days of notice of such change by Company, unless otherwise specified. Sufficient detail shall be given in the proposal to permit thorough analysis by Company. No amendment, alteration or modification of the Agreement shall be binding unless made pursuant to a written Change Order issued by Buyer and, when required by Company, accepted in writing by Contractor. All Change Orders shall be supplementary to and incorporated as a part of the Agreement.

C. Any such changes made without written authority from Company shall be the responsibility and sole risk of Contractor. No action, conduct, omission, prior failure or course of dealing by Company shall act to waive, modify, change or alter the requirement that a Change Order must be in writing executed by Buyer.

D. In the event that emergency or immediate action is required to avoid stopping or disruption of the Work in progress, the Contract Administrator may give Contractor an oral order, direction or instruction to proceed with a change. Such oral order, direction or instruction shall be confirmed by the Contract Administrator in writing to Contractor within one (1) working day. Contractor shall, within ten (10) days after commencement of the change, unless specified otherwise in the Agreement, provide Company with a written proposal on the effect of the change. The proposal shall be administered as provided in Paragraph B of this Section. If no such Change Order is received by Contractor within thirty (30)

days of the event, Contractor shall have the right to cease the work associated with the change or proceed at Contractor's own risk.

16. TERMINATION FOR CONVENIENCE

Company may at any time, without cause, terminate this Agreement, in whole or in part, upon ten (10) days written notice to Contractor. Upon receipt of such notice, Contractor shall discontinue the Work on the date and to the extent specified in the notice and shall thereafter do only such work as may be necessary to preserve and protect the Work already in progress. Upon such termination, Contractor waives all claims for damages as a result of such termination including, but not limited to, loss of anticipated profits, and any claims of subcontractors or suppliers as a result of such termination, and shall accept as its sole and complete remedy the value of all Services completed through the date of termination, including reasonable overhead and profit thereon and reasonable costs incurred by Contractor in terminating the Agreement. No termination fee(s) shall be payable by Company.

17. CANCELLATION FOR DEFAULT

Contractor shall be in default if at any time: (1) Contractor refuses, neglects or fails in any respect to prosecute the Services hereunder or any portion thereof with promptness, diligence or in accordance with any of the provisions set forth herein; (2) Contractor refuses, neglects or fails to perform any other obligations under this Agreement or provide adequate assurances of performance; (3) Contractor makes an assignment for the benefit of creditors or bankruptcy or insolvency proceedings are instituted by or against Contractor; or (4) in Company's sole judgment, Contractor's financial or other condition or progress on the Agreement shall be such as to endanger timely performance. Company may, but is not required to, notify Contractor in writing of any default. If Contractor fails to remedy such default within five (5) days after receipt by it of such written notice, Company may, in writing, (1) cancel this Agreement (2) recover from Contractor any and all increased costs and other damages relating to such default, (3) recover attorneys' fees and costs of suit plus interest, and/or pursue any other remedies available under this Agreement, by law, or in equity. Contractor shall return any Company property, deliver all Work in progress, and provide Company with all intellectual property rights in any Work. Cancellation is not Company's exclusive remedy and is in addition to any other rights and remedies it may have under this Agreement or by law. Failure of Company to exercise any of its rights under this Section shall not excuse Contractor from compliance with the provisions of this Agreement nor prejudice rights of Company to recover damages for such default.

19. FORCE MAJEURE

A. Except as otherwise provided herein, Contractor shall not be liable for a reasonable delay or default in performing Work hereunder and Company shall not be liable for failure to perform any of its obligations hereunder, to the extent due to fire, flood, storm, other natural disaster, national emergency or war, and not due to labor problems, inability to obtain financing, negligence or other similar condition of such party, provided that either party has given the other prompt notice of such occurrence.

B. Within seven (7) days of the commencement of any excusable delay, Contractor must notify Buyer in writing of the nature, cause, date of commencement and expected

impact of the event. Contractor must exercise due diligence in proceeding to meet its performance, obligations hereunder notwithstanding the delay. Upon Contractor satisfying these conditions, Company may extend the schedule for the period of time equal to the time actually lost by reason of the delay.

20. STANDARD OF CARE

All Services provided under this Agreement shall be performed by qualified and competent personnel in accordance with industry practice. Contractor shall perform its Services with the highest standard of care, skill, diligence and practice appropriate to the nature of the Services rendered and shall conform in all respects to any specifications. Contractor is hereby given notice that Company shall rely upon the accuracy, competence and completeness of the Services performed, and shall utilize the results of the Services as input and the basis for other Company work.

21. LICENSE, PATENTS AND COPYRIGHTS

Contractor represents and warrants that it has authority and grants Company a permanent, assignable, nonexclusive, royalty-free license to use any Third Party Work required while performing or obtaining Services. Company shall have all the intellectual property rights in the Work. As requested by Company, Contractor shall do whatever is necessary, at Company's cost, to obtain patents or copyrights on any concepts, process, products or writings conceived, developed or produced by Contractor while performing Services. Contractor shall execute all documents as may be necessary to implement and carry out the provisions of this Section.

22. OWNERSHIP OF INFORMATION

A. All Work prepared or developed by Contractor in the performance of the Services shall become the sole and exclusive property of Company, whether delivered to Company or not, and shall, together with any materials furnished to Contractor by Company, be delivered to Company upon request and, in any event, upon termination or completion of this Agreement. Except as specifically authorized in writing by Company, information and any other data developed or acquired by or furnished to Contractor in the performance of this Agreement shall be used only in connection with Services provided to Company and shall be the exclusive property of Company.

B. Company and Contractor agree that all Work is a Work-Made-For-Hire under the copyright laws of the United States. In addition, if any Work is not Work-Made-For-Hire, Contractor agrees to assign and does hereby expressly assign to Company for all time, all right, title and interest to all Work, including any and all copyrights, patents, trade dress, and any and all moral rights it may have in any whole or part of the Work. Contractor agrees to obtain any assignments of rights from other parties, including its employees, it requires to comply with this Section.

C. During and after this Agreement, Contractor agrees to assist Company in every reasonable way to secure, maintain and defend for Company's benefit all intellectual property rights it may have in any whole or part of the Work.

23. WARRANTY AND INDEMNITY – PATENTS, TRADEMARKS AND PROPRIETARY RIGHTS

A. Contractor warrants that all materials, equipment and processes used or supplied and the Work performed are free from any infringement of any patent, trademark or other intellectual property right. Contractor shall pay all royalties and license fees necessary for the proper performance of the Work.

B. Contractor shall indemnify and defend any action brought against Company based on a claim or allegation that any process or method used, equipment or material supplied or service performed pursuant to the Agreement constitutes an infringement or violation of any patent, trademark or other proprietary right. Company shall at Contractor's expense give such information and assistance as it may deem appropriate for the defense of same, and Contractor shall pay all of Company's actual costs and expenses of such action, including any damages awarded. If an infringement or violation is determined or held to exist and the use of such process, method, equipment, material or service is enjoined, Contractor shall at its own expense and at Company's option either (1) procure for Company the right to continue using said process, equipment, material or service or (2) replace it with non-infringing process, equipment, materials or service acceptable to Company; or (3) modify it in a manner acceptable to Company so that it becomes non-infringing.

24. NETWORK SECURITY/VIRUS PROTECTION

A. If Company's access to Contractor's system or Contractor's access to Company's system requires a network connection between Company's wide area network (WAN) and Contractor's WAN, Contractor and Company shall take reasonable and customary precautions to prevent unauthorized access to or use of the Network Connection through their respective networks. The parties agree, however, that each party is responsible for the security of its own network. Neither party shall be liable to the other for unauthorized access to the network connection, so long as such party shall have taken reasonable and customary precautions to prevent such unauthorized access.

B. Neither Company or Contractor shall knowingly engage in creating or transmitting computer virus software or other programs which could contaminate or otherwise cause the malfunction of any system (i.e., viruses, trojan horses, trap doors, worms, etc.). When providing electronic materials (any electronic media method, including but not limited to diskettes or CD-ROMs) to Company or Contractor under this Agreement, both parties agree to exercise the same standard of care that it uses to safeguard against the transfer of known computer viruses or other system errors which could contaminate or otherwise cause the malfunction of its own computer system.

25. ELECTRONIC MEDIA TOOL VIRUS PROTECTION

A. Any electronic media tool, including, but not limited to, diskettes, CD-Roms, laptops, or any other form of software or hardware provided or used by Contractor, shall be free from any virus, or any other system error that may contaminate or otherwise cause harm to Company's computer environment. Contractor warrants that any software, and related documentation in electronic form, shall not contain, or result in the creation or insertion of, any disabling device (i.e., any virus, timer, clock, counter, time lock, time bomb, or other limiting design, instruction, or routine) that would erase data or programming, cause any

resource to become inoperable or otherwise incapable of being used in the full manner for which such resource was intended to be used, or cause any software or documentation, any portion thereof, or any other programs, hardware, equipment, or data to become inoperable or otherwise become incapable of being used in the full manner for which it was designed, intended, and created.

B. Contractor further warrants that any software and related documentation in electronic form, shall not contain any computer code that would: (i) disable the software or impair its use or operation in any way based on the elapsing of a period of time, the exceeding of an authorized number of copies, users, or other relevant metric, or the advancement to a particular date or other numeral (referred to as "time bombs", "time locks", or "drop dead" devices); (ii) permit Contractor or any third party to remotely, and without Company's knowledge or approval, access the software through a device such as those referred to as a "trap," "access code," or "trap door"; or (iii) permit Contractor or any third party to track, monitor, or otherwise report on the use or operation of such software.

C. If such virus or other contaminant is brought into Company's computer environment, by or through Contractor, Contractor shall reimburse Company for all labor and materials costs incurred by Company to identify, contain and correct the effects of such virus. The hourly rate paid by Contractor for the identification, containment and correction of the effects of such virus shall be at the prevailing hourly rate incurred by Company.

26. LIMITATION OF LIABILITY

Except as may be expressly stated elsewhere in this Agreement, neither party shall be liable to the other party for incidental, indirect, or consequential damages, including, but not limited to, loss of profits or revenue.

27. RECORDS AND AUDITS

Company or its authorized representative shall have access to Contractor's records at Company's premises or at Contractor's regular place of business during normal business hours to review, audit, and verify any information connected with this Agreement for a period of three (3) years after completion of the Agreement. Copies of any material shall be made for Company at its request and any reasonable cost of reproduction shall be borne by Company.

28. NON-WAIVER

None of the provisions of the Agreement shall be considered waived by either party unless such waiver is given in writing by the other party. No such waiver shall be a waiver of any past or future default, breach or modification of any of the terms, provisions, conditions or covenants of the Agreement unless expressly set forth in such waiver.

29. NOTICES

Notices and other written communications shall be sent to Buyer and Contractor's representative identified in the Agreement. Such notices and other written communications must reference the Purchase Order and/or Contract Number appearing in the Agreement.

30. SAVING CLAUSE- INDEPENDENT TERMS

Each term and condition of this Agreement is deemed to have an independent effect and the invalidity of any partial or whole paragraph or section shall not invalidate the remaining paragraphs or sections. The obligation to perform all of the terms and conditions shall remain in effect regardless of the performance of any invalid term by the other party.

31. ASSIGNMENT

No assignment of this Agreement or any of its rights or obligations hereunder shall be made by Contractor without first obtaining the written consent of Company. This Agreement shall be binding upon and shall inure to the benefit of the respective successors and permitted assigns of the parties hereto.

32. GOVERNING LAW AND JURISDICTION

The Agreement, and the rights, obligations and liabilities of the parties hereto shall be construed in accordance with the law of the State of Michigan, without regard to its conflict of law principals. The parties agree that any action with respect to this Agreement shall be brought in a court of competent subject matter jurisdiction located in the State of Michigan and the parties hereby submit themselves to the exclusive jurisdiction and venue of such court for the purpose of such action.

33. SURVIVAL

All of the terms of this Agreement which by their nature extend beyond (a) the termination or cancellation of this Agreement or (b) the completion of the work shall survive and remain in full force and effect and apply to respective successors and assigns.

34. CONSTRUCTION OF TERMS

The terms of this Agreement have been arrived at after mutual negotiation and the parties agree that its terms shall not be construed against any party by reason of the fact that this Agreement was prepared by one of the parties.