

STATE OF MICHIGAN  
 DEPARTMENT OF MANAGEMENT AND BUDGET  
 PURCHASING OPERATIONS  
 P.O. BOX 30026, LANSING, MI 48909  
 OR  
 530 W. ALLEGAN, LANSING, MI 48933

January 28, 2010

**CHANGE NOTICE NO. 3**  
**TO**  
**CONTRACT NO. 071B7200275**  
**between**  
**THE STATE OF MICHIGAN**  
**and**

NAME & ADDRESS OF VENDOR		TELEPHONE (360) 398-1117 X52 <b>Garrett Reynolds</b>	
<b>American Canadian Fisheries</b> <b>6069 Hannegan Road</b> <b>Bellingham, WA 98226</b>  garrett@amcan-qss.com			
		BUYER/CA (517) 241-0684 <b>Brian Kloeckner</b>	
Contract Compliance Inspector: Edward Eisch (231) 347-4689 <b>Salmon and Egg Harvesting Services – Fisheries Division – Department of Natural Resources</b>			
CONTRACT PERIOD:		From: <b>May 21, 2007</b>	To: <b>April 30, 2010</b>
TERMS	<b>N/A</b>	SHIPMENT	<b>N/A</b>
F.O.B.	<b>N/A</b>	SHIPPED FROM	<b>N/A</b>
MINIMUM DELIVERY REQUIREMENTS		<b>N/A</b>	

**NATURE OF CHANGE(S):**

Effective January 19, 2010, this Contract is hereby **EXTENDED** through April 30, 2012.  
 Also effective January 19, 2010, this Contract is hereby **INCREASED** by \$396,000.00.

**NOTE:** The DMB Buyer for this Contract is **CHANGED** to Brian Kloeckner (517) 241-0684.

All other terms, conditions, specifications, and pricing remain unchanged.

**AUTHORITY/REASON:**

Per agency request (PRF dated 10/15/09), vendor agreement, Ad Board approval on January 19, 2010, and DMB/Purchasing Operations' approval.

**REVISED CURRENT AUTHORIZED SPEND LIMIT: \$1,056,000.00**

STATE OF MICHIGAN  
 DEPARTMENT OF MANAGEMENT AND BUDGET  
 PURCHASING OPERATIONS  
 P.O. BOX 30026, LANSING, MI 48909  
 OR  
 530 W. ALLEGAN, LANSING, MI 48933

August 12, 2008

**CHANGE NOTICE NO. 2**  
**TO**  
**CONTRACT NO. 071B7200275**  
**between**  
**THE STATE OF MICHIGAN**  
**and**

NAME & ADDRESS OF VENDOR		TELEPHONE (360) 398-1117 X52 <b>Garrett Reynolds</b>	
<b>American Canadian Fisheries</b> <b>6069 Hannegan Road</b> <b>Bellingham, WA 98226</b>  garrett@amcan-qss.com			
		BUYER/CA (517) 373-8622 <b>Malynda Little</b>	
Contract Compliance Inspector: Edward Eisch (231) 347-4689 <b>Salmon and Egg Harvesting Services – Fisheries Division – Department of Natural Resources</b>			
CONTRACT PERIOD:		From: <b>May 21, 2007</b>	To: <b>April 30, 2010</b>
TERMS	<b>N/A</b>	SHIPMENT	<b>N/A</b>
F.O.B.	<b>N/A</b>	SHIPPED FROM	<b>N/A</b>
MINIMUM DELIVERY REQUIREMENTS		<b>N/A</b>	

**NATURE OF CHANGE(S):**

Effective immediately, the Project Manager for the Contractor is changed to:

**John Zollner**  
 Telephone: (360) 398-1117

All other terms, conditions, specifications, and pricing remain unchanged.

**AUTHORITY/REASON:**

Per Contractor request, agency concurrence, and DMB/Purchasing Operations' approval.

**ESTIMATED CONTRACT VALUE REMAINS: \$660,000.00**

STATE OF MICHIGAN  
DEPARTMENT OF MANAGEMENT AND BUDGET  
PURCHASING OPERATIONS  
P.O. BOX 30026, LANSING, MI 48909  
OR  
530 W. ALLEGAN, LANSING, MI 48933

February 5, 2008

CHANGE NOTICE NO. 1  
TO  
CONTRACT NO. 071B7200275  
between  
THE STATE OF MICHIGAN  
and

NAME & ADDRESS OF VENDOR		TELEPHONE (360) 398-1117 X52 <b>Garrett Reynolds</b>
<b>American Canadian Fisheries</b> <b>6069 Hannegan Road</b> <b>Bellingham, WA 98226</b>  garrett@amcan-qss.com		
Contract Compliance Inspector: Edward Eisch (231) 347-4689 <b>Salmon and Egg Harvesting Services – Fisheries Division – Department of Natural Resources</b>		BUYER/CA (517) 373-8622 <b>Malynda Little</b>
CONTRACT PERIOD: From: <b>May 21, 2007</b> To: <b>April 30, 2010</b>		
TERMS	<b>N/A</b>	SHIPMENT <b>N/A</b>
F.O.B.	<b>N/A</b>	SHIPPED FROM <b>N/A</b>
MINIMUM DELIVERY REQUIREMENTS <b>N/A</b>		

**NATURE OF CHANGE(S):**

Effective immediately, the State Project Manager and Contract Compliance Inspector is hereby changed to:

Edward Eisch  
Lower Peninsula Hatchery Manager  
Oden State Fish Hatchery  
8258 South Ayr Road  
Alanson, MI 49706  
Telephone: (231) 347-4689  
Email: Eische@michigan.gov

**AUTHORITY/REASON:**

Per agency request and DMB/Purchasing Operations' approval.

**ESTIMATED CONTRACT VALUE REMAINS: \$660,000.00**

**STATE OF MICHIGAN  
 DEPARTMENT OF MANAGEMENT AND BUDGET  
 PURCHASING OPERATIONS  
 P.O. BOX 30026, LANSING, MI 48909  
 OR  
 530 W. ALLEGAN, LANSING, MI 48933**

May 24, 2007

**NOTICE  
 TO  
 CONTRACT NO. 071B7200275  
 between  
 THE STATE OF MICHIGAN  
 and**

NAME & ADDRESS OF VENDOR  <b>American Canadian Fisheries          6069 Hannegan Road          Bellingham, WA 98226</b>  garrett@amcan-qss.com		TELEPHONE (360) 398-1117 X52 <b>Garrett Reynolds</b>
		BUYER/CA (517) 373-8622 <b>Malynda Little</b>
Contract Compliance Inspector: Tammy Newcomb, Ph.D. (517) 373-3960 <b>Salmon and Egg Harvesting Services – Fisheries Division – Department of Natural Resources</b>		
CONTRACT PERIOD: From: <b>May 21, 2007</b> To: <b>April 30, 2010</b>		
TERMS  <b>N/A</b>	SHIPMENT  <b>N/A</b>	
F.O.B.  <b>N/A</b>	SHIPPED FROM  <b>N/A</b>	
MINIMUM DELIVERY REQUIREMENTS  <b>N/A</b>		

The terms and conditions of this Contract are those of ITB #071I7200146, this Contract Agreement and the vendor's quote dated 3/22/2007. In the event of any conflicts between the specifications, terms and conditions indicated by the State and those indicated by the vendor, those of the State take precedence.

Orders for delivery of services will be issued directly by the Department of Natural Resources through the issuance of a Purchase Order Form.

Value of Payment to Contractor Not to Exceed: **\$660,000.00**

STATE OF MICHIGAN  
 DEPARTMENT OF MANAGEMENT AND BUDGET  
 PURCHASING OPERATIONS  
 P.O. BOX 30026, LANSING, MI 48909  
 OR  
 530 W. ALLEGAN, LANSING, MI 48933

**CONTRACT NO. 071B7200275**  
**between**  
**THE STATE OF MICHIGAN**  
**and**

NAME & ADDRESS OF VENDOR  <b>American Canadian Fisheries</b> <b>6069 Hannegan Road</b> <b>Bellingham, WA 98226</b>  <div style="text-align: right;">garrett@amcan-qss.com</div>	TELEPHONE (360) 398-1117 X52 <b>Garrett Reynolds</b>  BUYER/CA (517) 373-8622 <b>Malynda Little</b>
Contract Compliance Inspector: Tammy Newcomb, Ph.D. (517) 373-3960 <b>Salmon and Egg Harvesting Services – Fisheries Division – Department of Natural Resources</b>	
CONTRACT PERIOD: From: <b>May 21, 2007</b> To: <b>April 30, 2010</b>	
TERMS <div style="text-align: center;"><b>N/A</b></div>	SHIPMENT <div style="text-align: center;"><b>N/A</b></div>
F.O.B. <div style="text-align: center;"><b>N/A</b></div>	SHIPPED FROM <div style="text-align: center;"><b>N/A</b></div>
MINIMUM DELIVERY REQUIREMENTS <div style="text-align: center;"><b>N/A</b></div>	
MISCELLANEOUS INFORMATION:  <p>The terms and conditions of this Contract are those of <a href="#">ITB #071I7200146</a>, this Contract Agreement and the vendor's quote dated 3/22/2007. In the event of any conflicts between the specifications, terms and conditions indicated by the State and those indicated by the vendor, those of the State take precedence.</p> <p>Orders for delivery of services will be issued directly by the <a href="#">Department of Natural Resources</a> through the issuance of a Purchase Order Form.</p> <p>Value of Payment to Contractor Not to Exceed: <span style="float: right;"><b>\$660,000.00</b></span></p>	

<p><b>FOR THE VENDOR:</b></p> <p style="text-align: center;"><b>American Canadian Fisheries</b></p> <hr/> <p style="text-align: center;">Firm Name</p> <hr/> <p style="text-align: center;">Authorized Agent Signature</p> <hr/> <p style="text-align: center;">Authorized Agent (Print or Type)</p> <hr/> <p style="text-align: center;">Date</p>	<p><b>FOR THE STATE:</b></p> <hr/> <p style="text-align: center;">Signature</p> <p style="text-align: center;"><b>Melissa Castro, CPPB, Buyer Manager</b></p> <hr/> <p style="text-align: center;">Name/Title</p> <p style="text-align: center;"><b>Services Division, Purchasing Operations</b></p> <hr/> <p style="text-align: center;">Division</p> <hr/> <p style="text-align: center;">Date</p>
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**STATE OF MICHIGAN**  
**Department of Management and Budget – Business Services Administration**  
**Purchasing Operations – Services Division**

**Contract # 071B7200275**

to provide

**Salmon and Egg Harvesting Services for the**  
**Michigan Department of Natural Resources – Fisheries Division**

DMB Buyer Name: Little, Malynda S.  
Telephone Number: (517) 373-8622  
Electronic-Mail Address: [littlem3@michigan.gov](mailto:littlem3@michigan.gov)



Table of Contents

**SALMON AND EGG HARVESTING SERVICES**

**Article 1 – Statement of Work (SOW)..... 7**

**1.0 Project Identification ..... 7**

    1.001 PROJECT ..... 7

    1.002 BACKGROUND ..... 7

**1.1 Scope of Work and Deliverables ..... 8**

    1.101 IN SCOPE ..... 8

    1.102 OUT OF SCOPE – RESERVED ..... 8

    1.103 ENVIRONMENT – RESERVED..... 8

    1.104 WORK AND DELIVERABLE..... 8

        A. Product Component Tasks ..... 8

        B. Harvest Component Tasks ..... 9

        C. Sale and Processing of Salmon and Salmon Eggs..... 10

        D. Testing for Contaminants ..... 10

        E. Waste Disposal..... 11

**1.2 Roles and Responsibilities ..... 11**

    1.201 CONTRACTOR STAFF ..... 11

    1.202 STATE STAFF ..... 12

    1.203 OTHER ROLES AND RESPONSIBILITIES – RESERVED..... 12

**1.3 Project Plan ..... 13**

    1.301 PROJECT PLAN MANAGEMENT ..... 13

    1.302 REPORTS ..... 13

**1.4 Project Management..... 14**

    1.401 ISSUE MANAGEMENT..... 14

    1.402 RISK MANAGEMENT ..... 14

    1.403 CHANGE MANAGEMENT ..... 15

**1.5 Acceptance..... 15**

    1.501 CRITERIA ..... 15

    1.502 FINAL ACCEPTANCE ..... 15

**1.6 Compensation and Payment ..... 15**

    1.601 COMPENSATION AND PAYMENT ..... 15

        A. Payment / Reimbursement Method ..... 15

        B. Estimates of Labor, Equipment, and other direct costs ..... 16

        C. Contractor will pay the State: ..... 19

        D. State will Pay Contractor: ..... 19

        E. DNR Invoice Process:..... 20

**1.7 Additional Terms and Conditions Specific to this SOW – RESERVED..... 20**

**Article 2 – General Terms and Conditions ..... 21**

**2.010 Contract Structure and Administration ..... 21**

    2.011 Definitions ..... 21

    2.012 Attachments and Exhibits ..... 21

    2.013 Statements of Work..... 21

    2.014 Issuing Office ..... 22

    2.015 Contract Compliance Inspector..... 22

**2.020 Contract Objectives / Scope / Background..... 22**

    2.021 Background-RESERVED ..... 22

    2.022 Purpose-RESERVED ..... 22

    2.023 Objectives and Scope-RESERVED ..... 23

    2.024 Interpretation-RESERVED ..... 23

    2.025 Form, Function and Utility ..... 23

**2.030 Legal Effect and Term ..... 23**

    2.031 Legal Effect ..... 23

    2.032 Contract Term ..... 23

    2.033 Renewal(s) ..... 23



**2.040 Contractor Personnel ..... 23**  
 2.041 Contractor Personnel ..... 23  
 2.042 Contractor Identification ..... 25  
 2.043 Cooperation with Third Parties ..... 25  
 2.044 Subcontracting by Contractor ..... 25  
 2.045 Contractor Responsibility for Personnel ..... 26  
**2.050 State Standards ..... 26**  
 2.051 Existing Technology Standards - RESERVED ..... 26  
 2.052 PM Methodology Standards- RESERVED ..... 26  
 2.053 Adherence to Portal Technology Tools - RESERVED ..... 26  
 2.054 Acceptable Use Policy ..... 26  
**2.060 Deliverables ..... 26**  
 2.061 Ordering ..... 26  
 2.062 Software – RESERVED ..... 26  
 2.063 Hardware – RESERVED ..... 26  
 2.064 Equipment to be New and Prohibited Products – RESERVED ..... 26  
**2.070 Performance ..... 27**  
 2.071 Performance, In General ..... 27  
 2.072 Time of Performance ..... 27  
 2.073 Liquidated Damages ..... 27  
 2.074 Bankruptcy ..... 27  
 2.075 Time is of the Essence ..... 27  
**2.080 Delivery and Acceptance of Deliverables ..... 28**  
 2.081 Delivery Responsibilities ..... 28  
 2.082 Delivery of Deliverables ..... 28  
 2.083 Testing – RESERVED ..... 28  
 2.084 Approval of Deliverables, In General ..... 28  
 2.085 Process for Approval of Written Deliverables – RESERVED ..... 29  
 2.086 Process for Approval of Services ..... 29  
 2.087 Process for Approval of Physical Deliverables ..... 29  
 2.088 Final Acceptance ..... 29  
**2.090 Financial ..... 30**  
 2.091 Pricing ..... 30  
 2.092 Invoicing and Payment Procedures and Terms ..... 30  
 2.093 State Funding Obligation ..... 31  
 2.094 Holdback – RESERVED ..... 31  
 2.095 Electronic Payment Availability ..... 31  
**2.100 Contract Management ..... 31**  
 2.101 Contract Management Responsibility ..... 31  
 2.102 Problem and Contract Management Procedures ..... 31  
 2.104 System Changes ..... 32  
 2.105 Reserved ..... 32  
 2.106 Change Requests ..... 32  
**2.110 Records and Inspections ..... 33**  
 2.111 Records and Inspections ..... 33  
 2.112 Errors ..... 33  
**2.120 State Responsibilities ..... 34**  
 2.121 State Performance Obligations ..... 34  
**2.130 Security ..... 34**  
 2.131 Background Checks ..... 34  
**2.140 Reserved ..... 34**



**2.150 Confidentiality..... 35**

2.151 Freedom of Information..... 35

2.152 Confidentiality..... 35

2.153 Protection of Confidential Information..... 35

2.154 Exclusions ..... 35

2.155 No Implied Rights ..... 35

2.156 Remedies ..... 36

2.157 Security Breach Notification..... 36

2.158 Survival ..... 36

2.159 Destruction of Confidential Information..... 36

**2.160 Proprietary Rights – RESERVED..... 36**

**2.170 Warranties and Representations..... 36**

2.171 Warranties and Representations ..... 36

2.175a DISCLAIMER – RESERVED ..... 37

2.175b Standard Warranties – RESERVED ..... 37

2.176 Consequences for Breach ..... 37

**2.180 Insurance..... 38**

2.181 Liability Insurance ..... 38

**2.190 Indemnification ..... 40**

2.191 Indemnification ..... 40

2.192 Continuation of Indemnification Obligations ..... 41

2.193 Indemnification Procedures ..... 41

**2.200 Limits of Liability and Excusable Failure..... 42**

2.201 Limits of Liability..... 42

2.202 Excusable Failure..... 42

2.203 Disaster Recovery..... 43

**2.210 Termination/Cancellation by the State ..... 43**

2.211 Termination for Cause..... 43

2.212 Termination for Convenience..... 43

2.213 Non-Appropriation ..... 44

2.214 Criminal Conviction ..... 44

2.216 Rights and Obligations Upon Termination ..... 44

2.217 Reservation of Rights..... 45

2.218 Contractor Transition Responsibilities ..... 45

2.219 State Transition Responsibilities..... 46

**2.220 Termination by Contractor..... 46**

2.221 Termination by Contractor ..... 46

**2.230 Stop Work..... 46**

2.231 Stop Work Orders ..... 46

2.232 Cancellation or Expiration of Stop Work Order..... 46

2.233 Allowance of Contractor Costs..... 46

**2.240 Reserved..... 46**

**2.250 Dispute Resolution ..... 47**

2.251 In General ..... 47

2.252 Informal Dispute Resolution..... 47

2.253 Injunctive Relief ..... 47

2.254 Continued Performance ..... 47

**2.260 Federal and State Contract Requirements..... 48**

2.261 Nondiscrimination..... 48

2.262 Unfair Labor Practices..... 48

2.263 Workplace Safety and Discriminatory Harassment ..... 48

**2.270 Litigation..... 48**

2.271 Disclosure of Litigation ..... 48

2.272 Governing Law ..... 49

2.273 Compliance with Laws ..... 49

2.274 Jurisdiction ..... 49

**2.280 Environmental Provision ..... 49**

2.281 Environmental Provision ..... 49



**2.290 General..... 50**

2.291 Amendments ..... 50

2.292 Assignment ..... 50

2.293 Entire Contract; Order of Precedence..... 51

2.294 Headings ..... 51

2.295 Relationship of the Parties (Independent Contractor Relationship)..... 51

2.296 Notices ..... 51

2.297 Media Releases and Contract Distribution..... 52

2.298 Reformation and Severability ..... 52

2.299 Consents and Approvals ..... 52

2.300 No Waiver of Default ..... 52

2.301 Survival ..... 52

2.302 Covenant of Good Faith ..... 52

2.303 Permits ..... 52

2.304 Website Incorporation ..... 52

2.305 Taxes..... 53

2.306 Prevailing Wage ..... 53

2.307 Call Center Disclosure ..... 53

2.308 Future Bidding Preclusion ..... 53

**2.310 Reserved..... 53**

**2.320 Extended Purchasing ..... 54**

2.321 MiDEAL ..... 54

**2.330 Federal Grant Requirements ..... 54**

2.331 Federal Grant Requirements ..... 54



## Article 1 – Statement of Work (SOW)

### 1.0 Project Identification

#### 1.001 PROJECT

This document is a contract agreement between:

**American Canadian Fisheries**

6069 Hannegan Road

Bellingham, Washington 98226

Contact: Garrett H. Reynolds

Telephone: (360) 398-1117 Ext 52

E-mail: [garrett@amcan-qss.com](mailto:garrett@amcan-qss.com)

and

**State of Michigan**

**Department of Natural Resources**

**Fisheries Division**

530 West Allegan St; Mason Building – 8<sup>th</sup> Flr

PO Box 30446

Lansing, MI 48909

Contact: Tammy J. Newcomb, Ph.D.

Lake Huron Basin Coordinator

Telephone: (517) 373-3960

E-mail: [newcombt@michigan.gov](mailto:newcombt@michigan.gov)

to provide services for the harvesting of salmon and salmon eggs, from six (6) different salmon harvest and egg-taking weirs located on five (5) different rivers in Michigan, for approximately three (3) years, from 05/21/2007 through 05/15/2010.

Pursuant to Part 487 of 1994 PA 451, MCL 324.48735, these salmon and salmon eggs are not required for fish culture purposes and are not required to maintain fishery resources of Michigan inland waters. Removal of these fish will protect the State's inland waters from ecological damage and imbalance.

Therefore, the Michigan Department of Natural Resources (DNR) seeks to professionally address and provide collection, processing, and marketing of the salmon for caviar, other human consumption, bait, fertilizer, and pet food production, or other novel products, as a priority over disposing of surplus fish in landfills, through the services described in this Contract.

The salmon and salmon eggs, harvested by this Contractor, may be sold provided that such sales comply with all applicable local, state, and federal laws controlling the sale of fish and fish eggs. In order to maintain the identity and integrity of the purchased fish, such harvested salmon and salmon eggs must be clearly marketed as Michigan salmon and Michigan salmon eggs and may not be adulterated with salmon or salmon eggs harvested outside the State of Michigan. In addition, fish and any parts of fish harvested, including wastewater and offal resulting from processing, shall either be legally sold or shall be legally disposed of by the Contractor.

#### 1.002 BACKGROUND

Pacific salmon were introduced in Michigan in 1967. They are an important component of Great Lakes recreational fishery. Unfortunately, some of the characteristics that make salmon desirable in open water fisheries also make them unsatisfactory for small stream fisheries, especially in large abundance. For example, some of the problems encountered from these characteristics include:

- Habitat loss and damage caused by the salmon as they create spawning beds;
- Habitat damage caused by many anglers fishing small areas where salmon concentrate;
- Inter-specific competition for space and food may occur in some instances between resident trout and anadromous salmon.

A large number of fish are stocked at specific locations to insure that sufficient adults return to produce hatchery eggs required to maintain fisheries; or to create open-water fisheries in areas of the Great Lakes where large, suitable rivers are lacking. These spawning salmon return to Michigan weirs each fall producing approximately one million pounds of potential waste. Therefore, it is desirable that surplus salmon be harvested in certain streams where a large number of fish are stocked, to meet DNR program goals.

A goal of this project, in addition to maintaining and protecting the State's inland water resources, includes obtaining useful products from these salmon (i.e., fish fillets, eggs, fertilizer, etc.), rather than sending the surplus fish to landfills.

**Note: Disclaimer of Warranty**

The State of Michigan makes no warranty, either expressed or implied, as to the condition or marketability of Michigan Coho and Chinook salmon or salmon eggs as to the fitness of such salmon and salmon eggs for any particular purpose, or for use for human consumption, animal feed, or bait.

**1.1 Scope of Work and Deliverables****1.101 IN SCOPE**

The surplus salmon and salmon eggs will be physically located in the water of five (5) designated rivers. The contractor must provide the necessary labor, equipment, and utilities, as specified in this contract to provide guard watch at specified weirs and remove the salmon and/or salmon eggs from the rivers and/or harvest weirs for the harvest component. The product component includes providing fish totes, ice, and transport trucks in a timely manner that will not delay or interfere with the harvest operation.

All sites are located in the Lower Peninsula and have improved access roads allowing use of tractor-trailers. The salmon weir sites are located at:

- 1) Little Manistee River Harvest Weir/Egg Taking Station (Manistee County)
- 2a) Lower Platte River Harvest Weir (Benzie County)
- 2b) Platte River Fish Hatchery (Benzie County)
- 3) Boardman River Harvest Weir (Grand Traverse County)
- 4) Medusa Creek Harvest Weir (Charlevoix County)
- 5) Swan River Harvest Weir/Egg Taking Station (Presque Isle County)

For the past six years, a total average of 811,000 pounds of salmon (range 362,000 – 1,160,000 pounds) and an average of 2,004 pounds of eggs (range 541 – 3,500 pounds) were harvested.

**1.102 OUT OF SCOPE – RESERVED****1.103 ENVIRONMENT – RESERVED****1.104 WORK AND DELIVERABLE**

Contractor shall provide Deliverables, Services, and Staff, and otherwise do all things necessary for or incidental to the performance of work, as set forth below:

**A. Product Component Tasks**

Contractor must accept all surplus salmon and salmon eggs from each site regardless of species, sex, grade, and condition, INCLUDING ANY STRIPPED FISH, MORTALITIES, FERTILIZED EGGS, AND DEAD HATCHERY EGGS.

Contractor must provide fish boxes, or totes, for the purpose of holding and transporting the fish in compliance with Health Code Standards and Regulations. Fish may not be held or transported off site in the bulk unless provided for under a non-human consumption clause of the Health Code. All totes must be of a uniform standard size to allow the number and weight of fish in the tote to be generally estimated when the totes are full or partially full. The contractor must also provide five-gallon plastic pails to hold and transport loose salmon eggs. The contractor shall make 12 extra fish totes available on a standby basis at each designated weir site; except that individual DNR Weir Supervisors may request an additional 24 extra, or standby, fish totes for designated weir sites. All totes must be of a suitable quality, as determined by the DNR Weir Supervisor, to hold and transport the fish without breaking.



If accurate weight measuring devices (weight scales) are available at weir sites, the weight of the surplus salmon shall be determined by an actual measurement of the weight of the tote and fish, minus the weight of the tote. This measurement shall be made once the tote is loaded with salmon and prior to the placing of ice, or any other material, in the tote. In the event an accurate weight measuring device is not available at a weir site, the number and weight of surplus salmon shall be estimated by the DNR after the fish arrive at the Contractor's fish processing facility. The estimate shall be based on a sub-sample of the average fish weight in the daily harvest from each weir site. The sub-sample shall be random and shall be based on at least 10% of the number of salmon in the daily harvest at each weir site. Estimates of the total number and weight of salmon, based on the sub-sample, shall be provided by the DNR to the contractor.

The weight of loose salmon eggs shall be based on the volume of salmon eggs placed in marked, graduated buckets. The volume of loose salmon eggs shall be converted to pounds of loose salmon eggs based on a ratio of one gallon of salmon eggs weighs eight (8) pounds.

Fish totes, ice and transport trucks must be provided in a timely manner that will not delay or interfere with the harvest operation.

Fish and fish totes may only be picked-up at the weir site by the contractor or his designated hauler. The DNR may require that the trucks used by the contractor for picking-up fish at the weir sites are legibly marked with the name of the contractor or his designated hauler. Fish may not be picked-up at the weir site by individuals other than the contractor, or the contractor's designated hauler, without prior arrangement and approval of the DNR. Partial shipments of surplus salmon from single weir sites to multiple locations, or local fish retail operations, are not permitted unless prior arrangements have been made with the DNR.

The icing of fish on site is encouraged and is the responsibility of the contractor. Icing is mandatory for any fish or parts of fish that remain at weir locations longer than 24 hours after harvest. If fish or fish parts are not retrieved or iced within that time period, they may be disposed of by the DNR and the costs associated with it, including personnel time, transportation, and disposal, will be charged to the contractor. Icing must be performed without causing a time delay to the DNR, and must not change the estimated weight of salmon in the tote.

## **B. Harvest Component Tasks**

THE CONTRACTOR WILL BE RESPONSIBLE FOR OPERATING THE SALMON HARVEST WEIRS UNDER THE DIRECTION AND CONTROL OF THE DNR.

The annual fall salmon run should commence in late August; however, the date varies depending upon water temperature and weather conditions. There could be several runs and the duration of availability of the salmon and loose eggs could extend through January of the following year.

Contractor shall provide, at least, a 500 square foot location in its central processing facility for the DNR to sub-sample the salmon harvest to estimate the weight of the harvest (for billing and auditing purposes), and to collect biological information (lengths, weights, sex, age, fin clips, etc.) from the harvested salmon.

This location, or work area, must be:

- Adjacent to the processing line,
- Accessible to fork trucks or pallet jacks,
- Have hot and cold running water available for use
- Noise levels must be such that normal verbal communications can be heard;
- Have functional electrical outlets, and
- Have adequate lighting

(all subject to DNR approval).



The number of totes of surplus salmon and the volume (or weight) of loose salmon eggs harvested at each site, each day, shall be recorded on a pre-numbered Salmon Shipping Report. In the event that an accurate weight measuring device is available at the weir site, the actual weight of salmon shall also be recorded on the Salmon Shipping Report. All pre-numbered Salmon Shipping Reports must be signed by a DNR representative. Salmon or salmon eggs may not be shipped or transported without a Salmon Shipping Report signed by a DNR representative.

Contractor shall provide a key-staff person at the central fish processing facility to assist the DNR in collection of biological data from the salmon run (duties of this key-staff person will include accurately recording information collected from the fish and may include handling the fish through the data collection procedure).

Harvest operations at the weirs will normally be during the daylight hours of Monday through Friday from September 1 to November 15. Harvest operations at other times may be required (at the discretion of the DNR), depending upon the number of fish; however, such non-routine operations will be held to a minimum.

At some facilities, laborers may also have to help pull seines to gather fish into areas where individual dip nets are used to lift them out of the water. Other laborers are needed for less physically demanding activities such as operating mechanical equipment as well as sorting and icing fish. Weir harvesting facilities and procedures have been or are being improved to minimize the need for hard physical labor.

#### **C. Sale and Processing of Salmon and Salmon Eggs**

The salmon and salmon eggs harvested under the terms and conditions of a contract, may be sold, provided that such sales comply with all applicable local, state, and federal laws controlling the sale of fish and fish eggs. In order to maintain the identity and integrity of the fish, the salmon and salmon eggs harvested by the contractor under the terms and conditions of this contract must clearly be marketed as Michigan salmon and Michigan salmon eggs and may not be adulterated with salmon or salmon eggs harvested outside the State of Michigan.

Under State Circuit Court Order, no processing of surplus salmon may take place within the Platte River Watershed.

Contractor must comply with all laws and regulations which govern food processing facilities, aspects of food safety and processing and, food product packaging and labeling: Michigan Food Law of 2000 as amended: Code of Federal Regulations (CFR), Part 110, *Good Manufacturing Practices*, and others that may apply.

Contractor shall make salmon available to local Michigan fish markets, to Michigan Food Banks, or other similar types of charitable organizations.

#### **D. Testing for Contaminants**

If Contractor chooses to market the eggs or any other portion of the fish for any purpose that would depend upon the absence of contaminants, or the concentration of contaminants below a certain level, then prior to marketing, testing procedures satisfactory to the regulatory agencies having jurisdiction, must be used. If Contractor tests to ascertain contaminant residue levels of either the salmon carcasses or eggs, then those tests must be conducted at the contractor's expense.



If the test results are to be used as evidence by the contractor, samples must be tested at a laboratory approved by the Michigan Department of Agriculture with the laboratory remitting copies of all test results to the Michigan Department of Agriculture. If eggs or the fish flesh exceed allowable Michigan Department of Agriculture or the U. S. Food and Drug Administration guidelines, policies, or statutes, for contaminants, and if such eggs and fish flesh are to be marketed for other than human consumption, then those eggs or fish must be dyed a color approved by the Director of the Michigan Department of Agriculture prior to sale.

## E. Waste Disposal

All waste from processing salmon or salmon eggs must be disposed by landfill or by applicable laws of the State. Any portion of fish that cannot be sold because of contaminant level shall be considered waste for purposes of this project. The State shall not be liable for any expenses for waste disposal during this project. Contractor will obtain approval from the State of Michigan to dispose of any fish. Disposal by landfill must be to a licensed facility with the landfill license number provided (at least) annually to the DNR.

Specific guidelines for disposing of carcasses, offal, waste eggs, etc., are outlined in the *Fish Waste Exemption* document issued on December 7, 2000 by the DNR's Waste Management Division Chief, **Jim Sygo**. Copies may be obtained from the following website location ([http://www.michigan.gov/deq/0,1607,7-135-3312\\_4123-14201--,00.html](http://www.michigan.gov/deq/0,1607,7-135-3312_4123-14201--,00.html)). During implementation of this project, any questions pertaining to this exemption must be directed to **Duane Roskoskey**, Environmental Quality Analyst, Waste Management Division, Department of Environmental Quality, 525 West Allegan, Lansing, Michigan 48909, (517) 335-4712, with a copy to the respective State weir location manager for this project (see §1.2, *Roles & Responsibilities*).

Surface Water Quality Division of the Michigan Department of Environmental Quality (DEQ) has determined that wash and wastewater from fish processing plants are classified as industrial waste and must, therefore, be disposed of by wastewater treatment plants or by other methods approved by the State and local governments (i.e. local public health departments). Since regulations vary by location, it shall be the sole responsibility of the Contractor to make arrangements to dispose of such wastewater in full compliance with all legal and regulatory requirements.

### 1.2 Roles and Responsibilities

#### 1.201 CONTRACTOR STAFF

- A. Contractor will carry out this project under the direction and control of DNR.
- B. Contractor will mobilize a work crew sufficient to operate all functions of each weir when directed to do so by the DNR, pursuant to the calendar or schedule as included (and approved by the DNR) with the Contractor's Work Plan.
- C. In addition to the location work-crews, Contractor must provide a staff person at its fish processing facility to assist the DNR in collection of biological data from the salmon run [biological sampling assistant] (duties of this key-staff person will include accurately recording information collected from the fish and may include handling the fish through the data collection procedure).
- D. Key Personnel, per location, must include a crew of no less than:
  1. Foreman (supervision);
  2. Watchman (security and monitoring);
  3. Laborer(s):
    - General labor
    - Egg-take labor, and
    - Equipment operation labor.



- E. All Contractor or Sub-Contractor(s) **key personnel** are subject to respective State and Departmental Background Checks (see § 2.131), and also must disclose all current and past material criminal or civil litigation, arbitration, investigations, or proceedings, or a claim or written allegation of fraud against any such individual, which involves dispute(s) that might reasonably be expected to adversely affect implementation of this project, or viability or financial stability of Contractor.
- F. At each weir site / location, either the foreman or at least one laborer must be capable and licensed to operate a fork-lift; **any key-personnel which operates a forklift must be licensed and provide proof of training to the DNR annually, according to MIOSHA standards (MIOSHA-STD-1119).**
- G. Unless otherwise authorized by the DNR project manager Contractor's response to DNR directive (by telephone notification to the contractor's office) for crew mobilization must be within:
- Four (4) hours for work at the Lower Platte Weir; and,
  - 24 hours at all other weirs.
- H. At the most extreme, the requirements for labor include the ability of some of the harvesters to lift up to 40 pound fish, sometimes above head level.
- I. **Supplies:** Contractor will provide their laborers with waders and rain gear, employee identification in the form of marked caps, jackets, badges or other suitable identification, and any other necessary safety equipment. Upon prior approval by the DNR, Contractor may request that the DNR purchase such gear and will agree to full reimbursement to the State via its invoice / billing process on this project.
- J. **Equipment:** Contractor must provide forklifts and all other needed equipment for its staff to implement this service; forklifts must be capable of lifting 1,500 pounds to a truck bed; forklifts must be suitable for work in an outdoor environment found at weir sites.

## 1.202 STATE STAFF

The following DNR staff person is the assigned State project manager (and contract compliance inspector), however, administration of this contract implies no authority to change, modify, clarify, amend, or otherwise alter the prices, terms, conditions, and specifications of this contract. That authority is retained by DMB-Purchasing Operations:

### Edward Eisch

Lower Peninsula Hatchery Manager  
 Oden State Fish Hatchery  
 8258 South Ayr Road  
 Alanson, MI 49706  
 Email: Eische@michigan.gov  
 Phone: (231) 347-4689

The following DNR staff is responsible for the direction and control of the operation of each harvest weir and/or egg-taking site(s) / location(s):

**Thomas Rozich**, Cadillac District Office, (231) 775-9727, ext.6070, for:

- Little Manistee River Harvest Weir
- Boardman river Harvest Weir
- Medusa Creek Harvest Weir

**Ed Eisch**, Platte River Hatchery, (231) 325-4611, for:

- Lower Platte River Harvest Weir
- Platte River Fish Hatchery

**Dave Borgeson**, Gaylord District Office, (989)732-3541, ext. 5070, for:

- Swan River harvest Weir

## 1.203 OTHER ROLES AND RESPONSIBILITIES – RESERVED



### 1.3 Project Plan

#### 1.301 PROJECT PLAN MANAGEMENT

Contractor will provide a work plan, calendar, and staffing table for final review and approval by the State, prior to service delivery, for every year this contract is effective.

**Contractor's Work Plan** shall include, but is not limited to, the following components:

- I. Contractor's Organizational information and requisite disclosures, certifications, and representations;
- II. Market Plan (overall - - to describe in detail how Contractor will create and implement additional opportunities to market and sell Michigan salmon and salmon eggs harvested from this project);
- III. Calendar (overall - - - proposed for activities at all locations, i.e., harvest production; testing; water treatment; meetings w/DNR staff; etc.);
- IV. Location Operation Plan (for each location):
  - a. Operational Plan, which describes in detail
    - Overall service implementation (for each component or service-task)
    - Wastewater treatment
    - Issues specific to location;
  - b. Staffing Plan, which includes
    - Personnel Names
    - Background checks / disclosures
    - Roles / position
    - Projected hours of work for each position
    - Calendar/schedule;
  - c. Supplies;
  - d. Equipment;
- V. Annual Project Summary (overall): including (but not limited to) analysis of Operations, Issues, Risks, and Recommended Changes;
- VI. Other (to include any other information that may be requested by the DNR).

#### 1.302 REPORTS

Contractor will be required to provide DNR with the following reports:

1. Annual Work Plan:
  - a. Prior to weir operations activities each Fall, Contractor will provide a detailed Work-Plan which includes a detailed description of its organizational structure and the names and titles of all personnel involved in the weir and harvesting activities, as well as the other components described in § 1.301, *Project Plan Management*. This information will be provided at (or prior to) the annual meeting, described in § 1.302 (1) (b), below.
  - b. In late July or early August, Contractor (and its key weir staff) shall meet with respective DNR staff to review its Annual Work Plan, and to report and review any operational issues from the prior year as well as detail any potential issues, risks, or changes in operations or personnel for the coming year.



## 2. Monthly Summary

Contractor must submit, by the 1<sup>st</sup> of the following month during the fall salmon harvest, a brief, written monthly summary of progress which must, at least, outline:

- Work accomplished during the reporting period just ending;
- Work to be accomplished during the coming reporting period;
- Problems, real or anticipated, and any significant deviation from previously agreed-upon work plans or calendars, which must also be immediately brought to the attention of the DNR project manager
  - Note that the format for these monthly summaries must be pre-approved and adjusted as directed by the DNR project manager.

## 3. Distribution Report

At the time of the final invoice (January 31), Contractor must provide the DNR project manager with a report specifying the major categories for distribution from the products of the harvest. For example, at a minimum, the report must include the percent of salmon or eggs distributed for food consumption, to the food bank or similar charitable program(s), for pet food, bait, fertilizer, and the amount sent to a licensed landfill.

## 4. Other

Contractor shall provide any other reports as may be directed by the DNR Project Manager or any of the DNR Project Location Managers.

### 1.4 Project Management

#### 1.401 ISSUE MANAGEMENT

Contractor shall define the **issue escalation process**, to include a detailed description of the process and steps when escalation is based on age, severity, budget impact, etc., for DNR approval prior to service implementation, as follows:

If during the performance of Contractor's duties under the terms of this contract, the State of Michigan had an issue with the manor in which American Canadian Fisheries was operating, an issue with contractor staff, Contractor management or any other problem in general, the following steps should be taken:

- First, notify the contractors Project Manager, Mr. John Zollner by phone, 360-398-1117; then,
- Notify American Canadian Fisheries. Contact Garrett H. Reynolds by phone, 360-815-5274;
- If it is possible to resolve the issue informally Contractor will do so;
- If not, notify Contractor in writing at once and Contractor will correct the problem as directed by the DNR;
- Contractor shall work with the State in any way necessary to avoid a stop work or interruption of any kind.

#### 1.402 RISK MANAGEMENT

Contractor shall define the **risk management process**, to include a detailed description of the process and steps, responsible parties and contact information, etc., as follows:

To manage the risks to Contractor's performance and delivery of service, such as an act of nature, like a flood or power outage, etc., the Contractor's managers and employees of shall be made available to the State to complete whatever steps are needed to immediately restore operations and delivery of services.

In the event of any kind of situation which occurs and does prevent the delivery of service, or any other problem in general, the following contacts shall be made:

- Contact / Notify the Contractor's Project Manager Butch Scalzo, at 941-962-2943, to initiate the recovery process. If the Contractor's Project Manager cannot solve the problem immediately, then the:
- Next contact is Garrett H. Reynolds, at the Contractor's home office (American Canadian Fisheries in Bellingham WA, telephone: (360) 398-1117 ex 52, or cell: 360-815-5274).



### 1.403 CHANGE MANAGEMENT

a. **Change to Project Work Plan:**

The **change management process**, to include a detailed description of the process and steps, notification time-lines, responsible parties and contact information, etc., as follows: Any change(s) to the approved work-plan shall be determined on an individual basis for each location, as needed, subject to review and approval by the DNR On Site Coordinator with final approval issued by the DNR Contract Compliance Inspector and Project Manager.

b. **Change to this Contract:**

If a proposed contract change is approved by the Contract Compliance Inspector, the Contract Compliance Inspector will submit a request for change to the Department of Management and Budget, Purchasing Operations Buyer, who will make recommendations to the Director of Purchasing Operations regarding ultimate approval/disapproval of the change request. If the DMB Purchasing Operations Director agrees with the proposed modification, and all required approvals are obtained (including State Administrative Board), the Purchasing Operations Buyer will issue an addendum to the Contract, via a Contract Change Notice. **A vendor which provides products or services prior to the issuance of a Contract Change Notice by the DMB Office of Purchasing Operations, risks non-payment for the out-of-scope/pricing products and/or services.**

### 1.5 Acceptance

#### 1.501 CRITERIA

The following criteria will be used by the State to determine Acceptance of the Services and/or Deliverables provided under this SOW:

Criterion for acceptance of service delivery is that delivery of services shall be completed by the scheduled described in the SOW and as approved in Contractor's Work Plan, per § 1.104, *Statement of Work*, and § 1.2, *Roles & Responsibilities*.

#### 1.502 FINAL ACCEPTANCE

Final acceptance is issued by the State when the Contractor's invoice(s) for service delivery is approved for payment.

### 1.6 Compensation and Payment

#### 1.601 COMPENSATION AND PAYMENT

**A. Payment / Reimbursement Method**

Contractor agrees that –

1. CONTRACT shall be a FIXED, not to exceed, maximum amount.
2. The unit rate(s) quoted and established shall remain FIXED for the entire period of the Contract, *except as follows*:
  - a. Rate / prices are subject to change only at the end of each 365-day period.
  - b. Such changes shall be based on changes in actual costs for delivery of services.
  - c. Documentation of such changes must be provided with the request for price change in order to substantiate any requested change.
  - d. Purchasing Operations reserves the right to consider various pertinent information sources to evaluate price increase requests (including but not limited information such as CPI, PPI, and US City Average, as published by the US Department of Labor, Bureau of Labor Statistics, etc.).
  - e. Purchasing Operations also reserves the right to consider other information related to special economic and/or industry market circumstances, when evaluating a price change request.
  - f. Purchasing Operations reserves the right to deny a vendor's request for a rate-change, and have the original, quoted rates remain in effect for the life of the Contract.
  - g. Changes may be either increase or decreases, and may be requested by either party.



- h. Approved changes shall be firm for the remainder of the Contract period unless further revised at the end of the next 365-day period.
- i. Requests for price changes shall be RECEIVED IN WRITING AT LEAST 60 days PRIOR TO THEIR EFFECTIVE DATE, and are subject to written acceptance and approval by the State before becoming effective.
- j. In the event new prices are not acceptable, the CONTRACT may be cancelled.
- k. The continued payment of any charges due after September 30<sup>th</sup> of any fiscal year will be subject to the availability of an appropriation for this purpose.

**B. Estimates of Labor, Equipment and other direct costs**

Below is a listing of estimated labor/equipment needs and utility cost projections:

**1. Estimates of Labor:**

I. Little Manistee River Harvest Weir / Egg Taking Station

A. Watchmen

Approximate Hours Required.....2,700 hours  
 Estimated Starting Date.....Sept 1  
 Estimated Ending Date.....Nov 15  
 Estimated Days Required.....75 days  
 Coverage.....One person present from 8 AM to 5 PM  
 Coverage.....Two persons present from 5 PM to 8 AM

B. Salmon Harvest/Egg-Take Laborers

Approximate Hours Required.....640 hours  
 Estimated Days Needed.....20 days

C. Foreman

Number Required.....one [1] person  
 Estimated Starting Date.....Aug 15  
 Estimated Ending Date.....Nov 15

II. Lower Platte River Harvest Weir

A. Watchmen

Approximate Hours Required.....1,500 hours  
 Estimated Starting Date.....Aug 15  
 Estimated Ending Date.....Dec 1  
 Estimated Days Required.....92 days  
 Coverage.....One [01] person, 24 hours a day Aug – Oct; Nov 8 PM -5 AM

B. Salmon Harvest/Egg-Take Laborers

Approximate Hours Required.....800 hours  
 Estimated Days Needed.....20 days

C. Foreman

Number Required.....one [1] person  
 Estimated Starting Date.....Aug 15  
 Estimated Ending Date.....Dec 1



III Platte River Fish Hatchery

A. Watchmen

Approximate Hours Required.....700 hours  
Estimated Starting Date.....Sep 1  
Estimated Ending Date.....Dec 1  
Estimated Days Required.....41 days  
Coverage.....One [01] person present from 5 PM to 8 AM

B. Salmon Harvest/Egg-Take Laborers

Approximate Hours Required.....300 hours  
Estimated Days Needed.....10 days

C. Foreman

Number Required.....zero [00] persons  
Estimated Starting Date.....See note  
Estimated Ending Date.....See note

*Note: Same Foreman as at Lower Platte River Weir*

IV. Boardman River Harvest Weir

A. Watchmen

Approximate Hours Required.....1,800 hours  
Estimated Starting Date.....Sep 1  
Estimated Ending Date.....Oct 31  
Estimated Days Required.....60 days  
Coverage.....One person, 24 hours a day

B. Salmon Harvest/Egg-Take Laborers

Approximate Hours Required.....300 hours  
Estimated Days Needed.....six [6] days

C. Foreman

Number Required.....one [1] person  
Estimated Starting Date.....Sep 1  
Estimated Ending Date.....Oct 31

V. Medusa Creek Harvest Weir

A. Watchmen

Approximate Hours Required.....1,400 hours  
Estimated Starting Date.....Sep 15  
Estimated Ending Date.....Nov 10  
Estimated Days Required.....45 days  
Coverage.....One [01] person, 24 hours a day

B. Salmon Harvest/Egg-Take Laborers

Approximate Hours Required.....200 hours  
Estimated Days Needed.....six [6] days

C. Foreman

Number Required.....zero [0] persons



VI. Swan River Harvest Weir/Egg Taking Station

A. Watchmen

Approximate Hours Required.....200 hours  
 Estimated Starting Date.....Sep 15  
 Estimated Ending Date.....Oct 31  
 Estimated Days Required.....20 days  
 Coverage.....One [1] person, (5 p.m. to 8 a.m.) (Watchman required every night while pumps are running)

B. Salmon Harvest/Egg-Take Laborers

Approximate Hours Required.....320 hours  
 Estimated Days Needed.....20 days  
 (two [02] people for days of egg-take)

C. Foreman

Number Required.....zero [0] person(s)

(At each Weir site, at least one (1) of the laborers or foreman provided by the Contractor MUST have a license to operate a fork lift and be capable of operation a fork lift truck.)

VII. Contractor’s Central Fish Processing Facility

A. Laborers

Number Required.....one [1] person  
 Approximate Hours Required.....80 hours  
 Estimated Starting Date.....Sep 1  
 Estimated Ending Date.....Oct 31  
 Estimated Days Required.....20 days

**2. Equipment**

The below designated equipment must be provided by the contractor at each weir site:

I. Little Manistee River Harvest Weir/Egg Taking Station

Fork lift truck  
 Pallet jack

II. Lower Platte River Harvest Weir

Fork lift truck  
 Pallet jack

III. Platte River Fish Hatchery

Fork lift truck  
 Pallet jack

IV. Boardman River Harvest Weir

Fork lift truck  
 Pallet jack

V. Medusa Creek Harvest Weir

Fork lift truck  
 Pallet jack  
 Blocking net  
 Portable toilet

VI. Swan River Harvest Weir/Egg Taking Station

Fork lift truck  
 Pallet jack  
 Portable toilet



### 3. Telephone and Utility Costs

The contractor will be responsible for payments of all utility costs and 50% of landline telephone costs at each weir site. **The quotes below are estimates based on recent history and are provided for informational purposes only.**

#### I. Little Manistee River Harvest Weir/Egg Taking Station

Telephone.....\$100  
Electricity.....\$8,000  
Propane.....\$1,000

#### II. Lower Platte River Harvest Weir

Telephone.....\$150  
Electricity.....\$300  
Propane.....\$150

#### III. Platte River Fish Hatchery

Electricity.....\$200  
Natural gas.....\$250

#### IV. Boardman River Harvest Weir

Telephone.....\$80  
Electricity.....\$5,000  
CO2 and Propane...\$300

#### V. Medusa Creek Harvest Weir

Telephone.....\$100  
Electricity.....\$500

#### VI. Swan River Harvest Weir/Egg Taking Station

Telephone.....\$50  
Diesel Fuel.....\$400  
Electricity.....\$5,000

### C. Contractor will pay the State:

#### 1. Chinook and Coho Salmon

(Regardless of species, sex, grade, condition):

- A “per pound” fee, **not less than \$.01/lb.** for the total annual harvest of salmon shall include a single price for all categories of salmon, **including “mortalities” and “stripped females,”**
- Note that not less than two percent (2%) of the total number of Chinook and four (4%) of the total number of Coho shall be categorized as “mortalities”.
- “Stripped females” shall compromise not less than six percent (6%) of the total weight of Chinook and not less than four percent (4%) of the total weight of Coho.

#### 2. Loose Eggs (Regardless of species, grade, or condition)

- A “per pound” fee, **not less than \$.01/lb.** for the total annual harvest of loose salmon eggs shall, and shall include a single all categories of loose salmon eggs, including “dead” fertilized hatchery eggs.

### D. State will Pay Contractor:

1. **A maximum, cumulative total not to exceed \$660,000.00 for the (approximately) three (3) year term of this Contract:**



- **This maximum total shall include a fixed, firm price per harvest season not to exceed \$220,000.00**, for payment of all services and tasks described in this Contract.
- No other costs will be reimbursed.

2. **Utility Costs and Operating Fees** - - The contractor will provide labor, equipment, utility costs (gas and electric), porta-johns, 50% of the landline phone bills and other costs pertaining to harvest operations while those activities are ongoing. In order to maintain continuity and ensure timely payment of these bills, the DNR will pay the bills as they are received and the amount will be deducted from the final invoice owed by the DNR to the contractor.

**E. DNR Invoice Process:**

- The DNR will process invoices based upon satisfactory performance and submission of required documentation and reports.
- Payments will be made in accordance with P.A. 279 of 1984.
- Contractor shall maintain a record system that documents the service and item(s), as defined in the Contract, delivered during the term of this Contract. These records shall also document the specific units / items billed to the State under the Contract.
- An “invoice” shall accurately represent the service and item delivered, the rate by type of service / item, and the total amount being claimed, and must be submitted to the State, within thirty (30) days from the end of the billing period.
- For the month of September, any billings or invoices shall be submitted as reasonably directed by the CCI or the State’s Contract Administrator to meet fiscal year-end closing deadlines.
- The **first invoice** will be submitted on August 19. It will not exceed 25% of the harvest project. (This invoice must have documents attached that show all preparations required for the season's harvest have been made and that all weirs stand ready for operations.)
- The **second invoice** will not exceed 25% and will be submitted September 16.
- The **third invoice** will not exceed 25% and will be submitted on October 14.
- The **fourth and final invoice** for the season will be paid following final approval and acceptance by DNR that all Contractor obligations have been met. This fourth invoice will be the final amount owing to the Contractor, less deductions for approved costs. (Actual dates of payment may vary.)
- If a billing is not received as set forth above, no payment shall be made by the State for that billing period unless an exception is specifically authorized by the Department director or her/his delegated representative.
- In no event, shall the State make payment to the Contractor for billings submitted more than 90 days after the end of the scheduled billing period described above, without and approval from the State Department Director or his/her representative.

1.7 Additional Terms and Conditions Specific to this SOW – RESERVED



## Article 2 – General Terms and Conditions

### 2.010 Contract Structure and Administration

#### 2.011 Definitions

Capitalized terms used in this Contract (including its Exhibits) shall have the meanings given below, unless the context requires otherwise:

- (a) "Days" means calendar days unless otherwise specified.
- (b) "24x7x365" means 24 hours a day, seven days a week, and 365 days a year (including the 366th day in a leap year).
- (c) "Additional Service" means any Services/Deliverables within the scope of the Contract, but not specifically provided under any Statement of Work, that once added will result in the need to provide the Contractor with additional consideration. "Additional Service" does not include New Work.
- (d) "Amendment Labor Rates" means the schedule of fully-loaded hourly labor rates attached as **Article 1, Attachment C**.
- (e) "Audit Period" has the meaning given in **§ 2.111**.
- (f) "Business Day," whether capitalized or not, shall mean any day other than a Saturday, Sunday or State-recognized legal holiday (as identified in the Collective Bargaining Agreement for State employees) from 8:00am EST through 5:00pm EST unless otherwise stated.
- (g) "Incident" means any interruption in Services.
- (h) "Business Critical" means any function identified in any Statement of Work as Business Critical.
- (i) "Deliverable" means physical goods and/or commodities as required or identified by a Statement of Work
- (j) "Key Personnel" means any Personnel designated in **Article 1, § 1.201 and/or Attachment B**, as Key Personnel.
- (k) "New Work" means any Services/Deliverables outside the scope of the Contract and not specifically provided under any Statement of Work, that once added will result in the need to provide the Contractor with additional consideration. "New Work" does not include Additional Service.
- (l) "Services" means any function performed for the benefit of the State.
- (m) "State Location" means any physical location where the State performs work. State Location may include state-owned, leased, or rented space.
- (n) "Subcontractor" means a company Contractor delegates performance of a portion of the Services to, but does not include independent contractors engaged by Contractor solely in a staff augmentation role.
- (o) "Work in Process" means a Deliverable that has been partially prepared, but has not been presented to the State for Approval.

#### 2.012 Attachments and Exhibits

All Attachments and/or Exhibits attached to any and all Statement(s) of Work, attached to, or referencing this Contract, are incorporated in their entirety into, and form part of, this Contract.

#### 2.013 Statements of Work

- (a) The parties agree that the Services/Deliverables to be rendered by Contractor pursuant to this Contract (and any future amendments of it) will be defined and described in detail in Statements of Work or Purchase Orders (PO) executed under this Contract. Contractor shall not be obliged or authorized to commence any work to implement a Statement of Work until authorized via a PO issued against this Contract, or an amendment to this Contract (see §2.106). Contractor shall perform in accordance with this Contract, including the Statements of Work/Purchase Orders executed under it.
- (b) Unless otherwise agreed by the parties, each Statement of Work (as defined in Article 1) will include, or incorporate by reference to the appropriate Contract Article 1 Attachment containing, the following information:
  - a description of the Services to be performed by Contractor under the Statement of Work;
  - a project schedule (including the commencement and completion dates for all tasks, subtasks (for all projects of sufficient duration and complexity to warrant sub task breakdown), and Deliverables;



- a list of the Deliverables to be provided, if any, including any particular specifications and acceptance criteria for such Deliverables, and the dates on which the Deliverables are scheduled to be completed and delivered to the State;
  - all Deliverable price schedules and other charges associated with the Statement of Work, the overall fixed price for such Statement of Work and any other appropriate pricing and payment terms;
  - a specification of Contractor's and the State's respective performance responsibilities with respect to the performance or completion of all tasks, subtasks and Deliverables;
  - a listing of any Key Personnel of Contractor and/or its Subcontractors for that Statement of Work and any future Statements of Work;
  - any other information or provisions the parties agree to include.
- (c) Reserved.
- (d) The initial Statements of Work, as of the Effective Date, are attached to this Contract.

#### 2.014 Issuing Office

This Contract is issued by the Department of Management and Budget, Purchasing Operations (PO) and Michigan Department of Natural Resources (collectively, including all other relevant State of Michigan departments and agencies, the "State"). PO is the sole point of contact in the State with regard to all procurement and contractual matters relating to the Contract. **PO is the only State office authorized to change, modify, amend, alter or clarify the prices, specifications, terms and conditions of this Contract.** The Contractor Administrator within the Office of Purchasing Operations for this Contract is:

Malynda Little, Buyer  
 Purchasing Operations - Services  
 Department of Management and Budget  
 Mason Bldg, 2nd Floor  
 PO Box 30026  
 Lansing, MI 48909  
 Email: [littlem3@michigan.gov](mailto:littlem3@michigan.gov)  
 Telephone: (517) 373-8622

#### 2.015 Contract Compliance Inspector

Upon receipt at PO of the properly executed Contract, it is anticipated that the Director of DMB Purchasing Operations, in consultation with the Department of Natural Resources, will direct that the person named below, or any other person so designated, be authorized to monitor and coordinate the activities for the Contract on a day-to-day basis during its term. However, monitoring of this Contract implies **no authority to change, modify, clarify, amend, or otherwise alter the prices, terms, conditions and specifications of such Contract as that authority is retained by DMB-Purchasing Operations.** The Contract Compliance Inspector for this Contract is:

Name: Edward Eische  
 Lower Lower Peninsula Hatchery Manager  
 Oden State Fish Hatchery  
 8258 South Ayr Road  
 Alonson, MI 49706  
 Email [Eische@michigan.gov](mailto:Eische@michigan.gov)  
 Phone: (231) 347-4689

2.020 Contract Objectives / Scope / Background

2.021 Background-RESERVED

2.022 Purpose-RESERVED

**2.023 Objectives and Scope-RESERVED****2.024 Interpretation-RESERVED****2.025 Form, Function and Utility**

If the Contract is for use of more than one (1) State agency and if the Deliverable/Service does not meet the form, function, and utility required by that State agency, that agency may, subject to State purchasing policies, procure the Deliverable/Service from another source.

## 2.030 Legal Effect and Term

**2.031 Legal Effect**

Except as otherwise agreed in writing by the parties, the State assumes no liability for costs incurred by Contractor or payment under this Contract, until Contractor is notified in writing that this Contract (or Change Order) has been approved by the State Administrative Board (if required), approved and signed by all the parties, and a Purchase Order against the Contract has been issued.

**2.032 Contract Term**

This Contract is for a period of three (3) years commencing on approximately May 15<sup>th</sup>, 2007, unless otherwise stated. All outstanding Purchase Orders shall also expire upon the termination (cancellation for any of the reasons listed in 2.210) of the Contract, unless otherwise extended pursuant to the Contract. Absent an early termination for any reason, Purchase Orders issued but not expired, by the end of the Contract's stated term, will remain in effect for the balance of the fiscal year for which they were issued.

**2.033 Renewal(s)**

This Contract may be renewed in writing by mutual agreement of the parties not less than 30 days before its expiration. At the State's option, the Contract may be renewed for up to two (2) additional one-year periods. Successful completion of negotiations surrounding the terms of the extension, will be a pre-requisite for the exercise of any option year.

## 2.040 Contractor Personnel

**2.041 Contractor Personnel**

(a) **Personnel Qualifications.** All persons assigned by Contractor to the performance of Services under this Contract shall be employees of Contractor or its majority-owned (directly or indirectly, at any tier) subsidiaries (or a State-approved Subcontractor) and shall be fully qualified to perform the work assigned to them. Contractor shall include a similar provision in any subcontract entered into with a Subcontractor. For the purposes of this Contract, independent contractors engaged by Contractor solely in a staff augmentation role shall be treated by the State as if they were employees of Contractor for this Contract only; however, the State understands that the relationship between Contractor and Subcontractor is an independent contractor relationship.

(b) **Key Personnel**

(i) In discharging its obligations under this Contract, Contractor shall provide the named Key Personnel on the terms indicated. **Article 1, Attachment B** provides an organization chart showing the roles of certain Key Personnel, if any.

(ii) Key Personnel shall be dedicated as defined in **Article 1, Attachment B** to the Project for its duration in the applicable Statement of Work with respect to other individuals designated as Key Personnel for that Statement of Work.



(iii) The State will have the right to recommend and approve in writing the initial assignment, as well as any proposed reassignment or replacement, of any Key Personnel. Before assigning an individual to any Key Personnel position, Contractor will notify the State of the proposed assignment, will introduce the individual to the appropriate State representatives, and will provide the State with a resume and any other information about the individual reasonably requested by the State. The State reserves the right to interview the individual before granting written approval. In the event the State finds a proposed individual unacceptable, the State will provide a written explanation including reasonable detail outlining the reasons for the rejection. Additionally, the State's request shall be based on legitimate, good-faith reasons. Proposed alternative for the individual denied, shall be fully qualified for the position.

(iv) Contractor shall not remove any Key Personnel from their assigned roles or the Contract without the prior written consent of the State. If the Contractor does remove Key Personnel without the prior written consent of the State, it shall be considered an unauthorized removal ("Unauthorized Removal"). It shall not be considered an Unauthorized Removal if Key Personnel must be replaced for reasons beyond the reasonable control of Contractor, including illness, disability, leave of absence, personal emergency circumstances, resignation or for cause termination of the Key Personnel's employment. It shall not be considered an Unauthorized Removal if Key Personnel must be replaced because of promotions or other job movements allowed by Contractor personnel policies or Collective Bargaining Agreement(s) as long as the State receives prior written notice before shadowing occurs and Contractor provides thirty (30) days of shadowing unless parties agree to a different time period. The Contractor with the State shall review any Key Personnel replacements, and appropriate transition planning will be established. Any Unauthorized Removal may be considered by the State to be a material breach of the Contract, in respect of which the State may elect to exercise its rights under **§ 2.210**.

(v) It is acknowledged that an Unauthorized Removal will interfere with the timely and proper completion of the Contract, to the loss and damage of the State, and that it would be impracticable and extremely difficult to fix the actual damage sustained by the State as a result of any Unauthorized Removal. Therefore, Contractor and the State agree that in the case of any Unauthorized Removal in respect of which the State does not elect to exercise its rights under **§ 2.210**, the State may assess liquidated damages against Contractor as specified below.

For the Unauthorized Removal of any Key Personnel designated in the applicable Statement of Work, the liquidated damages amount shall be \$25,000 per individual provided Contractor identifies a replacement approved by the State pursuant to **§ 2.041** and assigns the replacement to the Project to shadow the Key Personnel s/he is replacing for a period of at least 30 days prior to such Key Personnel's removal.

If Contractor fails to assign a replacement to shadow the removed Key Personnel for at least 30 days, in addition to the \$25,000 liquidated damages for an Unauthorized Removal, Contractor shall pay the amount of \$833.33 per day for each day of the 30 day shadow period that the replacement Key Personnel does not shadow the removed Key Personnel, up to \$25,000 maximum per individual. The total liquidated damages that may be assessed per Unauthorized Removal and failure to provide 30 days of shadowing shall not exceed \$50,000 per individual.

(c) Re-assignment of non-Key Personnel. Prior to re-deploying to other projects, at the completion of their assigned tasks on the Project, teams of its non-Key Personnel who are performing Services on-site at State facilities or who are otherwise dedicated primarily to the Project, Contractor will give the State at least 10 Business Days notice of the proposed re-deployment to give the State an opportunity to object to the re-deployment if the State reasonably believes such team's Contract responsibilities are not likely to be completed and approved by the State prior to the proposed date of re-deployment.

(d) Re-assignment of Personnel at the State's Request. The State reserves the right to require the removal from the Project of Contractor personnel found, in the judgment of the State, to be unacceptable. The State's request shall be written with reasonable detail outlining the reasons for the removal request. Additionally, the State's request shall be based on legitimate, good-faith reasons. Replacement personnel for the removed person shall be fully qualified for the position. If the State exercises this right, and the Contractor cannot immediately replace the removed personnel, the State agrees to an equitable adjustment in schedule or other terms that may be affected by the State's required removal. If any such incident with removed personnel results in delay not reasonable anticipatable under the circumstances and which is attributable to the State, the applicable SLA's for the affected Service will not be counted in **§ 2.076** for a time as agreed to by the parties.



(e) Staffing Levels.

(i) All staff requirements not specified in the applicable Statement of Work or State-approved project plan as State personnel will be supplied by Contractor. This includes secretarial, clerical and Contract administration support staff necessary for Contractor to perform its obligations hereunder.

(ii) Contractor shall provide sufficient personnel resources for the completion of Contract tasks indicated in Contractor's project plan approved by the State. If the level of personnel resources is insufficient to complete any Contractor Contract tasks in accordance with the Contract time schedule as demonstrated by Contractor's failure to meet mutually agreed to time schedules, Contractor shall promptly add additional qualified personnel resources to the performance of the affected tasks, at no additional charge to the State, in an amount sufficient to complete performance of Contractor's tasks in accordance with the Contract time schedule.

(f) Personnel Turnover. The Parties agree that it is in their best interests to keep the turnover rate of employees of Contractor and its Subcontractors who are performing the Services to a reasonable minimum. Accordingly, if the State determines that the turnover rate of such employees is excessive and so notifies Contractor, Contractor will meet with the State to discuss the reasons for the turnover rate and otherwise use commercially reasonable efforts to minimize such turnover rate. If requested to do so by the State, Contractor will submit to the State its proposals for reducing the turnover rate to an acceptable level. In any event, notwithstanding the turnover of personnel, Contractor remains obligated to perform the Services without degradation and in accordance with the State-approved Contract schedule.

(g) Location. All staff assigned by Contractor to work on the Contract will perform their duties either primarily at Contractor's offices and facilities or at State facilities. Without limiting the generality of the foregoing, Key Personnel will, at a minimum, spend at least the amount of time on-site at State facilities as indicated in the applicable Statement of Work. Subject to availability, selected Contractor personnel may be assigned office space to be shared with State personnel.

#### **2.042 Contractor Identification**

Contractor employees shall be clearly identifiable while on State property by wearing a State-issued badge, as required. Contractor employees are required to clearly identify themselves and the company they work for whenever making contact with State personnel by telephone or other means.

#### **2.043 Cooperation with Third Parties**

Contractor agrees to cause its personnel and the personnel of any Subcontractors to cooperate with the State and its agents and other contractors including the State's Quality Assurance personnel, and, as reasonably requested by the State, to provide to the State's agents and other contractors with reasonable access to Contractor's Project personnel, systems and facilities to the extent they relate to activities specifically associated with this Contract and will not interfere or jeopardize the safety or operation of the systems or facilities and provided Contractor receives reasonable prior written notice of such request. The State acknowledges that Contractor's time schedule for the Contract is very specific and agrees not to unnecessarily or unreasonably interfere with, delay or otherwise impeded Contractor's performance under this Contract with such requests for access.

#### **2.044 Subcontracting by Contractor**

(a) Contractor shall have full responsibility for the successful performance and completion of all of the Services and Deliverables. The State will consider Contractor to be the sole point of contact with regard to all contractual matters under this Contract, including payment of any and all charges for Services and Deliverables.

(b) Contractor shall not delegate any duties under this Contract to a Subcontractor unless the Department of Management and Budget, Office of Purchasing Operations has given written consent to such delegation. The State shall have the right of prior written approval of all Subcontractors and to require Contractor to replace any Subcontractors found, in the reasonable judgment of the State, to be unacceptable. The State's request shall be written with reasonable detail outlining the reasons for the removal request. Additionally, the State's request shall be based on legitimate, good-faith reasons. Replacement Subcontractor(s) for the removed Subcontractor shall be fully qualified for the position. If the State exercises this right, and the Contractor cannot immediately replace the removed Subcontractor, the State will agree to an equitable adjustment in schedule or other terms that may be affected by the State's required removal.



(c) In any subcontracts entered into by Contractor for the performance of the Services, Contractor shall require the Subcontractor, to the extent of the Services to be performed by the Subcontractor, to be bound to Contractor by the terms of this Contract and to assume toward Contractor all of the obligations and responsibilities that Contractor, by this Contract, assumes toward the State. The State reserves the right to receive copies of and review all subcontracts, although Contractor may delete or mask any proprietary information, including pricing, contained in such contracts before providing them to the State. The management of any Subcontractor will be the responsibility of Contractor, and Contractor shall remain responsible for the performance of its Subcontractors to the same extent as if Contractor had not subcontracted such performance. Contractor shall make all payments to Subcontractors or suppliers of Contractor. Except as otherwise agreed in writing by the State and Contractor, the State will not be obligated to direct payments for the Services other than to Contractor. The State's written approval of any Subcontractor engaged by Contractor to perform any obligation under this Contract shall not relieve Contractor of any obligations or performance required under this Contract. Attached as **Exhibit A** is a list of the Subcontractors, if any, approved by the State as of the execution of this Contract, together with a copy of the applicable subcontract.

(d) Except where specifically approved in writing by the State on a case-by-case basis, Contractor shall flow down the obligations in **§2.040, §2.110, §2.150, §2.160, §2.171(c), §2.172(b), §2.180, §2.260, §2.276, §2.297** in all of its agreements with any Subcontractors.

(e) The Contractor shall select subcontractors (including suppliers) on a competitive basis to the maximum practical extent consistent with the objectives and requirements of the Contract.

#### **2.045 Contractor Responsibility for Personnel**

Contractor shall be responsible for all acts and omissions of its employees, as well as the acts and omissions of any other personnel furnished by Contractor to perform the Services.

#### 2.050 State Standards

#### **2.051 Existing Technology Standards - RESERVED**

#### **2.052 PM Methodology Standards- RESERVED**

#### **2.053 Adherence to Portal Technology Tools - RESERVED**

#### **2.054 Acceptable Use Policy**

To the extent that Contractor has access to the State computer system, Contractor must comply with the State's Acceptable Use Policy, see <http://www.michigan.gov/ditservice/0,1607,7-179-25781-73760--,00.html>. All Contractor employees must be required, in writing, to agree to the State's Acceptable Use Policy before accessing the State system. The State reserves the right to terminate Contractor's access to the State system if a violation occurs.

#### 2.060 Deliverables

#### **2.061 Ordering**

Any Services/Deliverables to be furnished under this Contract shall be ordered by issuance of written Purchase Orders/Blanket Purchase Order by the State after approval by the Contract Administrator or his/her designee. All orders are subject to the terms and conditions of this Contract. In the event of conflict between an order and this Contract, the Contract shall take precedence as stated in **§ 2.293**. In no event shall any additional terms and conditions contained on a Purchase Order/Blanket Purchase Order be applicable, unless specifically contained in that Purchase Order/Blanket Purchase Order's accompanying Statement of Work.

#### **2.062 Software – RESERVED**

#### **2.063 Hardware – RESERVED**

#### **2.064 Equipment to be New and Prohibited Products – RESERVED**



## 2.070 Performance

### 2.071 Performance, In General

The State engages Contractor to execute the Contract and perform the Services/provide the Deliverables, and Contractor undertakes to execute and complete the Contract in its entirety in accordance with the terms and conditions of this Contract and with the participation of State representatives as specified in this Contract.

### 2.072 Time of Performance

(a) Contractor shall use commercially reasonable efforts to provide the resources necessary to complete all Services and Deliverables in accordance with the time schedules contained in the Statements of Work and other Exhibits governing the work, and with professional quality.

(b) Without limiting the generality of § 2.072(a), Contractor shall notify the State in a timely manner upon becoming aware of any circumstances that may reasonably be expected to jeopardize the timely and successful completion of any Deliverables/Services on the scheduled due dates in the latest State-approved delivery schedule and, in such event, shall inform the State of the projected actual delivery date.

(c) If Contractor believes that a delay in performance by the State has caused or will cause Contractor to be unable to perform its obligations in accordance with specified Contract time periods, Contractor shall notify the State in a timely manner and shall use commercially reasonable efforts to perform its obligations in accordance with such Contract time periods notwithstanding the State's failure. Contractor will not be in default for a delay in performance to the extent such delay is caused by the State.

### 2.073 Liquidated Damages

Parties acknowledge that default or failure to deliver services as described in this Contract will interfere with the timely and property completion of the Contract, with the effect of loss and damage to the State, and that it is impracticable and extremely difficult to fix any actual damage sustained by the State as a result of any such default.

Therefore, Contractor shall, in the case of any such default (if State does not elect to exercise its rights under § 2.191), pay liquidated damages as follows:

**\$4,000.00 per day for each day Contractor fails to remedy the default or failure to delivery services.**

### 2.074 Bankruptcy

If Contractor shall file for protection under the bankruptcy laws, or if an involuntary petition shall be filed against Contractor and not removed within 30 days, or if the Contractor becomes insolvent, be adjudicated bankrupt, or if it should make a general assignment for the benefit of creditors, or if a receiver shall be appointed due to its insolvency, and Contractor and/or its affiliates are unable to provide reasonable assurances that Contractor and/or its affiliates can deliver the services provided herein, the State may, without prejudice to any other right or remedy, terminate this Contract, in whole or in part, and, at its option, may take possession of the "Work in Process" and finish such Works in Process by whatever appropriate method the State may deem expedient. Contractor will fix appropriate notices or labels on the Work in Process to indicate ownership by the State. To the extent reasonably possible, materials and Work in Process shall be stored separately from other stock and marked conspicuously with labels indicating ownership by the State.

To secure the State's progress payments before the delivery of any services or materials required for the execution of Contractor's obligations hereunder, and any work which Contractor may subcontract in the support of the performance of its obligations hereunder, title shall vest in the State to the extent the State has made progress payments hereunder.

### 2.075 Time is of the Essence

The Contractor agrees that time is of the essence in the performance of the Contractor's obligations under this Contract. Failure to comply with timely approaches to the salmon harvest and handling of salmon carcasses or waste as outlined in this document poses both an environmental nuisance and public health issue.

### 2.076 Service Level Agreements (SLAs) -RESERVED



## 2.080 Delivery and Acceptance of Deliverables

### 2.081 Delivery Responsibilities

Unless otherwise specified by the State within an individual order, the following shall be applicable to all orders issued under this Contract.

- (a) Shipment responsibilities - Services performed/Deliverables provided under this Contract shall be delivered "F.O.B. Destination, within Government Premises." The Contractor shall have complete responsibility for providing all Services/Deliverables to all site(s) unless otherwise stated. Actual delivery dates will be specified on the individual purchase order.
- (b) Delivery locations - Services will be performed/Deliverables will be provided at every State of Michigan location within Michigan unless otherwise stated in the SOW. Specific locations will be provided by the State or upon issuance of individual purchase orders.
- (c) Damage Disputes - At the time of delivery to State Locations, the State shall examine all packages. The quantity of packages delivered shall be recorded and any obvious visible or suspected damage shall be noted at time of delivery using the shipper's delivery document(s) and appropriate procedures to record such.

Where there is no obvious or suspected damage, all deliveries to a State Location must be opened by the State and the contents inspected for possible internal damage not visible externally within 14 days of receipt. Any damage must be reported to the Contractor within five (5) days of inspection. If this inspection does not occur and damages not reported within 30 days of receipt, the cure for such damaged deliveries shall transfer to the delivery signing party.

### 2.082 Delivery of Deliverables

Where applicable, the Statements of Work / POs contain lists of the Deliverables to be prepared and delivered by Contractor including, for each Deliverable, the scheduled delivery date and a designation of whether the Deliverable is a document ("Written Deliverable"), a good ("Physical Deliverable") or a Service. All Deliverables shall be completed and delivered for State review and written approval and, where applicable, installed in accordance with the State-approved delivery schedule and any other applicable terms and conditions of the Contract.

### 2.083 Testing – RESERVED

### 2.084 Approval of Deliverables, In General

- (a) All Deliverables (Physical Deliverables and Written Deliverables) and Services require formal written approval by the State, in accordance with the following procedures. Formal approval by the State requires that the Deliverable be confirmed in writing by the State to meet its specifications, which will include the successful completion of Testing as applicable, to be led by the State with the support and assistance of Contractor. The parties acknowledge that the approval process set forth herein will be facilitated by ongoing consultation between the parties, visibility of interim and intermediate Deliverables and collaboration on key decisions.
- (b) The State's obligation to comply with any State Review Period is conditioned on the timely delivery of Deliverables/Services being reviewed.
- (c) Prior to commencement of its review or testing of a Deliverable/Service, the State may inspect the Deliverable/Service to confirm that all components of the Deliverable/Service have been delivered without material deficiencies. If the State determines that the Deliverable/Service has material deficiencies, the State may refuse delivery of the Deliverable/Service without performing any further inspection or testing of the Deliverable/Service. Otherwise, the review period will be deemed to have started on the day the State receives the Deliverable or the Service begins, and the State and Contractor agree that the Deliverable/Service is ready for use and, where applicable, certification by Contractor in as applicable.



(d) The State will approve in writing a Deliverable/Service upon confirming that it conforms to and, performs in accordance with, its specifications without material deficiency. The State may, but shall not be required to, conditionally approve in writing a Deliverable/Service that contains material deficiencies if the State elects to permit Contractor to rectify them post-approval. In any case, Contractor will be responsible for working diligently to correct within a reasonable time at Contractor's expense all deficiencies in the Deliverable/Service that remain outstanding at the time of State approval.

(e) If, after three (3) opportunities (the original and two [2] repeat efforts), Contractor is unable to correct all deficiencies preventing Final Acceptance of a Deliverable/Service, the State may: (i) demand that Contractor cure the failure and give Contractor additional time to cure the failure at the sole expense of Contractor; or (ii) keep the Contract in force and do, either itself or through other parties, whatever Contractor has failed to do, in which event Contractor shall bear any excess expenditure incurred by the State in so doing beyond the Contract price for such Deliverable/Service and will pay the State an additional sum equal to 10% of such excess expenditure to cover the State's general expenses provided the State can furnish proof of such general expenses; or (iii) terminate the particular Statement of Work for default, either in whole or in part by notice to Contractor provided Contractor is unable to cure such breach. Notwithstanding the foregoing, the State shall not use, as a basis for exercising its termination rights under this Section, deficiencies discovered in a repeat State Review Period that could reasonably have been discovered during a prior State Review Period.

(f) The State, at any time and in its reasonable discretion, may halt the testing or approval process if such process reveals deficiencies in or problems with a Deliverable/Service in a sufficient quantity or of a sufficient severity as to make the continuation of such process unproductive or unworkable. In such case, the State may stop using the Service or return the applicable Deliverable to Contractor for correction and re-delivery prior to resuming the testing or approval process.

#### **2.085 Process for Approval of Written Deliverables – RESERVED**

#### **2.086 Process for Approval of Services**

The State Review Period for approval of Services is governed by the applicable Statement of Work (failing which the State Review Period, by default, shall be 30 Business Days for Services). The State agrees to notify Contractor in writing by the end of the State Review Period either stating that the Service is approved in the form delivered by Contractor or describing any deficiencies that must be corrected prior to approval of the Services (or at the State's election, subsequent to approval of the Service). If the State delivers to Contractor a notice of deficiencies, Contractor will correct the described deficiencies and within 30 Business Days resubmit the Service in a form that shows all revisions made to the original version delivered to the State. Contractor's correction efforts will be made at no additional charge. Upon implementation of a corrected Service from Contractor, the State will have a reasonable additional period of time, not to exceed the length of the original State Review Period, to review the corrected Service for conformity and that the identified deficiencies have been corrected.

#### **2.087 Process for Approval of Physical Deliverables**

The State Review Period for approval of Physical Deliverables is governed by the applicable Statement of Work (failing which the State Review Period, by default, shall be 30 continuous Business Days for a Physical Deliverable). The State agrees to notify Contractor in writing by the end of the State Review Period either stating that the Deliverable is approved in the form delivered by Contractor or describing any deficiencies that must be corrected prior to approval of the Deliverable (or at the State's election, subsequent to approval of the Deliverable). If the State delivers to Contractor a notice of deficiencies, Contractor will correct the described deficiencies and within 30 Business Days resubmit the Deliverable in a form that shows all revisions made to the original version delivered to the State. Contractor's correction efforts will be made at no additional charge. Upon receipt of a corrected Deliverable from Contractor, the State will have a reasonable additional period of time, not to exceed the length of the original State Review Period, to review the corrected Deliverable to confirm that the identified deficiencies have been corrected.

#### **2.088 Final Acceptance**

Unless otherwise stated in the Statement of Work or Purchase Order, "Final Acceptance" of each Deliverable shall occur when each Deliverable/Service has been approved by the State following the State Review Periods identified in **§2.080-§2.087**. Payment will be made for Deliverables installed and accepted. Upon acceptance of a Service, the State will pay for all Services provided during the State Review Period that conformed to the acceptance criteria.



## 2.090 Financial

**2.091 Pricing**

See § 1.6, *Compensation and Payment*.

## (a) Fixed Prices for Services/Deliverables

Each Statement of Work/PO issued under this Contract shall specify (or indicate by reference to the appropriate Contract Exhibit) the firm, fixed prices for all Services/Deliverables, and the associated payment milestones and payment amounts. To the extent the parties agree that certain specific Services will be provided on a time and materials basis, such Services shall be provided at the Amendment Labor Rates (**Article 1**). The State may make progress payments to the Contractor when requested as work progresses, but not more frequently than monthly, in amounts approved by the Contract Administrator, after negotiation. Contractor must show verification of measurable progress at the time of requesting progress payments.

## (b) Adjustments for Reductions in Scope of Services/Deliverables

If the scope of the Services/Deliverables under any Statement of Work issued under this Contract is subsequently reduced by the State, the parties shall negotiate an equitable reduction in Contractor's charges under such Statement of Work commensurate with the reduction in scope, using the rates in **Article 1**, unless specifically identified in an applicable Statement of Work.

## (c) Services/Deliverables Covered

For all Services/Deliverables to be provided by Contractor (and its Subcontractors, if any) under this Contract, the State shall not be obligated to pay any amounts in addition to the charges specified in this Contract.

## (d) Labor Rates

All time and material charges will be at the rates specified in **Article 1**.

**2.092 Invoicing and Payment Procedures and Terms**

## (a) Invoicing and Payment – In General

(i) Each Statement of Work issued under this Contract shall list (or indicate by reference to the appropriate Contract Exhibit) the prices for all Services/Deliverables, equipment and commodities to be provided, and the associated payment milestones and payment amounts.

(ii) Each Contractor invoice will show details as to charges by Service/Deliverable component and location at a level of detail reasonably necessary to satisfy the State's accounting and charge-back requirements. The charges for Services billed on a time and materials basis shall be determined based on the actual number of hours of Services performed, at the applicable Labor Rates specified in **Article 1, Attachment C**. Invoices for Services performed on a time and materials basis will show, for each individual, the number of hours of Services performed during the billing period, the billable skill/labor category for such person and the applicable hourly billing rate. Prompt payment by the State is contingent on the Contractor's invoices showing the amount owed by the State minus any holdback amount to be retained by the State in accordance with **§2.094**.

(iii) Correct invoices will be due and payable by the State, in accordance with the State's standard payment procedure as specified in 1984 Public Act No. 279, MCL 17.51 et seq., within 45 days after receipt, provided the State determines that the invoice was properly rendered.

## (b) Taxes (See §2.305 and Article 3, §3.022-§3.024 for additional )

The State is exempt from Federal Excise Tax, State and Local Sales Taxes, and Use Tax with respect to the sale to and use by it of tangible personal property. Such taxes shall not be included in Contract prices as long as the State maintains such exemptions. Copies of all tax exemption certificates shall be supplied to Contractor, if requested.

## (c) Out-of-Pocket Expenses

Contractor acknowledges that the out-of-pocket expenses that Contractor expects to incur in performing the Services/ providing the Deliverables (such as, but not limited to, travel and lodging, document reproduction and shipping, and long distance telephone) are included in Contractor's fixed price for each Statement of Work. Accordingly, Contractor's out-of-pocket expenses are not separately reimbursable by the State unless, on a case-by-case basis for unusual expenses, the State has agreed in advance and in writing to reimburse Contractor for such an expense at the State's current travel reimbursement rates. See [http://www.mi.gov/dmb/0,1607,7-150-9141\\_13132---,00.html](http://www.mi.gov/dmb/0,1607,7-150-9141_13132---,00.html) for current rates.



- (d) Pro-ration  
To the extent there are any Services that are to be paid for on a monthly basis, the cost of such Services shall be pro-rated for any partial month.
- (e) Antitrust Assignment  
The Contractor assigns to the State any claim for overcharges resulting from antitrust violations to the extent that those violations concern materials or services supplied by third parties to the Contractor, toward fulfillment of this Contract.
- (f) Final Payment  
The making of final payment by the State to Contractor does not constitute a waiver by either party of any rights or other claims as to the other party's continuing obligations under the Contract, nor will it constitute a waiver of any claims by one party against the other arising from unsettled claims or failure by a party to comply with this Contract, including claims for Services and Deliverables not reasonably known until after acceptance to be defective or substandard. Contractor's acceptance of final payment by the State under this Contract shall constitute a waiver of all claims by Contractor against the State for payment under this Contract, other than those claims previously filed in writing on a timely basis and still unsettled.

### 2.093 State Funding Obligation

The State's obligation under this Contract is payable only and solely from funds appropriated for the purpose of this Contract. Contractor acknowledges and agrees that all funds for payments after the end of the current fiscal year are subject to the availability of a legislative appropriation for the purpose of this Contract. Events of non-appropriation are addressed further in **§2.210** of this Contract.

### 2.094 Holdback – RESERVED

### 2.095 Electronic Payment Availability

Public Act 533 of 2004 requires that payments under this contract be processed by electronic funds transfer (EFT). Contractor is required to register to receive payments by EFT at the Contract & Payment Express website ([www.cpexpress.state.mi.us](http://www.cpexpress.state.mi.us)).

## 2.100 Contract Management

### 2.101 Contract Management Responsibility

(a) Contractor shall have overall responsibility for managing and successfully performing and completing the Services/Deliverables, subject to the overall direction and supervision of the State and with the participation and support of the State as specified in this Contract. Contractor's duties will include monitoring and reporting the State's performance of its participation and support responsibilities (as well as Contractor's own responsibilities) and providing timely notice to the State in Contractor's reasonable opinion if the State's failure to perform its responsibilities in accordance with **Article 1**, (Work Plan / Project Plan) is likely to delay the timely achievement of any Contract tasks.

(b) The Services/Deliverables will be provided by the Contractor either directly or through its affiliates, subsidiaries, subcontractors or resellers. Regardless of the entity providing the Service/Deliverable, the Contractor will act as a single point of contact coordinating these entities to meet the State's need for Services/Deliverables. Nothing in this Contract, however, shall be construed to authorize or require any party to violate any applicable law or regulation in its performance of this Contract.

### 2.102 Problem and Contract Management Procedures

Problem Management and Contract Management procedures will be governed by the Contract and the applicable Statements of Work.

### 2.103 Reports and Meetings

- (a) Reports.  
Within 30 days after the Effective Date, the parties shall determine an appropriate set of periodic reports to be issued by Contractor to the State. Such reports may include:



- (i) Separately address Contractor's performance in each area of the Services;
- (ii) For each area of the Services, assess the degree to which Contractor has attained or failed to attain the pertinent objectives in that area, including on-time completion and delivery of Deliverables;
- (iii) Explain the reasons for any failure to achieve on-time completion and delivery of Deliverables and include a plan for corrective action where appropriate;
- (iv) Describe any circumstances that Contractor anticipates will impair or prevent on-time completion and delivery of Deliverables in upcoming reporting periods;
- (v) Include plans for corrective action or risk mitigation where appropriate and describe the status of ongoing problem resolution efforts;
- (vi) Provide reports setting forth a comparison of actual hours spent by Contractor (including its augmented personnel and Subcontractors) in performing the Project versus hours budgeted by Contractor.
- (vii) Set forth a record of the material personnel changes that pertain to the Services and describe planned changes during the upcoming month that may affect the Services.
- (viii) Include such documentation and other information may be mutually agreed to verify compliance with, and meeting the objectives of, this Contract.
- (ix) Set forth an updated schedule that provides information on the status of upcoming Deliverables, expected dates of delivery (or redelivery) of such Deliverables and estimates on timing for completion of the Project.

(b) Meetings.

Within 30 days after the Effective Date, the parties shall determine an appropriate set of meetings to be held between representatives of the State and Contractor. Contractor shall prepare and circulate an agenda sufficiently in advance of each such meeting to give participants an opportunity to prepare for the meeting. Contractor shall incorporate into such agenda items that the State desires to discuss. At the State's request, Contractor shall prepare and circulate minutes promptly after a meeting.

#### 2.104 System Changes

Contractor is not responsible for and not authorized to make changes to any State systems without written authorization from the State. Any changes Contractor makes to State systems with the State's approval shall be done in accordance with applicable State procedures, including security, access and configuration management procedures.

#### 2.105 Reserved

#### 2.106 Change Requests

The State reserves the right to request from time to time, any changes to the requirements and specifications of the Contract and the work to be performed by the Contractor under the Contract. During the course of ordinary business, it may become necessary for the State to discontinue certain business practices or create Additional Services/Deliverables. At a minimum, to the extent applicable, the State would like 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 State requests or directs the Contractor to perform any Services/Deliverables that are outside the scope of the Contractor's responsibilities under the Contract ("New Work"), the Contractor must notify the State promptly, and before commencing performance of the requested activities, that it believes the requested activities are New Work. If the Contractor fails to notify the State before commencing performance of the requested activities, any such activities performed before notice is given by the Contractor shall be conclusively considered to be in-scope Services/Deliverables, not New Work.

If the State requests or directs the Contractor to perform any services or provide deliverables that are consistent with and similar to the Services/Deliverables being provided by the Contractor under the Contract, but which the Contractor reasonably and in good faith believes are not included within the Statements of Work, then before performing such services or providing such deliverables, the Contractor shall notify the State in writing that it considers the services or deliverables to be an Additional Service/Deliverable for which the Contractor should receive additional compensation. If the Contractor does not so notify the State, the Contractor shall have no right to claim thereafter that it is entitled to additional compensation for performing that service or providing that deliverable. If the Contractor does so notify the State, then such a service or deliverable shall be governed by the Change Request procedure in this Section.



In the event prices or service levels are not acceptable to the State, the Additional Services or New Work shall be subject to competitive bidding based upon the specifications.

(a) Change Requests

(i) State Requests

If the State should require Contractor to perform New Work, Additional Services or make changes to the Services that would affect the Contract completion schedule or the amount of compensation due Contractor (a "Change"), the State shall submit a written request for Contractor to furnish a proposal for carrying out the requested Change (a "Change Request").

(ii) Contractor Recommendations

Contractor shall be entitled to propose a Change to the State, on its own initiative, should it be of the opinion that this would benefit the Contract.

(iii) Upon receipt of a Change Request or on its own initiative, Contractor shall examine the implications of the requested Change on the technical specifications, Contract schedule and price of the Deliverables and Services and shall submit to the State without undue delay a written proposal for carrying out the Change. Contractor's proposal will include any associated changes in the technical specifications, Contract schedule and price and method of pricing of the Services. If the Change is to be performed on a time and materials basis, the Amendment Labor Rates shall apply to the provision of such Services. If Contractor provides a written proposal and should Contractor be of the opinion that a requested Change is not to be recommended, it shall communicate its opinion to the State but shall nevertheless carry out the Change as specified in the written proposal if the State directs it to do so.

(iv) By giving Contractor written notice within a reasonable time, the State shall 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 Contract Change Notice shall be prepared and issued under this Contract, describing the Change and its effects on the Services and any affected components of this Contract (a "Contract Change Notice").

(v) No proposed Change shall be performed until the proposed Change has been specified in a duly executed Contract Change Notice issued by the Department of Management and Budget, Office of Purchasing Operations.

(vi) If the State requests or directs Contractor to perform any activities that Contractor believes constitute a Change, Contractor must notify the State that it believes the requested activities are a Change prior to commencing the performance of the requested activities. If Contractor fails to so notify the State prior to commencing performance of the requested activities, such activities shall be considered to be performed gratuitously by Contractor, and Contractor shall not have any right thereafter to assert any claim for additional compensation or time for the performance of such activities. If Contractor commences performance of gratuitous services outside the scope of this Contract and subsequently elects to stop performing such out-of-scope services, Contractor must, at the request of the State, back out or reverse any changes resulting from such performance that would adversely affect the Contract.

## 2.107 Management Tools – RESERVED

### 2.110 Records and Inspections

#### 2.111 Records and Inspections

Contractor agrees that the State may, upon 24-hour notice, perform an audit at Contractor's location(s) to determine if the Contractor is complying with the requirements of the Contract. The Contractor agrees to cooperate with the State during the audit and produce all records and documentation that verifies compliance with the Contract requirements.

#### 2.112 Errors

(a) If the audit demonstrates any errors in the statements provided to the State, then the amount in error shall be reflected as a credit or debit on the next invoice and in subsequent invoices until the amount is paid or refunded in full. However, a credit or debit may not be carried for more than four (4) quarterly statements. If a balance remains after four (4) quarterly statements, then the remaining amount will be due as a payment or refund within 45 days of the last quarterly statement that the balance appeared on or termination of the contract, whichever is earlier.



(b) In addition to other available remedies, the difference between the payment received and the correct payment amount is greater than 10%, then the Contractor shall pay all of the reasonable costs of the audit.

## 2.120 State Responsibilities

### 2.121 State Performance Obligations

(a) **Equipment and Other Resources.** To facilitate Contractor's performance of the Services/Deliverables, the State shall provide to Contractor such equipment and resources as identified in the Statements of Work or other Contract Exhibits as items to be provided by the State.

(b) **Facilities.** The State shall designate space as long as it is available and as provided in the Statement of Work, to house Contractor's personnel whom the parties agree will perform the Services/Deliverables at State facilities (collectively, the "State Facilities"). Contractor shall have reasonable access to, and unless agreed otherwise by the parties in writing shall observe and comply with all rules and regulations relating to, each of the State Facilities (including hours of operation) used by Contractor in the course of providing the Services. Contractor agrees that it will not, without the prior written consent of the State, use any State Facilities or access any State information systems provided for Contractor's use, or to which Contractor otherwise gains access in the course of performing the Services, for any purpose other than providing the Services to the State.

(c) **Return.** Contractor shall be responsible for returning to the State any State-furnished equipment, facilities and other resources when no longer required for the Contract in the same condition as when provided by the State, reasonable wear and tear excepted.

(d) Except as otherwise provided in **§2.220**, the State's failure to perform its responsibilities as set forth in this Contract shall not be deemed to be grounds for termination by Contractor. However, Contractor will not be liable for any default or delay in the performance of its obligations under this Contract to the extent such default or delay is caused by nonperformance of the State's obligations under this Contract, provided Contractor provides the State with reasonable written notice of such nonperformance and Contractor uses commercially reasonable efforts to perform notwithstanding the State's failure to perform. In addition, if the State's nonperformance of its responsibilities under this Contract materially increases the time required for Contractor's performance or Contractor's cost of performance, Contractor shall be entitled to seek an equitable extension via the Change Request process described in **§2.106**.

## 2.130 Security

### 2.131 Background Checks

The Contractor shall authorize the investigation of its personnel proposed to have access to State facilities and systems on a case by case basis. The scope of the background check is at the discretion of the State and the results will be used to determine Contractor personnel eligibility for working within State facilities and systems. Such investigations will include Michigan State Police Background checks (ICHAT) and may include the National Crime Information Center (NCIC) Finger Prints. Proposed Contractor personnel may be required to complete and submit an RI-8 Fingerprint Card for the NCIC Finger Print Check. Any request for background checks will be initiated by the State and will be reasonably related to the type of work requested.

All Contractor personnel will also be expected to comply with the State's security and acceptable use policies for State IT equipment and resources. See <http://www.michigan.gov/ditservice/0,1607,7-179-25781-73760--,00.html>. Furthermore, Contractor personnel will be expected to agree to the State's security and acceptable use policies before the Contractor personnel will be accepted as a resource to perform work for the State. It is expected the Contractor will present these documents to the prospective employee before the Contractor presents the individual to the State as a proposed resource. Contractor staff will be expected to comply with all Physical Security procedures in place within the facilities where they are working.

## 2.140 Reserved



## 2.150 Confidentiality

### 2.151 Freedom of Information

All information in any proposal submitted to the State by Contractor and this Contract is subject to the provisions of the Michigan Freedom of Information Act, 1976 Public Act No. 442, as amended, MCL 15.231, et seq (the "FOIA").

### 2.152 Confidentiality

Contractor and the State 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 Contractor shall mean all non-public proprietary information of Contractor (other than Confidential Information of the State as defined below) which is marked confidential, restricted, proprietary or with a similar designation. "Confidential Information" of the State shall mean any information which is retained in confidence by the State (or otherwise required to be held in confidence by the State pursuant to applicable federal, state and local laws and regulations) or which, in the case of tangible materials provided to Contractor by the State pursuant to its performance under this Contract, is marked as confidential, proprietary or with a similar designation by the State. In the case of information of either Contractor or the State "Confidential Information" shall exclude any information (including this Contract) that is publicly available pursuant to the Michigan FOIA.

### 2.153 Protection of Confidential Information

The State and 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 Contractor nor the State will (i) make any use of the Confidential Information of the other except as contemplated by this Contract, (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 in order to fulfill the purposes of this Contract. Disclosure to, and use by, a Subcontractor is permissible where (A) use of a Subcontractor is authorized under this Contract, (B) such disclosure is necessary or otherwise naturally occurs in connection with work that is within such Subcontractor's scope of responsibility, and (C) Contractor obligates the Subcontractor in a written Contract to maintain the State's Confidential Information in confidence. At the State's request, any employee of Contractor and of any Subcontractor having access or continued access to the State's Confidential Information may be required to execute an acknowledgment that the employee has been advised of Contractor's and the Subcontractor's obligations under this Section and of the employee's obligation to Contractor or Subcontractor, as the case may be, to protect such Confidential Information from unauthorized use or disclosure.

### 2.154 Exclusions

Notwithstanding the foregoing, the provisions of this Section will not apply to any particular information which the State or Contractor can demonstrate (i) was, at the time of disclosure to it, in the public domain; (ii) after disclosure to it, is published or otherwise becomes part of the public domain through no fault of the receiving party; (iii) was in the possession of the receiving party at the time of disclosure to it without an obligation of confidentiality; (iv) was received after disclosure to it from a third party who had a lawful right to disclose such information to it without any obligation to restrict its further disclosure; or (v) was independently developed by the receiving party without reference to Confidential Information of the furnishing party. Further, the provisions of this Section will not apply to any particular Confidential Information to the extent the receiving party is required by law to disclose such Confidential Information, provided that the receiving party (i) promptly provides the furnishing party with notice of the legal request, and (ii) assists the furnishing party in resisting or limiting the scope of such disclosure as reasonably requested by the furnishing party.

### 2.155 No Implied Rights

Nothing contained in this Section shall be construed as obligating a party to disclose any particular Confidential Information to the other party, or as granting to or conferring on a party, expressly or impliedly, any right or license to the Confidential Information of the other party.

**2.156 Remedies**

Each party acknowledges that, if it breaches (or attempts or threatens to breach) its obligations under this Section, the other party may be irreparably harmed. Accordingly, if a court of competent jurisdiction should find that a party has breached (or attempted or threatened to breach) any such obligations, the non-breaching party shall be entitled to seek an injunction preventing such breach (or attempted or threatened breach).

**2.157 Security Breach Notification**

In the event of a breach of this Section, Contractor shall take (i) prompt corrective action to cure any such deficiencies and (ii) any action pertaining to such unauthorized disclosure required by applicable federal and state laws and regulations. Contractor and the State will cooperate to mitigate, to the extent practicable, the effects of any breach, intrusion, or unauthorized use or disclosure. Contractor shall report to the State in writing any use or disclosure of Confidential Information, whether suspected or actual, other than as provided for by the Contract within ten (10) days of becoming aware of such use or disclosure or such shorter time period as is reasonable under the circumstances.

**2.158 Survival**

The parties' respective obligations under this Section shall survive the termination or expiration of this Contract for any reason.

**2.159 Destruction of Confidential Information**

Promptly upon termination or cancellation of the Contract for any reason, Contractor shall certify to the State that Contractor has destroyed all State Confidential Information.

2.160 Proprietary Rights – RESERVED

2.170 Warranties and Representations

**2.171 Warranties and Representations**

The Contractor represents and warrants:

(a) It is capable in all respects of fulfilling and shall fulfill all of its obligations under this Contract. The performance of all obligations under this Contract shall be provided in a timely, professional, and workman-like manner and shall meet the performance and operational standards required under this Contract.

(b) The Contract Appendices, Attachments and Exhibits identify the equipment and software and services necessary for the Deliverable(s) to perform and Services to operate in compliance with the Contract's requirements and other standards of performance.

(c) It is the lawful owner or licensee of any Deliverable licensed or sold to the State by Contractor or developed by Contractor under this Contract, and Contractor has all of the rights necessary to convey to the State the ownership rights or licensed use, as applicable, of any and all Deliverables. None of the Deliverables provided by Contractor to the State under this Contract, nor their use by the State, will infringe the patent, copyright, trade secret, or other proprietary rights of any third party.

(d) If, under this Contract, Contractor procures any equipment, software or other Deliverable for the State (including equipment, software and other Deliverables manufactured, re-marketed or otherwise sold by Contractor under Contractor's name), then in addition to Contractor's other responsibilities with respect to such items in this Contract, Contractor shall assign or otherwise transfer to the State or its designees, or afford the State the benefits of, any manufacturer's warranty for the Deliverable.

(e) The contract signatory has the power and authority, including any necessary corporate authorizations, necessary to enter into this Contract, on behalf of Contractor.

(f) It is qualified and registered to transact business in all locations where required.



(g) Neither the Contractor nor any Affiliates, nor any employee of either, has, shall have, or shall acquire, any contractual, financial, business, or other interest, direct or indirect, that would conflict in any manner or degree with Contractor's performance of its duties and responsibilities to the State under this Contract or otherwise create an appearance of impropriety with respect to the award or performance of this Agreement. Contractor shall notify the State within two (2) days of any such interest that may be incompatible with the interests of the State.

(h) Neither Contractor nor any Affiliates, nor any employee of either has accepted or shall accept anything of value based on an understanding that the actions of the Contractor or Affiliates or employee on behalf of the State would be influenced. Contractor shall not attempt to influence any State employee by the direct or indirect offer of anything of value.

(i) Neither Contractor nor any Affiliates, nor any employee of either has paid or agreed to pay any person, other than bona fide employees and consultants working solely for Contractor or such Affiliate, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or making of this Contract.

(j) The prices proposed by Contractor were arrived at independently, without consultation, communication, or agreement with any other bidder for the purpose of restricting competition; the prices quoted were not knowingly disclosed by Contractor to any other bidder; and no attempt was made by Contractor to induce any other person to submit or not submit a proposal for the purpose of restricting competition.

(k) All financial statements, reports, and other information furnished by Contractor to the State as part of its response to the RFP or otherwise in connection with the award of this Contract fairly and accurately represent the business, properties, financial condition, and results of operations of Contractor as of the respective dates, or for the respective periods, covered by such financial statements, reports, other information. Since the respective dates or periods covered by such financial statements, reports, or other information, there have been no material adverse change in the business, properties, financial condition, or results of operations of Contractor.

(l) All written information furnished to the State by or behalf of Contractor in connection with this Contract, including its bid, is true, accurate, and complete, and contains no untrue statement of material fact or omits any material fact necessary to make such information not misleading.

(m) It is not in material default or breach of any other contract or agreement that it may have with the State or any of its departments, commissions, boards, or agencies. Contractor further represents and warrants that it has not been a party to any contract with the State or any of its departments that was terminated by the State or such department within the previous five (5) years for the reason that Contractor failed to perform or otherwise breached an obligation of such contract.

**2.172 Software Warranties – RESERVED**

**2.173 Equipment Warranty– RESERVED**

**2.174 Physical Media Warranty – RESERVED**

**2.175a DISCLAIMER – RESERVED**

**2.175b Standard Warranties – RESERVED**

**2.176 Consequences for Breach**

In addition to any remedies available in law, if the Contractor breaches any of the warranties contained in this section, such breach may be considered as a default in the performance of a material obligation of this Contract.



## 2.180 Insurance

**2.181 Liability Insurance**

## (a) Liability Insurance

Contractor is required to provide proof of the minimum levels of insurance coverage as indicated below. The purpose of this coverage shall be to protect the State from claims which may arise out of or result from the Contractor's performance of services under the terms of this Contract, whether such 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.

Contractor waives all rights against the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees and agents for recovery of damages to the extent these damages are covered by the insurance policies the Contractor is required to maintain pursuant to this Contract.

All insurance coverage provided relative to this Contract/Purchase Order are PRIMARY and NON-CONTRIBUTING to any comparable liability insurance (including self-insurances) carried by the State.

The insurance shall be written for not less than any minimum coverage specified in this Contract or required by law, whichever is greater.

The insurers selected by Contractor shall have an A.M. Best rating of A or better, or as otherwise approved in writing by the State, or if such ratings are no longer available, with a comparable rating from a recognized insurance rating agency. All policies of insurance required in this Contract shall be issued by companies that have been approved to do business in the State. See [http://www.mi.gov/cis/0,1607,7-154-10555\\_22535---,00.html](http://www.mi.gov/cis/0,1607,7-154-10555_22535---,00.html).

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

Before the Contract is signed by both parties or before the purchase order is issued by the State, the Contractor must furnish to the Director of Purchasing Operations, certificate(s) of insurance verifying insurance coverage ("Certificates"). The Certificate must be on the standard "accord" form or equivalent. **THE CONTRACT OR PURCHASE ORDER NO. MUST BE SHOWN ON THE CERTIFICATE OF INSURANCE TO ASSURE CORRECT FILING.** All Certificate(s) are to be prepared and submitted by the Insurance Provider. All Certificate(s) shall contain a provision indicating that coverages afforded under the policies WILL NOT BE CANCELLED, MATERIALLY CHANGED, OR NOT RENEWED without 30 days prior written notice, except for 10 days for non-payment of premium, having been given to the Director of Purchasing Operations, Department of Management and Budget. The notice must include the Contract or Purchase Order number affected and be mailed to: Director, Purchasing Operations, Department of Management and Budget, P.O. Box 30026, Lansing, Michigan 48909. Failure to provide evidence of coverage, may, at the State's sole option, result in this Contract's termination.

Contractor is required to pay for and provide the type and amount of insurance checked  below:

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
  - \$500,000 Fire Damage Limit (any one fire)

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 to provide services or products under this Contract, the Contractor must have vehicle liability insurance on any auto including owned, hired and non-owned vehicles used in Contractor's business for bodily injury and property damage as required by law.



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. Workers' compensation coverage must be provided in accordance with applicable laws governing the employees and employers work activities in the state of the Contractor's domicile. If the applicable coverage is provided by a self-insurer, proof must be provided of approved self-insured authority by the jurisdiction of domicile. For employees working outside of the state of qualification, Contractor must provide appropriate certificates of insurance proving mandated coverage levels for the jurisdictions where the employees' activities occur.

Any certificates of insurance received must also provide a list of states where the coverage is applicable.

Contractor also agrees to provide evidence that insurance policies contain a waiver of subrogation by the insurance company. This provision shall not be applicable where 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 accident
- \$100,000 each employee by disease
- \$500,000 aggregate disease

5. Employee Fidelity, including Computer Crimes, insurance naming the State as a loss payee, providing coverage for direct loss to the State and any legal liability of the State arising out of or related to fraudulent or dishonest acts committed by the employees of Contractor or its Subcontractors, acting alone or in collusion with others, in a minimum amount of one million dollars (\$1,000,000.00) with a maximum deductible of fifty thousand dollars (\$50,000.00).

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

7. Professional Liability (Errors and Omissions) Insurance with the following minimum coverage: three million dollars (\$3,000,000.00) each occurrence and three million dollars (\$3,000,000.00) annual aggregate.

8. Fire and Personal Property Insurance covering against any loss or damage to the office space used by Contractor for any reason under this Contract, and the equipment, software and other contents of such office space, including without limitation, those contents used by Contractor to provide the Services to the State, up to the replacement value thereof, where such office space and its contents are under the care, custody and control of Contractor. Such policy shall cover all risks of direct physical loss or damage, including without limitation, flood and earthquake coverage and coverage for computer hardware and software. The State shall be endorsed on the policy as a loss payee as its interests appear.

(b) Subcontractors

Except where the State has approved in writing a Contractor subcontract with other insurance provisions, Contractor shall require all of its Subcontractors under this Contract 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, Contractor may include any Subcontractors under Contractor's insurance on the coverage required in this Section. Subcontractor(s) shall fully comply with the insurance coverage required in this Section. Failure of Subcontractor(s) to comply with insurance requirements does not limit Contractor's liability or responsibility.

(c) Certificates of Insurance and Other Requirements

Contractor shall furnish to the Office of Purchasing Operations certificate(s) of insurance verifying insurance coverage or providing satisfactory evidence of self-insurance as required in this Section (the "Certificates"). Before the Contract is signed, and not less than 20 days before the insurance expiration date every year thereafter, the Contractor shall provide evidence that the State and its agents, officers and employees are listed as additional insureds under each commercial general liability and commercial automobile liability policy. In the event the State approves the representation of the State by the insurer's attorney, the attorney may be required to be designated as a Special Assistant Attorney General by the Attorney General of the State of Michigan.



Contractor shall maintain all required insurance coverage throughout the term of the Contract and any extensions thereto and, in the case of claims-made Commercial General Liability policies, shall secure tail coverage for at least three (3) years following the expiration or termination for any reason of this Contract. The minimum limits of coverage specified above are not intended, and shall not be construed, to limit any liability or indemnity of Contractor under this Contract to any indemnified party or other persons. Contractor shall be responsible for all deductibles with regard to such insurance. If Contractor fails to pay any premium for required insurance as specified in this Contract, or if any insurer cancels or significantly reduces any required insurance as specified in this Contract without the State's written consent, at the State's election (but without any obligation to do so) after the State has given Contractor at least 30 days written notice, the State may pay such premium or procure similar insurance coverage from another company or companies; and at the State's election, the State may deduct the entire cost (or part thereof) from any payment due Contractor, or Contractor shall pay the entire cost (or any part thereof) upon demand by the State.

## 2.190 Indemnification

### 2.191 Indemnification

#### (a) General Indemnification

To the extent permitted by law, the Contractor shall indemnify, defend and hold harmless the State 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 Contract 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.

#### (b) Code Indemnification

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

#### (c) Employee Indemnification

In any and all 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 the Contract shall 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.

#### (d) Patent/Copyright Infringement Indemnification

To the extent permitted by law, the Contractor shall indemnify, defend and hold harmless the State 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 the State to the extent that such 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 such equipment, software, commodity or service, or the use or reproduction of any documentation provided with such 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 the State's or Contractor's opinion be likely to become the subject of a claim of infringement, the Contractor shall at the Contractor's sole expense (i) procure for the State the right to continue using the equipment, software, commodity or service or, if such option is not reasonably available to the Contractor, (ii) replace or modify to the State's satisfaction the same with equipment, software, commodity or service of equivalent function and performance so that it becomes non-infringing, or, if such option is not reasonably available to Contractor, (iii) accept its return by the State with appropriate credits to the State against the Contractor's charges and reimburse the State for any losses or costs incurred as a consequence of the State ceasing its use and returning it.



Notwithstanding the foregoing, the Contractor shall have no obligation to indemnify or defend the State for, or to pay any costs, damages or attorneys' fees related to, any claim based upon (i) equipment developed based on written specifications of the State; or (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 the State; or (iii) the combination, operation, or use of the equipment with equipment or software not supplied by the Contractor under this Contract.

### **2.192 Continuation of Indemnification Obligations**

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

### **2.193 Indemnification Procedures**

The procedures set forth below shall apply to all indemnity obligations under this Contract:

(a) After receipt by the State of notice of the action or proceeding involving a claim in respect of which it will seek indemnification, the State shall promptly notify Contractor of such 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 Contractor shall relieve Contractor of its indemnification obligations except to the extent that Contractor can demonstrate damages attributable to such failure. Within 10 days following receipt of written notice from the State relating to any claim, Contractor shall notify the State 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 prior to the State receiving Contractor's Notice of Election, the State shall be entitled to defend against the claim, at Contractor's expense, and Contractor will be responsible for any reasonable costs incurred by the State in defending against the claim during such period.

(b) If Contractor delivers a Notice of Election relating to any claim: (i) the State shall be entitled to participate in the defense of such claim and to employ counsel at its own expense to assist in the handling of such claim and to monitor and advise the State about the status and progress of the defense; (ii) Contractor shall, at the request of the State, demonstrate to the reasonable satisfaction of the State, Contractor's financial ability to carry out its defense and indemnity obligations under this Contract; (iii) Contractor shall periodically advise the State about the status and progress of the defense and shall obtain the prior written approval of the State before entering into any settlement of such claim or ceasing to defend against such claim and (iv) to the extent that any principles of Michigan governmental or public law may be involved or challenged, the State shall have the right, at its own expense, to control the defense of that portion of such claim involving the principles of Michigan governmental or public law. Notwithstanding the foregoing, the State may retain control of the defense and settlement of a claim by written notice to Contractor given within 10 days after the State's receipt of Contractor's information requested by the State pursuant to clause (ii) of this paragraph if the State determines that Contractor has failed to demonstrate to the reasonable satisfaction of the State Contractor's financial ability to carry out its defense and indemnity obligations under this Section. Any litigation activity on behalf of the State of Michigan, or any of its subdivisions pursuant to this Section, must be coordinated with the Department of Attorney General. In the event the insurer's attorney represents the State pursuant to this Section, the insurer's attorney may be required to be designated as a Special Assistant Attorney General by the Attorney General of the State of Michigan.

(c) If Contractor does not deliver a Notice of Election relating to any claim of which it is notified by the State as provided above, the State shall have the right to defend the claim in such 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 the State, upon request of the State, Contractor shall promptly reimburse the State for all such reasonable costs and expenses.



## 2.200 Limits of Liability and Excusable Failure

### 2.201 Limits of Liability

Contractor's liability for damages to the State shall be limited to two (2) times the value of the Contract, which ever is higher. The foregoing limitation of liability shall not apply to claims for infringement of United States patent, copyright, trademarks 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 attorney's fees awarded by a court in addition to damages after litigation based on this Contract.

State's liability for damages to Contractor shall be limited to the value of the Contract.

Neither Contractor nor the State shall be liable to each other, regardless of the form of action, for consequential, incidental, indirect, or special damages. This limitation of liability shall 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 attorney's fees awarded by a court in addition to damages after litigation based on this Contract.

### 2.202 Excusable Failure

Neither party will be liable for any default, damage or delay in the performance of its obligations under the Contract to the extent such default, damage or delay is caused by government regulations or requirements (executive, legislative, judicial, military or otherwise), power failure, electrical surges or current fluctuations, lightning, earthquake, war, water or other forces of nature or acts of God, delays or failures of transportation, equipment shortages, suppliers' failures, or acts or omissions of common carriers, fire; riots, civil disorders; strikes or other labor disputes, embargoes; injunctions (provided the injunction was not issued as a result of any fault or negligence of the party seeking to have its default or delay excused); or any other cause beyond the reasonable control of such party; provided the non-performing party and its Subcontractors are without fault in causing such default or delay, and such default or delay could not have been prevented by reasonable precautions and cannot reasonably be circumvented by the non-performing party through the use of alternate sources, workaround plans or other means, including disaster recovery plans.

In such event, the non-performing party will be excused from any further performance or observance of the obligation(s) so affected for as long as such circumstances prevail and such party continues to use its commercially reasonable efforts to recommence performance or observance whenever and to whatever extent possible without delay and provided further that such party promptly notifies the other party in writing of the inception of the excusable failure occurrence, and also of its abatement or cessation.

If any of the above-enumerated circumstances substantially prevent, hinder, or delay Contractor's performance of the Services/provision of Deliverables for more than 10 Business Days, and the State determines that performance is not likely to be resumed within a period of time that is satisfactory to the State in its reasonable discretion, then at the State's option: (a) the State may procure the affected Services/Deliverables from an alternate source, and the State shall not be liable for payment for the unperformed Services/ Deliverables not provided under the Contract for so long as the delay in performance shall continue; (b) the State may terminate any portion of the Contract so affected and the charges payable there under shall be equitably adjusted to reflect those Services/Deliverables terminated; or (c) the State may terminate the affected Statement of Work without liability to Contractor as of a date specified by the State in a written notice of termination to Contractor, except to the extent that the State shall pay for Services/Deliverables provided through the date of termination.

Contractor will not have the right to any additional payments from the State as a result of any Excusable Failure occurrence or to payments for Services not rendered/Deliverables not provided as a result of the Excusable Failure condition. Defaults or delays in performance by Contractor which are caused by acts or omissions of its Subcontractors will not relieve Contractor of its obligations under the Contract except to the extent that a Subcontractor is itself subject to an Excusable Failure condition described above and Contractor cannot reasonably circumvent the effect of the Subcontractor's default or delay in performance through the use of alternate sources, workaround plans or other means.



### 2.203 Disaster Recovery

Contractor and the State recognize that the State provides essential services in times of natural or man-made disasters. Therefore, except as so mandated by Federal disaster response requirements, Contractor personnel dedicated to providing Services/Deliverables under this Contract will provide the State with priority service for repair and work around in the event of a natural or manmade disaster.

#### 2.210 Termination/Cancellation by the State

The State may terminate this Contract without further liability or penalty to the State, its departments, divisions, agencies, offices, commissions, officers, agents and employees for any of the following reasons:

### 2.211 Termination for Cause

(a) In the event that Contractor breaches any of its material duties or obligations under this Contract (including a Chronic Failure to meet any particular SLA as defined in § 2.076), which are either not capable of or subject to being cured, or are not cured within the time period specified in the written notice of breach provided by the State (such time period not to be less than 30 days), or pose 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, the State may, having provided written notice of termination to Contractor, terminate this Contract in whole or in part, for cause, as of the date specified in the notice of termination.

(b) In the event that this Contract is terminated for cause, in addition to any legal remedies otherwise available to the State by law or equity, Contractor shall be responsible for all costs incurred by the State in terminating this Contract, including but not limited to, State administrative costs, reasonable attorneys' fees and court costs, and any reasonable additional costs the State may incur to procure the Services/Deliverables required by this Contract from other sources. Re-procurement costs shall not be considered by the parties to be consequential, indirect or incidental damages, and shall not be excluded by any other terms otherwise included in this Contract, provided such costs are not in excess of 50% more than the prices for such Service/Deliverables provided under this Contract.

(c) In the event the State chooses to partially terminate this Contract for cause, charges payable under this Contract will be equitably adjusted to reflect those Services/Deliverables that are terminated and the State shall pay for all Services/Deliverables for which Final Acceptance has been granted provided up to the termination date. Services and related provisions of this Contract that are terminated for cause shall cease on the effective date of the termination.

(d) In the event this Contract is terminated for cause pursuant to this Section, and it is determined, for any reason, that Contractor was not in breach of contract pursuant to the provisions of this section, that termination for cause shall be deemed to have been a termination for convenience, effective as of the same date, and the rights and obligations of the parties shall be limited to that otherwise provided in this Contract for a termination for convenience.

### 2.212 Termination for Convenience

The State may terminate this Contract for its convenience, in whole or part, if the State determines that such a termination is in the State's best interest. Reasons for such termination shall be left to the sole discretion of the State and may include, but not necessarily be limited to (a) the State no longer needs the Services or products specified in the Contract, (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 the State, or (d) falsification or misrepresentation, by inclusion or non-inclusion, of information material to a response to any RFP issued by the State. The State may terminate this Contract for its convenience, in whole or in part, by giving Contractor written notice at least 30 days prior to the date of termination. If the State chooses to terminate this Contract in part, the charges payable under this Contract shall be equitably adjusted to reflect those Services/Deliverables that are terminated. Services and related provisions of this Contract that are terminated for cause shall cease on the effective date of the termination.

**2.213 Non-Appropriation**

(a) Contractor acknowledges that, if this Contract extends for several fiscal years, continuation of this Contract is subject to appropriation or availability of funds for this Contract. If funds to enable the State to effect continued payment under this Contract are not appropriated or otherwise made available, the State shall have the right to terminate this Contract 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. The State shall give Contractor at least 30 days advance written notice of termination for non-appropriation or unavailability (or such time as is available if the State receives notice of the final decision less than 30 days before the funding cutoff).

(b) If funding for the Contract 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 made available, the State may, upon 30 days written notice to Contractor, reduce the level of the Services or the change the production of Deliverables in such manner and for such periods of time as the State may elect. The charges payable under this Contract will be equitably adjusted to reflect any equipment, services or commodities not provided by reason of such reduction.

(c) In the event the State terminates this Contract, eliminates certain Deliverables, or reduces the level of Services to be provided by Contractor pursuant to this Section, the State shall 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 the State, to the extent funds are available. For the avoidance of doubt, this Section will not preclude Contractor from reducing or stopping Services/Deliverables and/or raising against the State 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.

**2.214 Criminal Conviction**

The State may terminate this Contract 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 incident to the application for, or performance of, a State, public or private Contract or subcontract; convicted of a criminal offense, including any of the following: embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, attempting to influence a public employee to breach the ethical conduct standards for State of Michigan employees; convicted under State or federal antitrust statutes; or convicted of any other criminal offense which in the sole discretion of the State reflects upon Contractor's business integrity.

**2.215 Approvals Rescinded**

The State may terminate this Contract without further liability or penalty in the event any final administrative or judicial decision or adjudication disapproves a previously approved request for purchase of personal services pursuant to Constitution 1963, Article 11, § 5, and Civil Service Rule 7-1. Termination may be in whole or in part and may be immediate as of the date of the written notice to Contractor or may be effective as of the date stated in such written notice.

**2.216 Rights and Obligations Upon Termination**

(a) If this Contract is terminated by the State for any reason, Contractor shall (i) stop all work as specified in the notice of termination, (ii) take any action that may be necessary, or that the State may direct, for preservation and protection of Deliverables or other property derived or resulting from this Contract that may be in Contractor's possession, (iii) return all materials and property provided directly or indirectly to Contractor by any entity, agent or employee of the State, (iv) in the event that the Contractor maintains title in Deliverables that is intended to be transferred to the State at the termination of the Contract, Contractor will transfer title in, and deliver to, the State, unless otherwise directed, all Deliverables intended to be transferred to the State at the termination of the Contract and which are resulting from the Contract (which shall be provided to the State on an "As-Is" basis except to the extent the amounts paid by the State in respect of such items included compensation to Contractor for the provision of warranty services in respect of such materials), and (v) 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 Contract.



(b) In the event the State terminates this Contract prior to its expiration for its own convenience, the State shall pay Contractor for all charges due for Services provided prior to the date of termination and, if applicable, as a separate item of payment pursuant to this Contract, for Work In Process, on a percentage of completion basis at the level of completion determined by the State. All completed or partially completed Deliverables prepared by Contractor pursuant to this Contract shall, at the option of the State, become the State's property, and Contractor shall be entitled to receive equitable fair compensation for such Deliverables. Regardless of the basis for the termination, the State shall not be 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 the State.

(c) Upon a good faith termination, the State shall have the right to assume, at its option, any and all subcontracts and agreements for services and deliverables provided under this Contract, and may further pursue completion of the Services/Deliverables under this Contract by replacement contract or otherwise as the State may in its sole judgment deem expedient.

### 2.217 Reservation of Rights

Any termination of this Contract or any Statement of Work issued under it by a party shall be with full reservation of, and without prejudice to, any rights or remedies otherwise available to such party with respect to any claims arising prior to or as a result of such termination.

### 2.218 Contractor Transition Responsibilities

In the event this contract is terminated, for convenience or cause, dissolved, voided, rescinded, nullified, expires or is otherwise rendered unenforceable, the Contractor agrees to comply with direction provided by the State to assist in the orderly transition of equipment, services, software, leases, etc. to the State or a third party designated by the State. In the event of termination or the expiration of this Contract, the Contractor agrees to make all reasonable efforts to effect an orderly transition of services within a reasonable period of time that in no event will exceed 180 days. These efforts shall include, but are not limited to, the following:

(a) Personnel - The Contractor shall work with the State, 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 shall allow as many personnel as practicable to remain on the job to help the State, or a specified third party, maintain the continuity and consistency of the services required by this Contract. In addition, during or following the transition period, in the event the State requires the Services of the Contractor's subcontractors or vendors, as necessary to meet its needs, Contractor agrees to reasonably, and with good-faith, work with the State to use the Services of Contractor's subcontractors or vendors. Contractor will notify all of Contractor's subcontractors of procedures to be followed during transition.

(b) Information - The Contractor agrees to provide reasonable detailed specifications for all Services/Deliverables needed by the State, or specified third party, to properly provide the Services/Deliverables required under this Contract. The Contractor will provide the State with asset management data generated from the inception of this Contract through the date on which this Contractor is terminated in a comma-delineated format unless otherwise requested by the State. The Contractor will deliver to the State any remaining owed reports and documentation still in Contractor's possession subject to appropriate payment by the State.

(d) Software. - The Contractor shall reasonably assist the State in the acquisition of any Contractor software required to perform the Services/use the Deliverables under this Contract. This shall include any documentation being used by the Contractor to perform the Services under this Contract. If the State transfers any software licenses to the Contractor, those licenses shall, upon expiration of the Contract, transfer back to the State at their current revision level. Upon notification by the State, Contractor may be required to freeze all non-critical changes to Deliverables/Services.

(e) Payment - If the transition results from a termination for any reason, reimbursement shall be governed by the termination provisions of this Contract. If the transition results from expiration, the Contractor will be reimbursed for all reasonable transition costs (i.e. costs incurred within the agreed period after contract expiration that result from transition operations) at the rates specified by **Article 1**. The Contractor will prepare an accurate accounting from which the State and Contractor may reconcile all outstanding accounts.

**2.219 State Transition Responsibilities**

In the event that this Contract is terminated, dissolved, voided, rescinded, nullified, or otherwise rendered unenforceable, the State agrees to perform the following obligations, and any others upon which the State and the Contractor agree:

- (a) Reconciling all accounts between the State and the Contractor;
- (b) Completing any pending post-project reviews.

**2.220 Termination by Contractor****2.221 Termination by Contractor**

If the State materially breaches its obligation to pay Contractor undisputed amounts due and owing under this Contract in accordance with **§2.090**, or if the State breaches its other obligations under this Contract to an extent that makes it impossible or commercially impractical for Contractor to perform the Services, and if the State does not cure the breach within the time period specified in a written notice of breach provided to the State by Contractor (such time period not to be less than thirty (30) days), then Contractor may terminate this Contract, in whole or in part based on Statement of Work for cause, as of the date specified in the notice of termination; provided, however, that Contractor must discharge its obligations under **§2.250** before any such termination.

**2.230 Stop Work****2.231 Stop Work Orders**

The State may, at any time, by written stop work order to Contractor, require that Contractor stop all, or any part, of the work called for by the Contract for a period of up to ninety (90) calendar days after the stop work order is delivered to 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 **§2.230**. Upon receipt of the stop work order, 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, the State shall either: (a) cancel the stop work order; or (b) terminate the work covered by the stop work order as provided in **§2.210**.

**2.232 Cancellation or Expiration of Stop Work Order**

If a stop work order issued under this **§2.230** is canceled or the period of the stop work order or any extension thereof expires, Contractor shall resume work. The parties shall agree upon an equitable adjustment in the delivery schedule, the Contract price, or both, and the Contract shall be modified, in writing, accordingly, if: (a) the stop work order results in an increase in the time required for, or in Contractor's costs properly allocable to, the performance of any part of the Contract; and (b) Contractor asserts its right to an equitable adjustment within 30 calendar days after the end of the period of work stoppage; provided that, if the State decides the facts justify the action, the State may receive and act upon a Contractor proposal submitted at any time before final payment under the Contract. Any adjustment will conform to the requirements of **§2.106**.

**2.233 Allowance of Contractor Costs**

If the stop work order is not canceled and the work covered by the stop work order is terminated for reasons other than material breach, such termination shall be deemed to be a termination for convenience under **§2.212**, and the State shall allow reasonable costs resulting from the stop work order in arriving at the termination settlement. For the avoidance of doubt, the State shall not be liable to Contractor for loss of profits because of a stop work order issued under this **§2.230**.

**2.240 Reserved**



## 2.250 Dispute Resolution

**2.251 In General**

Any claim, counterclaim, or dispute between the State and Contractor arising out of or relating to the Contract or any Statement of Work shall be resolved as follows. For all Contractor claims seeking an increase in the amounts payable to Contractor under the Contract, or the time for Contractor's performance, Contractor shall submit a letter executed by Contractor's Contract Administrator or his designee certifying that (a) the claim is made in good faith, (b) the amount claimed accurately reflects the adjustments in the amounts payable to Contractor or the time for Contractor's performance for which Contractor believes the State is liable and covers all costs of every type to which Contractor is entitled from the occurrence of the claimed event, and (c) the supporting data provided with such an affidavit are current and complete to Contractor's best knowledge and belief.

**2.252 Informal Dispute Resolution**

(a) All operational disputes between the parties shall be resolved under the Contract Management procedures developed pursuant to **§2.100**. If the parties are unable to resolve any disputes after compliance with such processes, the parties shall meet with the Director of Purchasing Operations, DMB, or designee, for the purpose of attempting to resolve such dispute without the need for formal legal proceedings, as follows:

(i) The representatives of Contractor and the State shall meet as often as the parties reasonably deem necessary in order to gather and furnish to each other all information with respect to the matter in issue which the parties believe to be appropriate and germane in connection with its resolution. The representatives shall discuss the problem and negotiate in good faith in an effort to resolve the dispute without the necessity of any formal proceeding.

(ii) During the course of negotiations, all reasonable requests made by one party to another for non-privileged information reasonably related to the Contract will be honored in order that each of the parties may be fully advised of the other's position.

(iii) The specific format for the discussions will be left to the discretion of the designated State and Contractor representatives, but may include the preparation of agreed upon statements of fact or written statements of position.

(iv) Following the completion of this process within 60 calendar days, the Director of Purchasing Operations, DMB, or designee, shall issue a written opinion regarding the issue(s) in dispute within 30 calendar days. The opinion regarding the dispute shall be considered the State's final action and the exhaustion of administrative remedies.

(b) This **§2.250** will not be construed to prevent either party from instituting, and a party is authorized to institute, formal proceedings earlier to avoid the expiration of any applicable limitations period, to preserve a superior position with respect to other creditors, or pursuant to **§2.253**.

(c) The State will not mediate disputes between the Contractor and any other entity, except state agencies, concerning responsibility for performance of work pursuant to the Contract.

**2.253 Injunctive Relief**

The only circumstance in which disputes between the State and Contractor will not be subject to the provisions of **§2.252** is where a party makes a good faith determination that a breach of the terms of the Contract by the other party is such that the damages to such party resulting from the breach will be so immediate, so large or severe and so incapable of adequate redress after the fact that a temporary restraining order or other immediate injunctive relief is the only adequate remedy.

**2.254 Continued Performance**

Each party agrees to continue performing its obligations under the Contract while a dispute is being resolved except to the extent the issue in dispute precludes performance (dispute over payment shall not be deemed to preclude performance) and without limiting either party's right to terminate the Contract as provided in **§2.210** and **§2.220**, as the case may be.



## 2.260 Federal and State Contract Requirements

### 2.261 Nondiscrimination

In the performance of the Contract, Contractor agrees not to discriminate against any employee or applicant for employment, with respect to his or her hire, tenure, terms, conditions or privileges of employment, or any matter directly or indirectly related to employment, because of race, color, religion, national origin, ancestry, age, sex, height, weight, marital status, physical or mental disability. Contractor further agrees that every subcontract entered into for the performance of this Contract or any purchase order resulting from this Contract will contain a provision requiring non-discrimination in employment, as specified here, binding upon each Subcontractor. This covenant is required pursuant to the Elliot Larsen Civil Rights Act, 1976 PA 453, MCL 37.2101, *et seq.*, and the Persons with Disabilities Civil Rights Act, 1976 PA 220, MCL 37.1101, *et seq.*, and any breach of this provision may be regarded as a material breach of the Contract.

### 2.262 Unfair Labor Practices

Pursuant to 1980 PA 278, MCL 423.231, *et seq.*, the State shall not award a Contract or subcontract to an employer whose name appears in the current register of employers failing to correct an unfair labor practice compiled pursuant to section 2 of the Act. This information is compiled by the United States National Labor Relations Board. A Contractor of the State, in relation to the Contract, shall not enter into a contract with a Subcontractor, manufacturer, or supplier whose name appears in this register. Pursuant to section 4 of 1980 PA 278, MCL 423.324, the State may void any Contract if, subsequent to award of the Contract, the name of Contractor as an employer or the name of the Subcontractor, manufacturer or supplier of Contractor appears in the register.

### 2.263 Workplace Safety and Discriminatory Harassment

In performing Services for the State, the Contractor shall comply with the Department of Civil Services Rule 2-20 regarding Workplace Safety and Rule 1-8.3 regarding Discriminatory Harassment. In addition, the Contractor shall comply with Civil Service regulations and any applicable agency rules provided to the Contractor. For Civil Service Rules, see <http://www.mi.gov/mdcs/0,1607,7-147-6877---,00.html>.

## 2.270 Litigation

### 2.271 Disclosure of Litigation

(a) Disclosure. Contractor must disclose any material criminal litigation, investigations or proceedings involving the Contractor (and each Subcontractor) or any of its officers or directors or any litigation, investigations or proceedings under the Sarbanes-Oxley Act. In addition, each Contractor (and each Subcontractor) must notify the State of any material civil litigation, arbitration or proceeding which arises during the term of the Contract and extensions thereto, to which Contractor (or, to the extent Contractor is aware, any Subcontractor hereunder) is a party, and which involves: (i) disputes that might reasonably be expected to adversely affect the viability or financial stability of Contractor or any Subcontractor hereunder; or (ii) a claim or written allegation of fraud against Contractor or, to the extent Contractor is aware, any Subcontractor hereunder by a governmental or public entity arising out of their business dealings with governmental or public entities. Any such litigation, investigation, arbitration or other proceeding (collectively, "Proceeding") must be disclosed in a written statement to the Contract Administrator within 30 days of its occurrence. Details of settlements which are prevented from disclosure by the terms of the settlement may be annotated as such. Information provided to the State from Contractor's publicly filed documents referencing its material litigation will be deemed to satisfy the requirements of this Section.

(b) Assurances. In the event that any such Proceeding disclosed to the State pursuant to this Section, or of which the State otherwise becomes aware, during the term of this Contract would cause a reasonable party to be concerned about:

(1) The ability of Contractor (or a Subcontractor hereunder) to continue to perform this Contract in accordance with its terms and conditions, or



(2) Whether Contractor (or a Subcontractor hereunder) in performing Services for the State is engaged in conduct which is similar in nature to conduct alleged in such Proceeding, which conduct would constitute a breach of this Contract or a violation of Michigan law, regulations or public policy, then Contractor shall be required to provide the State all reasonable assurances requested by the State to demonstrate that:

- Contractor and/or its Subcontractors hereunder will be able to continue to perform this Contract and any Statements of Work in accordance with its terms and conditions, and
- Contractor and/or its Subcontractors hereunder have not and will not engage in conduct in performing the Services which is similar in nature to the conduct alleged in such Proceeding.

(c) Contractor shall make the following notifications in writing:

(1) Within 30 days of Contractor becoming aware that a change in its ownership or officers has occurred, or is certain to occur, or a change that could result in changes in the valuation of its capitalized assets in the accounting records, Contractor shall notify the Office of Purchasing Operations.

(2) Contractor shall also notify Purchasing Operations within 30 days whenever changes to asset valuations or any other cost changes have occurred or are certain to occur as a result of a change in ownership or officers.

(3) Contractor shall also notify Purchasing Operations within 30 days whenever changes to company affiliations occur.

#### **2.272 Governing Law**

This Contract shall, in all respects, be governed by and construed in accordance with the substantive laws of the State of Michigan, without regard to any Michigan choice of law rules that would apply the substantive law of any other jurisdiction to the extent not inconsistent with, or pre-empted by federal law.

#### **2.273 Compliance with Laws**

Contractor shall comply with all applicable state, federal, and local laws and ordinances ("Applicable Laws") in providing the Services/Deliverables.

#### **2.274 Jurisdiction**

Any dispute arising from the Contract shall be resolved in the State of Michigan. With respect to any claim between the parties, Contractor consents to venue in Ingham County, Michigan, and irrevocably waives any objections it may have to such jurisdiction on the grounds of lack of personal jurisdiction of such court or the laying of venue of such court or on the basis of forum non conveniens or otherwise. Contractor agrees to appoint agents in the State of Michigan to receive service of process.

#### **2.280 Environmental Provision**

#### **2.281 Environmental Provision**

For the purposes of this Section, "Hazardous Materials" is a generic term used to describe asbestos, ACBMs, PCBs, petroleum products, such construction materials as paint thinners, solvents, gasoline, oil, etc., and any other material the manufacture, use, treatment, storage, transportation or disposal of which is regulated by the federal, state or local laws governing the protection of the public health, natural resources or the environment. This includes, but is not limited to, materials such as batteries and circuit packs, and other materials that are regulated as (1) "Hazardous Materials" under the Hazardous Materials Transportation Act, (2) "chemical hazards" under the Occupational Safety and Health Administration standards, (3) "chemical substances or mixtures" under the Toxic Substances Control Act, (4) "pesticides" under the Federal Insecticide Fungicide and Rodenticide Act, and (5) "hazardous wastes" as defined or listed under the Resource Conservation and Recovery Act. This Contract does not cover the handling, removal, or disposal of all Hazardous Materials.



(a) The Contractor shall use, handle, store, dispose of, process, transport and transfer any material considered a Hazardous Material in accordance with all federal, State and local laws. The State shall provide a safe and suitable environment for performance of Contractor's Work. Prior to the commencement of Work, the State shall advise Contractor of the presence at the work site of any Hazardous Material to the extent that the State is aware of such Hazardous Material. If the Contractor encounters material reasonably believed to be a Hazardous Material and which may present a substantial danger, the Contractor shall immediately stop all affected Work, give written notice to the State of the conditions encountered, and take appropriate health and safety precautions.

(b) Upon receipt of a written notice, the State will investigate the conditions. If (i) the material is a Hazardous Material that may present a substantial danger, and (ii) the Hazardous Material was not brought to the site by the Contractor, or does not result in whole or in part from any violation by the Contractor of any laws covering the use, handling, storage, disposal of, processing, transport and transfer of Hazardous Materials, the State shall order a suspension of Work in writing. The State shall proceed to have the Hazardous Material removed or rendered harmless. In the alternative, the State shall terminate the affected Work for the State's convenience.

(c) Once the Hazardous Material has been removed or rendered harmless by the State, the affected Work shall be resumed as directed in writing by the State. Any determination by the Michigan Department of Community Health and/or the Michigan Department of Environmental Quality (whichever is applicable) that the Hazardous Material has either been removed or rendered harmless shall be binding upon the State and Contractor for the purposes of resuming the Work. If any such incident with Hazardous Material results in delay not reasonable anticipatable under the circumstances and which is attributable to the State, the applicable SLAs for the affected Work will not be counted in **\$2.076** for a time as mutually agreed by the parties.

(d) If the Hazardous Material was brought to the site by the Contractor, or results in whole or in part from any violation by the Contractor of any laws covering the use, handling, storage, disposal of, processing, transport and transfer of Hazardous Material, or from any other act or omission within the control of the Contractor, the Contractor shall bear its proportionate share of the delay and costs involved in cleaning up the site and removing and rendering harmless the Hazardous Material in accordance with Applicable Laws to the condition approved by applicable regulatory agency(ies). If the Contractor fails to take appropriate action pursuant to Applicable Laws and consistent with the State requirements, then the State may take appropriate action.

## 2.290 General

### 2.291 Amendments

The Contract may not be modified, amended, extended, or augmented, except by a writing executed by the parties.

### 2.292 Assignment

(a) Neither party shall have the right to assign the Contract, or to assign or delegate any of its duties or obligations under the Contract, to any other party (whether by operation of law or otherwise), without the prior written consent of the other party; provided, however, that the State may assign the Contract to any other State agency, department, division or department without the prior consent of Contractor and Contractor may assign the Contract to an affiliate so long as such affiliate is adequately capitalized and can provide adequate assurances that such affiliate can perform the Contract. Any purported assignment in violation of this Section shall be null and void. It is the policy of the State of Michigan to withhold consent from proposed assignments, subcontracts, or novations when such transfer of responsibility would operate to decrease the State's likelihood of receiving performance on the Contract or the State's ability to recover damages.

(b) Contractor may not, without the prior written approval of the State, assign its right to receive payments due under the Contract. In the event of any such permitted assignment, Contractor shall not be relieved of its responsibility to perform any duty imposed upon it herein, and the requirement under the Contract that all payments shall be made to one entity shall continue.

**2.293 Entire Contract; Order of Precedence**

(a) The Contract, including any Statements of Work and Exhibits, to the extent not contrary to the Contract, each of which is incorporated for all purposes, constitutes the entire agreement between the parties with respect to the subject matter and supersedes all prior agreements, whether written or oral, with respect to such subject matter and as additional terms and conditions on the purchase order shall apply as limited by **§2.061**.

(b) In the event of any inconsistency between the terms of the Contract and a Statement of Work, the terms of the Statement of Work will take precedence (as to that Statement of Work only); provided, however, that a Statement of Work may not modify or amend the terms of **§2.110 through §2.220** of the Contract, which may be modified or amended only by a formal Contract amendment.

**2.294 Headings**

Captions and headings used in the Contract are for information and organization purposes. Captions and headings, including inaccurate references, do not, in any way, define or limit the requirements or terms and conditions of the Contract.

**2.295 Relationship of the Parties (Independent Contractor Relationship)**

The relationship between the State and Contractor is that of client and independent Contractor. No agent, employee, or servant of Contractor or any of its Subcontractors shall be or shall be deemed to be an employee, agent or servant of the State for any reason. Contractor will be solely and entirely responsible for its acts and the acts of its agents, employees, servants and Subcontractors during the performance of the Contract.

**2.296 Notices**

(a) Any notice given to a party under the Contract shall be deemed effective, if addressed to such party as addressed below, upon: (i) delivery, if hand delivered; (ii) receipt of a confirmed transmission by facsimile if a copy of the notice is sent by another means specified in this Section; (iii) the third (3rd) Business Day after being sent by U.S. mail, postage pre-paid, return receipt requested; or (iv) the next Business Day after being sent by a nationally recognized overnight express courier with a reliable tracking system.

State:

State of Michigan  
Purchasing Operations  
Attention: Little, Malynda  
PO Box 30026  
530 West Allegan  
Lansing, Michigan 48909

with a copy to:

State of Michigan  
Department of Natural Resources - Fisheries  
Attention: Newcomb, Tammy  
PO Box 30026  
530 West Allegan  
Lansing, Michigan 48909

Either party may change its address where notices are to be sent by giving notice in accordance with this Section.

**(b) Binding Commitments**

Representatives of Contractor identified in **Article 1**, shall have the authority to make binding commitments on Contractor's behalf within the bounds set forth in such table. Contractor may change such representatives from time to time upon written notice.

**2.297 Media Releases and Contract Distribution****(a) Media Releases**

Neither Contractor nor the State will make any news releases, public announcements or public disclosures, nor will they have any conversations with representatives of the news media, pertaining to the Contract, the Services or the Contract without the prior written approval of the other party, and then only in accordance with explicit written instructions provided by that party. In addition, neither Contractor nor the State will use the name, trademarks or other proprietary identifying symbol of the other party or its affiliates without such party's prior written consent. Prior written consent of the Contractor must be obtained from authorized representatives.

**(b) Contract Distribution**

Purchasing Operations shall retain the sole right of Contract distribution to all State agencies and local units of government unless other arrangements are authorized by Purchasing Operations.

**2.298 Reformation and Severability**

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

**2.299 Consents and Approvals**

Except as expressly provided otherwise in the Contract, if either party requires the consent or approval of the other party for the taking of any action under the Contract, such consent or approval shall be in writing and shall not be unreasonably withheld or delayed.

**2.300 No Waiver of Default**

The failure of a party to insist upon strict adherence to any term of the Contract shall not be considered a waiver or deprive the party of the right thereafter to insist upon strict adherence to that term, or any other term, of the Contract.

**2.301 Survival**

Any provisions of the Contract that impose continuing obligations on the parties including the parties' respective warranty, indemnity and confidentiality obligations, shall survive the expiration or termination of the Contract for any reason. Specific references to survival in the Contract are solely for identification purposes and not meant to limit or prevent the survival of any other section.

**2.302 Covenant of Good Faith**

Each party agrees that, in its dealings with the other party or in connection with the Contract, it shall act reasonably and in good faith. Unless stated otherwise in the Contract, the parties will not unreasonably delay, condition or withhold the giving of any consent, decision or approval that is either requested or reasonably required of them in order for the other party to perform its responsibilities under the Contract.

**2.303 Permits**

Contractor shall obtain and pay any associated costs for all required governmental permits, licenses and approvals for the delivery, installation and performance of the Services. The State shall pay for all costs and expenses incurred in obtaining and maintaining any necessary easements or right of way.

**2.304 Website Incorporation**

State expressly states that it will not be bound by any content on the Contractor's website, even if the Contractor's documentation specifically referenced that content and attempts to incorporate it into any other communication, unless the State has actual knowledge of such content and has expressly agreed to be bound by it in a writing that has been manually signed by an authorized representation of the State.

**2.305 Taxes**

Vendors are expected to collect and pay all applicable federal, state, and local employment taxes, including the taxes defined in §3.022 for all persons involved in the resulting Contract.

The State may refuse to award a contract to any Vendor who has failed to pay any applicable State taxes. The State may refuse to accept Vendor's bid, if Vendor has any outstanding debt with the State. Prior to any award, the State will verify whether Vendor has any outstanding debt with the State.

**2.306 Prevailing Wage**

The rates of wages and fringe benefits to be paid each class of individuals employed by the Contractor, its subcontractors, their subcontractors, and all persons involved with the performance of this Contract in privity of contract with the Contractor shall not be less than the wage rates and fringe benefits established by the Michigan Department of Labor and Economic Development, Wage and Hour Bureau, schedule of occupational classification and wage rates and fringe benefits for the local where the work is to be performed. The term Contractor shall include all general contractors, prime contractors, project managers, trade contractors, and all of their contractors or subcontractors and persons in privity of contract with them.

The Contractor, its subcontractors, their subcontractors, and all persons involved with the performance of this contract in privity of contract with the Contractor shall keep posted on the work site, in a conspicuous place, a copy of all wage rates and fringe benefits as prescribed in the contract. You must also post, in a conspicuous place, the address and telephone number of the Michigan Department of Labor and Economic Development, the office responsible for enforcement of the wage rates and fringe benefits. You shall keep an accurate record showing the name and occupation of the actual wage and benefits paid to each individual employed in connection with this contract. This record shall be available to the State upon request for reasonable inspection.

If any trade is omitted from the list of wage rates and fringe benefits to be paid to each class of individuals by the Contractor, it is understood that the trades omitted shall also be paid not less than the wage rate and fringe benefits prevailing in the local where the work is to be performed.

**2.307 Call Center Disclosure**

**Contractor and / or all subcontractors involved in the performance of this Contract providing call or contact center services to the State must disclose the location of its call or contact center services to inbound callers. Failure to disclose this information shall be a material breach of this Contract.**

**2.308 Future Bidding Preclusion**

Contractor acknowledges that, to the extent this Contract involves the creation, research, investigation or generation of a future RFP, it may be precluded from bidding on the subsequent RFP. The State reserves the right to disqualify any bidder if the State determines that the bidder has used its position (whether as an incumbent Contractor, or as a Contractor hired to assist with the RFP development, or as a Vendor offering free assistance) to gain a leading edge on the competitive RFP.

2.310 Reserved



### 2.320 Extended Purchasing

#### 2.321 MiDEAL

Public Act 431 of 1984 permits DMB to provide purchasing services to any city, village, county, township, school district, intermediate school district, non-profit hospital, institution of higher education, community, or junior college. A current listing of approved program members is available at: <http://www.michigan.gov/doingbusiness/0,1607,7-146-6586-16656--,00.html>. Unless otherwise stated, it is the responsibility of the Contractor to ensure that the non-state agency is an authorized purchaser before extending the Contract pricing.

The Contractor will supply Contract Services and equipment at the established State of Michigan contract prices and terms to the extent applicable and where available. Inasmuch as these are non-state agencies, all invoices will be submitted to and payment remitted by the local unit of government on a direct and individual basis.

To the extent that authorized local units of government purchase quantities of Services and/or equipment under this Contract, the quantities of Services and/or equipment purchased will be included in determining the appropriate rate wherever tiered pricing based on quantity is provided.

#### 2.322 State Employee Purchases - RESERVED

### 2.330 Federal Grant Requirements

#### 2.331 Federal Grant Requirements

The following links contain certifications and terms which may be required for some purchases paid via Federal funds. They are included here to be utilized as required.

Lobbying Certifications are usually for agreements over \$100,000. The debarment certification is required for all agreements. The last link is where you can go and search for debarred or suspended contractors.

[http://straylight.law.cornell.edu/uscode/html/uscode31/usc\\_sec\\_31\\_00001352----000-.html](http://straylight.law.cornell.edu/uscode/html/uscode31/usc_sec_31_00001352----000-.html)

[http://www.archives.gov/federal\\_register/codification/executive\\_order/12549.html](http://www.archives.gov/federal_register/codification/executive_order/12549.html)

[http://www.archives.gov/federal\\_register/executive\\_orders/pdf/12869.pdf](http://www.archives.gov/federal_register/executive_orders/pdf/12869.pdf)

<http://www.epls.gov/epl/servlet/EPLSSearchMain/1>