

AUTHORITY: Act 431 of 1984
 COMPLETION: Required
 PENALTY: Contract change will not be executed unless form is filed

STATE OF MICHIGAN
 DEPARTMENT OF NATURAL RESOURCES
 PROCUREMENT
 P.O. BOX 30028, LANSING, MI 48909
 OR
 525 W. ALLEGAN, LANSING, MI 48933

CHANGE NOTICE NO. 01
 to
CONTRACT NO. 751B2200074
 between
THE STATE OF MICHIGAN
 and

NAME & ADDRESS OF CONTRACTOR	PRIMARY CONTACT	EMAIL
American Canadian Fisheries 6069 Hannegan Rd Bellingham, WA 98226	Garrett Reynolds	garrett@amcan-Qss.com
	PHONE	VENDOR TAX ID # (LAST FOUR DIGITS ONLY)
	360-398-1117 ext 52	0653/001

STATE CONTACTS	DIVISION	NAME	PHONE	EMAIL
CONTRACT MANAGER / CCI	FISHERIES	MARISA LAY	517-284-5837	LAYM@MICHIGAN.GOV
CONTRACT ADMINISTRATOR	FINANCE AND OPERATIONS	JANA HARDING-BISHOP	517-284-5938	HARDINGJ3@MICHIGAN.GOV

CONTRACT SUMMARY

DESCRIPTION: Salmon and Egg Harvesting and buying concessions

INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW
7/20/12	7/19/15	5- 1 year	7/19/15
PAYMENT TERMS	F.O.B.	SHIPPED TO	
Net 45	N/A	N/A	

ALTERNATE PAYMENT OPTIONS	EXTENDED PURCHASING
<input type="checkbox"/> P-card <input type="checkbox"/> Direct Voucher (DV) <input type="checkbox"/> Other	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No

MINIMUM DELIVERY REQUIREMENTS
None

DESCRIPTION OF CHANGE NOTICE

EXTEND CONTRACT EXPIRATION DATE	EXERCISE CONTRACT OPTION YEAR(S)	EXTENSION BEYOND CONTRACT OPTION YEARS	LENGTH OF EXTENSION/OPTION	EXPIRATION DATE AFTER CHANGE
<input type="checkbox"/> No <input checked="" type="checkbox"/> Yes	<input checked="" type="checkbox"/>	<input type="checkbox"/>	1 year	7/19/16
CURRENT VALUE	VALUE/COST OF CHANGE NOTICE	ESTIMATED REVISED AGGREGATE CONTRACT VALUE		
\$473,211.42	\$195,000.00	\$668,211.42		

DESCRIPTION:

Change notice is to exercise 1 option year and add funding to cover the additional year.

Also to change Contract Manager to Marisa Lay – phone number remains the same email address: laym@michigan.gov.

FOR THE CONTRACTOR:

American Canadian Fisheries
Firm

On-file in DNR Procurement
Authorized Agent Signature

Garrett Reynolds
Authorized Agent
5/27/15

Date

FOR THE STATE:

On-file in DNR Procurement
Signature

Laura Gyorkos, Procurement Manager
Authorized Agent Signature

Department of Natural Resources
Agency

6/2/15
Date



Michigan Department of Natural Resources - Procurement Services
 P.O. Box 30028, Lansing, MI 48909
 OR
 530 W. Allegan, Lansing, MI 48933

NOTICE OF CONTRACT NO. 751B2200074

**Between
 THE STATE OF MICHIGAN
 And**

Required by authority of 1984 PA 431, as amended.

Name of Contractor American Canadian Fisheries	Primary Contact Garrett Reynolds
Address of Contractor 6069 Hannegan Rd	Email garrett@amcan-gss.com
Address of Contractor	Telephone (360) 398-1117 ext 52 (Cell – 360-815-5274)
City, State, ZIP Bellingham, WA 98226	Contractor #, Mail Code *****0653/001

STATE CONTACTS	AGENCY	NAME	TELEPHONE	EMAIL
Contract Compliance Inspector	DNR	Marlene Sublet-Bennett	(248) 359-9062	Sublet-BennettM@Michigan.gov
Buyer	DNR	Jana Harding-Bishop	(517) 373-1190	HardingJ3@Michigan.gov

CONTRACT SUMMARY

Description Salmon and Egg Harvesting Buying Concessions			
Initial Term 3 years	Effective Date July 20, 2012	Initial Expiration Date July 19, 2015	Available Options 5 – 1 year
Payment Terms Net 45	F.O.B N/A	Shipped N/A	Shipped From N/A
Alternate Payment Options <input type="checkbox"/> P-card <input type="checkbox"/> Direct Voucher (DV) <input type="checkbox"/> Other:		Available to MiDeal Participants <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
Minimum Delivery Requirements None			
Miscellaneous Information The terms and conditions of this Contract are those of ITB #RFP-JH-FISH-751R2200637, this Contract Agreement and the vendor's quote. In the event of any conflicts between the specifications, and terms and conditions, indicated by the State and those indicated by the vendor, those of the State take precedence.			
ESTIMATED CONTRACT VALUE AT TIME OF EXECUTION: \$473,211.42			



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ESTIMATED CONTRACT VALUE AT TIME OF EXECUTION: \$473,211.42			

THIS IS NOT AN ORDER: This Contract Agreement is awarded on the basis of our inquiry bearing the ITB No. RFP-JH-FISH-751R2200637. Orders for delivery will be issued directly by the Michigan Department of Natural Resources through the issuance of a Purchase Order Form.

All terms and conditions of the invitation to bid are made a part hereof.

FOR THE CONTRACTOR:

FOR THE STATE:

American Canadian Fisheries

 Firm Name

On-file in Procurement

 Signature

 Authorized Agent Signature

Jana Harding-Bishop/Buyer

 Name/Title

On-file in Procurement

 Authorized Agent (Print or Type)

 DNR/Procurement

 Date

 Date

Table of Contents

DEFINITIONS..... 8

Article 1 – Statement of Work (SOW)..... 10

1.010 PROJECT IDENTIFICATION.....10

 1.011 Project Request10

 1.012 Background.....10

1.020 SCOPE OF WORK AND DELIVERABLES10

 1.021 In Scope.....10

 1.022 Work and Deliverable.....11

1.2 ROLES AND RESPONSIBILITIES16

 1.201 Contractor Staff Roles and Responsibilities16

1.3 PROJECT PLAN.....17

 1.301 Project Plan Management17

 1.302 Reports18

1.4 PROJECT MANAGEMENT19

 1.401 Issue Management19

 1.402 Risk Management19

1.5 ACCEPTANCE20

 1.501 Criteria20

 1.502 Final Acceptance20

1.6 Proposal Pricing.....20

 1.601 Proposal Pricing.....20

 1.062 Price Term20

1.7 Additional Terms and Conditions Specific to the SOW — Reserved20

Article 2, Terms and Conditions..... 21

2.010 Contract Structure and Term.....21

 2.011 Contract Term21

 2.002 Options to Renew21

 2.003 Legal Effect.....21

 2.004 Attachments & Exhibits21

 2.005 Ordering.....21

 2.006 Order of Precedence.....21

 2.007 Headings.....21

 2.008 Form, Function & Utility.....21

 2.009 Reformation and Severability22

 2.010 Consents and Approvals22

 2.011 No Waiver of Default22

 2.012 Survival22

2.020 Contract Administration22

 2.021 Issuing Office22

 2.022 Contract Compliance Inspector.....22

 2.023 Project Manager.....22

 2.024 Change Requests23

 2.025 Notices23

 2.026 Binding Commitments23

 2.027 Relationship of the Parties23

 2.028 Covenant of Good Faith.....23

 2.029 Assignments24

2.030 General Provisions.....24

 2.031 Media Releases24

 2.032 Contract Distribution24

 2.033 Permits.....24

 2.034 Website Incorporation24

 2.035 Future Bidding Preclusion24

 2.036 Freedom of Information.....24

 2.037 Disaster Recovery.....24

2.040 Financial Provisions25

 2.041 Fixed Prices for Services/Deliverables.....25

 2.042 Adjustments for Reductions in Scope of Services/Deliverables25

 2.043 Services/Deliverables Covered25

 2.044 Invoicing and Payment.....25

 2.045 Pro-ration25

 2.046 Antitrust Assignment25

 2.047 Final Payment.....25

 2.048 Electronic Payment Requirement.....26

2.050 Taxes26

 2.051 Employment Taxes26

 2.052 Sales and Use Taxes.....26

2.060	Contract Management	26
2.061	Contractor Personnel Qualifications.....	26
2.062	Contractor Key Personnel.....	26
2.063	Re-assignment of Personnel at the State's Request.....	27
2.064	Contractor Personnel Location.....	27
2.065	Contractor Identification.....	27
2.066	Cooperation with Third Parties.....	27
2.067	Contractor Return of State Equipment/Resources.....	27
2.068	Contract Management Responsibilities.....	27
2.070	Subcontracting by Contractor	28
2.071	Contractor Full Responsibility.....	28
2.072	State Consent to Delegation.....	28
2.073	Subcontractor Bound to Contract.....	28
2.074	Flow Down.....	28
2.075	Competitive Selection.....	28
2.080	State Responsibilities	28
2.081	Equipment.....	28
2.082	Facilities.....	28
2.090	Security	29
2.091	Background Checks.....	29
2.092	Security Breach Notification.....	29
2.093	PCI Data Security Requirements – Reserved.....	29
2.100	Confidentiality	29
2.101	Confidentiality.....	29
2.102	Protection and Destruction of Confidential Information.....	29
2.103	Exclusions.....	30
2.104	No Implied Rights.....	30
2.105	Respective Obligations.....	30
2.110	Records and Inspections	30
2.111	Inspection of Work Performed.....	30
2.112	Examination of Records.....	30
2.113	Retention of Records.....	30
2.114	Audit Resolution.....	31
2.115	Errors.....	31
2.120	Warranties	31
2.121	Warranties and Representations.....	31
2.122	Warranty of Merchantability - Reserved.....	31
2.123	Warranty of Fitness for a Particular Purpose- Reserved.....	32
2.124	Warranty of Title - Reserved.....	32
2.125	Equipment Warranty - Reserved.....	32
2.126	Equipment to be New - Reserved.....	32
2.127	Prohibited Products - Reserved.....	32
2.128	Consequences For Breach.....	32
2.130	Insurance	32
2.131	Liability Insurance.....	32
2.132	Subcontractor Insurance Coverage.....	33
2.133	Certificates of Insurance and Other Requirements.....	33
2.140	Indemnification	34
2.141	General Indemnification.....	34
2.142	Code Indemnification.....	34
2.143	Employee Indemnification.....	34
2.144	Patent/Copyright Infringement Indemnification.....	34
2.145	Continuation of Indemnification Obligations.....	35
2.146	Indemnification Procedures.....	35
2.150	Termination/Cancellation	35
2.151	Notice and Right to Cure.....	35
2.152	Termination for Cause.....	36
2.153	Termination for Convenience.....	36
2.154	Termination for Non-Appropriation.....	36
2.155	Termination for Criminal Conviction.....	37
2.156	Termination for Approvals Rescinded.....	37
2.157	Rights and Obligations upon Termination.....	37
2.158	Reservation of Rights.....	37
2.160	Termination by Contractor	37
2.161	Termination by Contractor.....	37
2.170	Transition Responsibilities	38
2.171	Contractor Transition Responsibilities.....	38
2.172	Contractor Personnel Transition.....	38
2.173	Contractor Information Transition.....	38
2.174	Contractor Software Transition.....	38
2.175	Transition Payments.....	38

	2.176	State Transition Responsibilities	38
2.180		Stop Work	38
	2.181	Stop Work Orders	38
	2.182	Cancellation or Expiration of Stop Work Order	39
	2.183	Allowance of Contractor Costs.....	39
2.190		Dispute Resolution	39
	2.191	In General	39
	2.192	Informal Dispute Resolution	39
	2.193	Injunctive Relief.....	40
	2.194	Continued Performance	40
2.200		Federal and State Contract Requirements	40
	2.201	Nondiscrimination	40
	2.202	Unfair Labor Practices.....	40
	2.203	Workplace Safety and Discriminatory Harassment	40
	2.204	Prevailing Wage	40
2.210		Governing Law	41
	2.211	Governing Law	41
	2.212	Compliance with Laws	41
	2.213	Jurisdiction	41
2.220		Limitation of Liability	41
	2.221	Limitation of Liability.....	41
2.230		Disclosure Responsibilities	41
	2.231	Disclosure of Litigation	41
	2.232	Call Center Disclosure - Reserved	42
2.240		Performance	42
	2.241	Time of Performance - Reserved	42
	2.242	Service Level Agreements (SLAs) - Reserved	42
	2.243	Liquidated Damages - Reserved.....	42
	2.244	Excusable Failure	42
2.250		Approval of Deliverables	43
	2.251	Delivery Responsibilities - Reserved	43
	2.252	Delivery of Deliverables - Reserved.....	43
	2.253	Testing - Reserved.....	43
	2.254	Approval of Deliverables, In General	43
	2.255	Process For Approval of Written Deliverables.....	44
	2.256	Process for Approval of Services	44
	2.257	Process for Approval of Physical Deliverables	44
	2.258	Final Acceptance	44
2.260		Ownership	44
	2.261	Ownership of Work Product by State - Reserved.....	44
	2.262	Vesting of Rights - Reserved	44
	2.263	Rights in Data - Reserved.....	44
	2.264	Ownership of Materials - Reserved	44
2.270		State Standards	45
	2.271	Existing Technology Standards.....	45
	2.272	Acceptable Use Policy	45
	2.273	Systems Changes	45
2.280		Extended Purchasing	45
	2.281	MIDEAL- RESERVED.....	45
	2.282	State Employee Purchases - Reserved	45
2.290		Environmental Provision	45
	2.291	Environmental Provision	45
2.300		Other Provisions	46
	2.311	Forced Labor, Convict Labor, Forced or Indentured Child Labor, or Indentured Servitude Made Materials.....	46

DEFINITIONS

24x7x365 means 24 hours a day, seven days a week, and 365 days a year (including the 366th day in a leap year).

Additional Service means any Services within the scope of the Contract, but not specifically provided under any Statement of Work.

Audit Period means the seven year period following Contractor's provision of any work under the Contract.

Bidder(s) are those companies that submit a proposal in response to this RFP.

Business Day means any day other than a Saturday, Sunday or State-recognized legal holiday from 8:00am EST through 5:00pm EST unless otherwise stated.

Blanket Purchase Order is an alternate term for Contract and is used in the Plan Sponsors' computer system.

CCI means Contract Compliance Inspector.

Days means calendar days unless otherwise specified.

Deleted – N/A means that section is not applicable or included in this RFP. This is used as a placeholder to maintain consistent numbering.

Deliverable means physical goods and/or services required or identified in a Statement of Work.

DTMB means the Michigan Department of Technology Management and Budget.

Environmentally Preferable Products means a product or service that has a lesser or reduced effect on human health and the environment when compared with competing products or services that serve the same purpose. Such products or services may include, but are not limited to: those which contain recycled content, minimize waste, conserve energy or water, and reduce the amount of toxics either disposed of or consumed.

Hazardous Material means any material defined as hazardous under the latest version of federal Emergency Planning and Community Right-to-Know Act of 1986 (including revisions adopted during the term of the Contract).

Incident means any interruption in any function performed for the benefit of a Plan Sponsor.

Key Personnel means any personnel identified in **Section 1.031** as Key Personnel.

New Work means any Services/Deliverables outside the scope of the Contract and not specifically provided under any Statement of Work, such that once added will result in the need to provide the Contractor with additional consideration. "New Work" does not include Additional Service.

Ozone-depleting Substance means any substance the Environmental Protection Agency designates in 40 CFR part 82 as: (1) Class I, including, but not limited to, chlorofluorocarbons, halons, carbon tetrachloride, and methyl chloroform; or (2) Class II, including, but not limited to, hydrochlorofluorocarbons.

Post-Consumer Waste means any product generated by a business or consumer which has served its intended end use; and which has been separated or diverted from solid waste for the purpose of recycling into a usable commodity or product, and which does not include post-industrial waste.

Post-Industrial Waste means industrial by-products which would otherwise go to disposal and wastes generated after completion of a manufacturing process, but does not include internally generated scrap commonly returned to industrial or manufacturing processes.

Recycling means the series of activities by which materials that are no longer useful to the generator are collected, sorted, processed, and converted into raw materials and used in the production of new

products. This definition excludes the use of these materials as a fuel substitute or for energy production.

Reuse means using a product or component of municipal solid waste in its original form more than once.

RFP means a Request for Proposal designed to solicit proposals for services.

Services means any function performed for the benefit of the State.

SLA means Service Level Agreement.

Source Reduction means any practice that reduces the amount of any hazardous substance, pollutant, or contaminant entering any waste stream or otherwise released into the environment prior to recycling, energy recovery, treatment, or disposal.

State Location means any physical location where the State performs work. State Location may include state-owned, leased, or rented space.

Subcontractor means a company selected by the Contractor to perform a portion of the Services, but does not include independent contractors engaged by Contractor solely in a staff augmentation role.

Unauthorized Removal means the Contractor's removal of Key Personnel without the prior written consent of the State.

Waste Prevention means source reduction and reuse, but not recycling.

Pollution Prevention means the practice of minimizing the generation of waste at the source and, when wastes cannot be prevented, utilizing environmentally sound on-site or off-site reuse and recycling. The term includes equipment or technology modifications, process or procedure modifications, product reformulation or redesign, and raw material substitutions. Waste treatment, control, management, and disposal are not considered pollution prevention, per the definitions under Part 143, Waste Minimization, of the Natural Resources and Environmental Protection Act (NREPA), 1994 PA 451, as amended.

Work in Progress means a Deliverable that has been partially prepared, but has not been presented to the State for Approval.

Work Product refers to any data compilations, reports, and other media, materials, or other objects or works of authorship created or produced by the Contractor as a result of an in furtherance of performing the services required by the Contract.

Article 1 – Statement of Work (SOW)

1.010 PROJECT IDENTIFICATION

1.011 Project Request

Provide services for the harvesting of salmon and surplus salmon eggs, from six (6) different harvest and egg-taking weirs located on five (5) different streams in Michigan, for approximately three (3) years, from 5/1/2012 through 5/31/2015.

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. This is an RFP to solicit professional services to 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 RFP. The salmon and salmon eggs harvested 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. This is a formal request to prospective Bidders to solicit proposals for this project. Bidders must submit written proposals according to the instructions contained within this document, discussing how they will meet the specific requirements.

Any awarded Contract(s) between the State and any awarded Contractor(s) is a separate document, whose terms are limited by Article 2.

1.012 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 habitat and food may occur in some instances between resident trout and anadromous salmon.

A large number of the 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 the 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.

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.

1.020 SCOPE OF WORK AND DELIVERABLES

1.021 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 RFP 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*)
- 2) Lower Platte River Harvest Weir (*Benzie County*)
- 3) Platte River Fish Hatchery (*Benzie County*)
- 4) Boardman River Harvest Weir (*Grand Traverse County*)
- 5) Medusa Creek Harvest Weir (*Charlevoix County*)
- 6) Swan River Harvest Weir/Egg Taking Station (*Presque Isle County*)

For the past three years, an average of 270,493 total pounds of salmon (range 113,210 to 397,548 pounds) and an average of 23,706 pounds of eggs (range 6,484 to 41,373 pounds) were harvested each year.

Contractor Response: Contractor shall acknowledge they understand the overall scope of work and are capable of providing the services as requested.

American Canadian Fisheries understands the fish and Salmon eggs will be harvested from five different stream locations around the lower Peninsula of the State of Michigan. We understand the requirements involved in the collection and transport of large numbers of Salmon and Salmon eggs. We will supply the totes and ice, trucks and trailers, labor people, foreman, guards and utilities to perform all the duties of the contract. We have many years of experience removing Salmon under contract in four States.

1.022 Work and Deliverable

Contractor must 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.

Fish totes, ice and transport trucks must be available at the weir the morning of any scheduled harvest or egg take operation.

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 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; DNR Weir Supervisors may request additional totes for designated weirs sites as needed. All totes must be of a suitable quality, as determined by the DNR Weir Supervisor, to hold and transport the fish without breaking.

Contractor Response: Contractor shall state they size, type and weight capacity of totes which they plan to use to transport fish. Bidder agrees to make extra totes available per the above specification.

American Canadian uses only food grade plastic totes and we use only one size, 40X48X29 high. We use uniform size plastic five gallon buckets for loose egg removal. These totes will hold if iced for human consumption fish 850# net weight. For fish disposal use like mortalities, these totes will hold up to 1200# if not iced. We can leave any number of totes at the fish collection areas as requested by hatchery staff.

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.

Contractor Response: Contractor shall state they understand the method of determining weight for both the salmon and the eggs and agree to the method to be used.

American Canadian understands the system and method and agrees to its use to determine fish and egg weights. We do recommend in sites that have access to a scale to place bottom ice into the tote four to five inches deep then zero the scale. Then add the fish up to about four inches from the top of the tote then get the weight. Then top off the tote with ice and it is ready to be loaded into the truck. Doing this will provide real weights and good average weight estimations for sites that do not have a scale. The trick is to always load the totes the same way.

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 the 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 On-Site Coordinator.

Contractor Response: Contractor shall state who they intend to have hauling and how they will be identified. Contractor must also provide plan to request DNR approval if another hauler is used.

American Canadian will as always do it's own trucking to service the Michigan contract. Our trucks will be identified by the use of company decals on the doors and the drivers will have on their person company ID cards. We have no intention to use an outside hauler or common carrier.

Shipments of surplus salmon directly from the weir to multiple locations, or local fish retail operations without passing thru the processing facility will not be permitted unless prior arrangements have been made with the DNR On-Site Coordinator. In such cases where this is allowed the contractor is required complete the Salmon Shipping Report and have it signed by a DNR Representative prior to the shipment leaving the Weir.

Contractor Response: Contractor shall agree that they understand and agree to the above. Contractors are encouraged to provide details as to if they intend to use this process and if so, how often.

All hatchery fish from this contract must go through our processing facility before any kind of distribution can take place. In the event it was required to bypass the production facility we would fill out the required paperwork from the weir or hatchery and our own bill of lading. Even pond mortalities will go to the plant for inspection, reloading and then disposal.

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.

Contractor Response: Contractor shall state they understand the requirements for icing and the penalty if not done within 24 hours.

We are aware of all icing requirements and will remove all fish the same day of the harvest. We understand we could be charged by the State for all fish removal cost in the event we failed

to remove this fish under the terms of the contract. We would also be in violation of our HACCP plan without the proper use of ice. Ice use is mandatory except for pond mortalities.

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 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: (All subject to DNR approval)

- 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

Contractor Response: Contractor shall provide a detailed plan on how and where they will set up the processing facility, the equipment which will be used, water sources, electrical resources and how they intend to control the noise level.

A 500 square foot area is set up adjacent to our processing area in the new plant located in Traverse City Michigan. This area is in full compliance with all items listed above. Excessive noise is unlikely but in that event we will supply any type of ear protection required by the State. We further understand the season start and end dates can vary and agree to cover the full season.

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 Response: Contractor shall state that they understand the details which they will need to provide on the Salmon Shipping Report and that the report MUST be signed by a DNR representative.

American Canadian understands and agrees to have the completed Salmon shipping report, including fish and egg weights estimated or weighed including tote counts, fish counts if needed and signed off by DNR management. And any other paperwork needed for our system.

As part of the Contractor duties and the proposal costs they 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 as needed and requested by the DNR. (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).

Contractor Response: Contractor shall provide the name and the key person to be assigned and that they understand the duties this person must perform under this contract.

American Canadian will be using Melody Sloan in this roll. She will be assigned by our Project leader John Zollner to work with DNR staff to perform all duties required. In the event melody could not Report for work we would supply another person from internal staff at the plant. There is a chance that Carla Zollner (John's wife) may return this year and fill that position.

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.

- A. 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. At the most extreme, the requirements for labor include the ability of some of the harvesters to lift up to 40 pounds of fish, sometimes above head level.

Contractor Response: Contractor shall state they understand the normal harvesting hours, that they may need to work other times at the discretion of the DNR and that some of the laborers may have to help with physically demanding activities.

American Canadian understands that start and end dates may change, hours of operation by the DNR may change, we may need to supply labor on weekends and Hollidays and the work may heavy at times.

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 Response: Contractor shall state they understand terms and conditions of this contract as well as all laws they must adhere to when selling the fish or fish eggs.

We do understand these laws and will continue to operate utilizing the Good Manufacturing Practices built into our HACCP operated facility. We do not operate in any area outside of Michigan that could create a possibility of mixing other fish products with those recovered within this contract. We clearly label all products coming from the contract as produced in Michigan. We understand the terms and conditions of the contract and agree to comply with them.

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

Contractor Response: Contractor shall provide a detailed plan for making salmon available to Michigan fish markets, food banks and/or other charitable organizations.

American Canadian has been and will continue to produce human consumption fish for retail outlets and local food bank groups. We use local talk media and the newspaper to keep people advised of our activities and opportunities for free and wholesale fish products. We have been able to move all available fish in this fashion. At the processing plant we grade the fish as we work through it and save the best quality fish for sales and food banks. This fish is made available at our plant and is normally picked up by interested parties on a daily or as available basis depending on DNR harvesting activities.

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 must be dyed a color approved by the Director of the Michigan Department of Agriculture prior to sale.

Contractor Response: Contractor must state they understand and agree to the requirements for testing of contaminants.

American Canadian fisheries is aware of food safety testing and we do some test work on this fish every year. Butch Scalzo did the early testing and found no contaminates above maximum allowable levels. We continued this testing with no issues. If we had an issue we would share all test data with the DNR. As stated, none of the fish we have tested has ever been found to have high levels of anything affecting food safety. However, we do use a high percentage of this fish for pet food and would hope the state would never require us to use dye on any of this fish.

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 purpose 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 and 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 September 30, 2011, by the DEQ's Solid Waste and Land Application Section Chief, **Steven Sliver**. Copies may be obtained from the following website location (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 On-Site Coordinator for this project (see §1.202, *State Staff*).

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 legal and regulatory requirements.

Contractor Response: Contractor must state they understand and agree to the requirements for the disposal of waste.

We do understand and agree to the standers above. Our new plant is located at 2375 Rice Street, Traverse City Michigan and is connected to the local sewer system. We do not land apply any waste water. Any solid waste goes to the Manistee County land fill.

F. Equipment and Supplies

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 needed to comply with MIOSHA standards

Contractor Response: Contractor agrees to provide their laborers with all of the items listed above as well as any other supplies needed to carry out this project.

American Canadian agrees to continue to supply any and all supplies, rain gear, waders, hats and badges as needed or required by the DNR.

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.

Contractor Response: Contractor must provide a list of the equipment they intend to use in carrying out this contract.

American Canadian agrees to supply all compliant forklifts for outside use were ever needed. We will provide all the fish totes and ice required to remove the fish from the hatcheries. We will provide all trucks, trailers, pallet jacks ice chippers and shovels. We have the processing plant ready to go with all required processing equipment needed to process the fish and eggs. We have cold storage capability at the plant. We will also supply portable toilets at the weirs where needed and supply utilities and partial phone cost.

1.2 ROLES AND RESPONSIBILITIES

1.201 Contractor Staff Roles and Responsibilities

- 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:
 - a. Foreman (supervision);
 - b. Watchman (security and monitoring);
 - c. Laborer(s):
 - i. General labor
 - ii. Egg-take labor, and
 - iii. Equipment operation labor
- E. 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). Bidder must identify below who will be licensed to operate the forklift.**

Contractor Response to Task: Contractor must provide the names of each staff member assigned to this project at each Weir and within the Processing Facility for the 2012 season. Their roles and a brief description of their responsibilities must be provided and contact information

Little Manistee/river Harvest Weir

Name	Role/Responsibility	Contact Information
<u>Larry Froncek</u>	<u>Foreman</u>	<u>423 Main Street, Eastlake Mi.</u>
	<u>Oversee all aspects of the</u>	<u>49626</u>
	<u>Operation under the</u>	<u>Phone 231-510-2732</u>
	<u>direction of the DNR.</u>	

Boardman River Harvest Weir

Name	Role/Responsibility	Contact Information
<u>Johnny Johnson</u>	<u>Foreman</u>	<u>5515 East Lincoln Road</u>
	<u>Oversee all aspects of the</u>	<u>Ceder Mi. 49621</u>
	<u>Operation in cooperation with</u>	<u>Phone 231-409-2850</u>
	<u>and direction of the DNR.</u>	

Medusa Creek Harvest Weir

Name	Role/Responsibility	Contact Information
<u>Roy Straw</u>	<u>Foreman</u>	<u>Phone 231-633-6072</u>
	<u>Oversee all aspects of the</u>	
	<u>operation in cooperation with and</u>	<u>New address pending</u>
	<u>direction of the DNR.</u>	

Lower Platte Pier Harvest Weir

Name	Role/Responsibility	Contact Information
<u>Robert Morrow</u>	<u>Foreman</u>	<u>Phone 231-378-2106</u>
	<u>Oversee all aspects of the</u>	
	<u>operation in cooperation with and</u>	
	<u>Direction of the DNR.</u>	

Platte River State Fish Hatchery

Name	Role/Responsibility	Contact Information
<u>Robert Maorrow</u>	<u>Foreman</u>	<u>17529 Wallin Road,</u>
	<u>Oversee all aspects of the</u>	<u>Thompsonville Mi.</u>
	<u>Operation in cooperation with</u>	<u>49683</u>
	<u>and direction of the DNR.</u>	<u>Phone 231-378-2106</u>

Swan River Harvest Weir

Name	Role/Responsibility	Contact Information
<u>Jim Cherrette</u>	<u>Foreman</u>	<u>Phone 989-351-9295</u>
	<u>Oversee all aspects of the</u>	
	<u>Operation in cooperation with</u>	<u>New address pending</u>
	<u>and direction of the DNR.</u>	

Processing Plant

Name	Role/Responsibility	Contact Information
<u>John Zollner</u>	<u>Project manager</u>	<u>Plant address: 2375 Rice Street</u>
	<u>Oversee the entire project to</u>	<u>Travers City Michigan 49684.</u>
	<u>include all field/weir operations</u>	<u>Cell phone 360-510-9087</u>
	<u>trucking and processing plant</u>	<u>Will advise plant phone when</u>
	<u>operations.</u>	<u>We are open.</u>

1.3 PROJECT PLAN

1.301 Project Plan Management

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
- ❖ 24 hours at all other weirs

In late July or early August, The Contractor and their 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.

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 with DNR staff; etc.);
- IV. Location Operation Plan (for each location):
 - a. **Operational Plan**, which describes in detail:
 - i. Overall service implementation (for each component or service-task)
 - ii. Wastewater treatment
 - iii. Issues specific to location
 - b. **Staffing Plan**, which includes:
 - i. Personnel Names
 - ii. Background checks/disclosures
 - iii. Roles/Position
 - iv. Projected hours of work for each position
 - v. Calendar/schedule
 - c. **Supplies**
 - i. List supplies which will be provided to staff
 - ii. List supplies which will be provided for use during the project period
 - d. **Equipment**
 - i. List equipment which will be used to carry out this project.
- V. Annual Project Summary (overall): Including (but not limited to) analysis of Operations, Issues, Risks, and Recommended Changes;

Contractor Response:

American Canadian agrees to supply the Work Plan for the first year of the new contract at the July preseason meeting with the DNR.

1.302 Reports

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

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 to be held in accordance with section 1.301.

Bi-Weekly Phone Updates:

Contractor must phone updates in bi-weekly to Project Manager Ed Eisch during the fall salmon harvest. These updates should include a brief 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.

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. The report must also detail the total number of pounds of fish and the total number of pounds of eggs harvested at all weirs combined. These numbers will be used to construct the final billing invoice for the season.

Other:

Contractor shall provide any other reports as may be directed by the DNR Project Manager or any of the DNR On-Site Coordinators.

Contractor Response: Contractor must state they understand and agree to the above reporting requirements.

American Canadian Fisheries will provide the reporting above as required by phone to Ed Eisch and Provide the Final Distribution Report along with the last invoice.

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.

Contractor Response: Contractor must define the issue escalation process which they will use should it be necessary. Response must include the various steps, contact information, etc.

If any operational issue arose in a weir or hatchery, the first contact with American Canadian should be directed to the weir foreman in control at that facility. You will have those numbers on file. The next level would be a call to our Project Manager John Zollner, 360-510-9087, located in our plant in Traverse City Mi. The last call would be to Garrett H. Reynolds at the home office in Bellingham Wa. That number is 360-815-5274. If a more serious issue came up such as an accident or a serious injury, first call to John Zollner and Garrett H. Reynolds. If the issue were political in nature, some kind of a news release or contractual issue, call Garrett H. Reynolds first.

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:

Contractor Response: Contractor must define the risk management process which they will use should it be necessary. Response must include the various steps, contact information, etc.

The risk factors regarding our ability to perform the duties of this contract vary greatly depending on what portions of our operation you look at. From my point of view the concern for the DNR is, can we perform allowing for the normal unexpected accidents, power outages, and flooding that can effect hatchery and weir operations? Our weir foreman and lead people will be watching for safety hazards in the work areas. They would report problems to DNR or American Canadian staff depending on what the problem was. If an accident caused the loss of an employee we would replace that person from the temp service. As a matter of fact we have back up people that can be

in place on very short notice. If the issue was of a more catastrophic nature such as a fire causing the loss of our production facility, we do have the ability to move into another building or cold storage and could have equipment in place to continue production in a week.

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:

Acceptance will be when the Salmon Shipping Report has been signed by the DNR Representative.

1.502 Final Acceptance

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

Upon successful completion of the harvest season, the contractor will provide the DNR with final Distribution Report and final invoice.

1.6 Proposal Pricing

1.601 Proposal Pricing

For authorized Services and Price List, see Attachment A.

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 the expense at the State's current travel reimbursement rates. See www.michigan.gov/dtmb for current rates.

1.062 Price Term

Prices quoted are the maximum for a period of 365 days from the date the Contract becomes effective.

Prices are subject to change at the end of each 365-day period. Such changes must be based on changes in actual costs incurred. Documentation of such changes must be provided with the request for price change in order to substantiate any requested change. DNR-Procurement reserves the right to consider various pertinent information sources to evaluate price increase requests (such as the CPI and PPI, US City Average, as published by the US Department of Labor, Bureau of Labor Statistics). DNR-Procurement also reserves the right to consider other information related to special economic and/or industry circumstances, when evaluating a price change request. Changes may be either increases or decreases, and may be requested by either party. Approved changes must be firm for the remainder of the Contract period unless further revised at the end of the next 365-day period. Requests for price changes must be RECEIVED IN WRITING AT LEAST 10 DAYS PRIOR TO THEIR EFFECTIVE DATE, and are subject to written acceptance before becoming effective. In the event new prices are not acceptable, the Contract may be cancelled. **The Contractor remains responsible for performing according to the Contract terms at the Contract price for all orders received before price revisions are approved or before the Contract is cancelled.**

1.7 Additional Terms and Conditions Specific to the SOW — Reserved

Article 2, Terms and Conditions

2.010 Contract Structure and Term

2.011 Contract Term

The Contract is for a period of three (3) years beginning July 20, 2012 through July 19, 2015. All outstanding Purchase Orders must also expire upon the termination (cancellation for any of the reasons listed in **Section 2.150**) of the Contract, unless otherwise extended under 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.

2.002 Options to Renew

The Contract may be renewed in writing by mutual agreement of the parties not less than 30 days before its expiration. The Contract may be renewed for up to five (5) additional one (1) year periods.

2.003 Legal Effect

Contractor must show acceptance of the Contract by signing two (2) copies of the Contract and returning them to the Contract Administrator. The Contractor must not proceed with the performance of the work to be done under the Contract, including the purchase of necessary materials, until both parties have signed the Contract to show acceptance of its terms, and the Contractor receives a Contract release/purchase order that authorizes and defines specific performance requirements.

Except as otherwise agreed in writing by the parties, the State assumes no liability for costs incurred by Contractor or payment under the Contract, until Contractor is notified in writing that the 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.

2.004 Attachments & Exhibits

All Attachments and Exhibits affixed to any and all Statement(s) of Work, or appended to or referencing the Contract, are incorporated in their entirety and form part of the Contract.

2.005 Ordering

The State will issue a written Purchase Order, Blanket Purchase Order, Direct Voucher or Procurement Card Order, which must be approved by the Contract Administrator or the Contract Administrator's designee, to order any Services/Deliverables under the Contract. All orders are subject to the terms and conditions of the Contract. No additional terms and conditions contained on either a Purchase Order or Blanket Purchase Order apply unless they are also specifically contained in that Purchase Order's or Blanket Purchase Order's accompanying Statement of Work. Exact quantities to be purchased are unknown; however, the Contractor must furnish all such materials and services as may be ordered during the CONTRACT period. Quantities specified, if any, are estimates based on prior purchases, and the State is not obligated to purchase in these or any other quantities.

2.006 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 the subject matter and as additional terms and conditions on the purchase order must apply as limited by **Section 2.005**.

(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 the Contract, which may be modified or amended only by a formal Contract amendment.

2.007 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.

2.008 Form, Function & 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.

2.009 Reformation and Severability

Each provision of the Contract is severable from all other provisions of the Contract and, if one (1) or more of the provisions of the Contract is declared invalid, the remaining provisions of the Contract remain in full force and effect.

2.010 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, the consent or approval must be in writing and must not be unreasonably withheld or delayed.

2.011 No Waiver of Default

If a party fails to insist upon strict adherence to any term of the Contract then the party has not waived the right to later insist upon strict adherence to that term, or any other term, of the Contract.

2.012 Survival

Any provisions of the Contract that impose continuing obligations on the parties, including without limitation the parties' respective warranty, indemnity and confidentiality obligations, 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.

2.020 Contract Administration

2.021 Issuing Office

The Contract is issued by the Department of Natural Resources, Procurement Services. DNR-Procurement Services is the sole point of contact in the State with regard to all procurement and contractual matters relating to the Contract. **DNR-Procurement Services is the only State office authorized to change, modify, amend, alter or clarify the prices, specifications, terms and conditions of the Contract.** The Contractor Administrator within DNR-Procurement Service for the Contract is:

Jana Harding-Bishop
Procurement Services
Department of Natural Resources
Mason Bldg, 6th Floor
PO Box 30028
Lansing, MI 48909
Email: HardingJ3@michigan.gov
Phone: 517-373-1190

2.022 Contract Compliance Inspector

After DNR-Procurement Service receives the properly executed Contract, it is anticipated that the Director of Procurement Service, in consultation with (Department of Natural Resources), will direct the person named below, or any other person so designated, to monitor and coordinate the activities for the Contract on a day-to-day basis during its term. However, monitoring of the Contract implies **no authority to change, modify, clarify, amend, or otherwise alter the prices, terms, conditions and specifications of the Contract as that authority is retained by DNR Procurement Service.** The CCI for the Contract is:

Marlene Sublet-Bennett, Contract Compliance Inspector
Fisheries Division
Southfield Operations Service Center
26000 W. Eight Mile Road
Southfield, MI 48034
Email: sublet-bennettm@michigan.gov
Phone: 248-359-9062
Fax: 248-355-2669

2.023 Project Manager

The following individual will oversee the project:

Edward Eisch, Project Manager and
Northern Lower Peninsula Hatchery Manager

Platte River State Fish Hatchery
15210 U.S.-31
Beulah, MI 49617
Email: eische@michigan.gov
Phone: 231-325-4611, ext. 14
Fax: 231-325-2111

2.024 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 Contractor does not so notify the State, the Contractor has no right to claim thereafter that it is entitled to additional compensation for performing that service or providing that deliverable.

Change Requests:

- (a) By giving Contractor written notice within a reasonable time, the State must be entitled to accept a Contractor proposal for Change, to reject it, or to reach another agreement with Contractor. Should the parties agree on carrying out a Change, a written Contract Change Notice must be prepared and issued under the Contract, describing the Change and its effects on the Services and any affected components of the Contract (a "Contract Change Notice")?
- (b) No proposed Change may be performed until the proposed Change has been specified in a duly executed Contract Change Notice issued by the DNR-Procurement Service.
- (c) If the State requests or directs the Contractor to perform any activities that Contractor believes constitute a Change, the Contractor must notify the State that it believes the requested activities are a Change before beginning to work on the requested activities. If the Contractor fails to notify the State before beginning to work on the requested activities, then the Contractor waives any right to assert any claim for additional compensation or time for performing the requested activities. If the Contractor commences performing work outside the scope of the Contract and then ceases performing that work, the Contractor must, at the request of the State, retract any out-of-scope work that would adversely affect the Contract.

2.025 Notices

Any notice given to a party under the Contract must be deemed effective, if addressed to the State contact as noted in Section 2.021 and the Contractor's contact as noted on the cover page of the contract, 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 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.

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

2.026 Binding Commitments

Representatives of Contractor must have the authority to make binding commitments on Contractor's behalf within the bounds set forth in the Contract. Contractor may change the representatives from time to time upon written notice.

2.027 Relationship of the Parties

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 must be deemed to be an employee, agent or servant of the State for any reason. Contractor is solely and entirely responsible for its acts and the acts of its agents, employees, servants and Subcontractors during the performance of the Contract.

2.028 Covenant of Good Faith

Each party must act reasonably and in good faith. Unless stated otherwise in the Contract, the parties must 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.

2.029 Assignments

- (a) Neither party may assign the Contract, or 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 the affiliate is adequately capitalized and can provide adequate assurances that the affiliate can perform the requirements of the Contract. The State may withhold consent from proposed assignments, subcontracts, or notations when the 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. If the State permits an assignment, the Contractor is not relieved of its responsibility to perform any of its contractual duties, and the requirement under the Contract that all payments must be made to one (1) entity continues.
- (c) If the Contractor intends to assign the Contract or any of the Contractor's rights or duties under the Contract, the Contractor must notify the State in writing at least 90 days before the assignment. The Contractor also must provide the State with adequate information about the assignee within a reasonable amount of time before the assignment for the State to determine whether to approve the assignment.

2.030 General Provisions

2.031 Media Releases

News releases (including promotional literature and commercial advertisements) pertaining to the RFP and Contract or project to which it relates must not be made without prior written State approval, and then only in accordance with the explicit written instructions from the State. No results of the activities associated with the RFP and Contract are to be released without prior written approval of the State and then only to persons designated.

2.032 Contract Distribution

Procurement Service retains the sole right of Contract distribution to all State agencies and local units of government unless other arrangements are authorized by Procurement Service.

2.033 Permits

Contractor must 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 must pay for all costs and expenses incurred in obtaining and maintaining any necessary easements or right of way.

2.034 Website Incorporation

The State is not 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 the content and has expressly agreed to be bound by it in a writing that has been manually signed by an authorized representative of the State.

2.035 Future Bidding Preclusion

Contractor acknowledges that, to the extent the 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 competitive advantage on the RFP

2.036 Freedom of Information

All information in any proposal submitted to the State by Contractor and the Contract is subject to the provisions of the Michigan Freedom of Information Act, 1976 PA 442, MCL 15.231, et seq (the "FOIA").

2.037 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 the Contract must provide the State with priority service for repair and work around in the event of a natural or man-made disaster.

2.040 Financial Provisions

2.041 Fixed Prices for Services/Deliverables

Each Statement of Work or Purchase Order issued under the Contract must 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. 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.

2.042 Adjustments for Reductions in Scope of Services/Deliverables

If the scope of the Services/Deliverables under any Statement of Work issued under the Contract is subsequently reduced by the State, the parties must negotiate an equitable reduction in Contractor's charges under such Statement of Work commensurate with the reduction in scope.

2.043 Services/Deliverables Covered

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

2.044 Invoicing and Payment

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 the 3rd Monday in August. 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 shall indicate that all weirs stand ready for operations.)
- The **second invoice** will not exceed 25% of the harvest project, and will be submitted on the 3rd Monday in September.
- The third invoice will not exceed 25% of the harvest project, and will be submitted on the 3rd Monday in October.
- 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 telephone and utility charges for the contract period and the per pound fee for the salmon and eggs harvested throughout the contract period.

2.045 Pro-ration

To the extent there are any Services that are to be paid for on a monthly basis, the cost of such Services must be pro-rated for any partial month.

2.046 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 the Contract.

2.047 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 (1) party against the other arising from unsettled claims or failure by a party to comply with the 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 the Contract must constitute a waiver of all claims by Contractor against the State for payment under the Contract, other than those claims previously filed in writing on a timely basis and still unsettled.

2.048 Electronic Payment Requirement

Electronic transfer of funds is required for payments on State contracts. The Contractor must register with the State electronically at <http://www.cpexpress.state.mi.us>. As stated in 1984 PA 431, all contracts that the State enters into for the purchase of goods and services must provide that payment will be made by Electronic Fund Transfer (EFT).

2.050 Taxes

2.051 Employment Taxes

Contractors are expected to collect and pay all applicable federal, state, and local employment taxes.

2.052 Sales and Use Taxes

Contractors are required to be registered and to remit sales and use taxes on taxable sales of tangible personal property or services delivered into the State. Contractors that lack sufficient presence in Michigan to be required to register and pay tax must do so as a volunteer. This requirement extends to: (1) all members of any controlled group as defined in § 1563(a) of the Internal Revenue Code and applicable regulations of which the company is a member, and (2) all organizations under common control as defined in § 414(c) of the Internal Revenue Code and applicable regulations of which the company is a member that make sales at retail for delivery into the State are registered with the State for the collection and remittance of sales and use taxes. In applying treasury regulations defining "two (2) or more trades or businesses under common control" the term "organization" means sole proprietorship, a partnership (as defined in § 701(a)(2) of the Internal Revenue Code), a trust, an estate, a corporation, or a limited liability company.

2.060 Contract Management

2.061 Contractor Personnel Qualifications

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

2.062 Contractor Key Personnel

(a) The Contractor must provide the CCI with the names of the Key Personnel.

(b) Key Personnel must be dedicated as defined in the Statement of Work 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.

(c) The State reserves 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 must notify the State of the proposed assignment, must introduce the individual to the appropriate State representatives, and must 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 must provide a written explanation including reasonable detail outlining the reasons for the rejection.

(d) Contractor must not remove any Key Personnel from their assigned roles on the Contract without the prior written consent of the State. The Contractor's removal of Key Personnel without the prior written

consent of the State is an unauthorized removal ("Unauthorized Removal"). Unauthorized Removals does not include replacing Key Personnel for reasons beyond the reasonable control of Contractor, including illness, disability, leave of absence, personal emergency circumstances, and resignation or for cause termination of the Key Personnel's employment. Unauthorized Removals does not include replacing Key Personnel 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 30 days of shadowing unless parties agree to a different time period. The Contractor with the State must review any Key Personnel replacements and appropriate transition planning must 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 termination and cancellation rights.

(e) The Contractor must notify the Contract Compliance Inspector and the Contract Administrator at least 10 business days before redeploying non-Key Personnel, who are dedicated to primarily to the Project, to other projects. If the State does not object to the redeployment by its scheduled date, the Contractor may then redeploy the non-Key Personnel.

2.063 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 must be written with reasonable detail outlining the reasons for the removal request. Additionally, the State's request must be based on legitimate, good-faith reasons. Replacement personnel for the removed person must 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 incident with removed personnel results in delay not reasonably anticipatable under the circumstances and which is attributable to the State, the applicable SLAs for the affected Service will not be counted for a time as agreed to by the parties.

2.064 Contractor Personnel Location

All staff assigned by Contractor to work on the Contract must perform their duties either primarily at Contractor's offices and facilities or at State facilities. Without limiting the generality of the foregoing, Key Personnel must, 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.

2.065 Contractor Identification

Contractor employees must 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.

2.066 Cooperation with Third Parties

Contractor must 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. As reasonably requested by the State in writing, the Contractor must provide to the State's agents and other contractors reasonable access to Contractor's Project personnel, systems and facilities to the extent the access relates to activities specifically associated with the Contract and will not interfere or jeopardize the safety or operation of the systems or facilities. The State acknowledges that Contractor's time schedule for the Contract is very specific and must not unnecessarily or unreasonably interfere with, delay, or otherwise impede Contractor's performance under the Contract with the requests for access.

2.067 Contractor Return of State Equipment/Resources

The Contractor must return 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.

2.068 Contract Management Responsibilities

The Contractor must assume responsibility for all contractual activities, whether or not that Contractor performs them. Further, the State considers the Contractor to be the sole point of contact with regard to contractual matters, including payment of any and all charges resulting from the anticipated Contract. If any part of the work is to be subcontracted, the Contract must include a list of Subcontractors, including firm name and address, contact person and a complete description of work to be subcontracted. The State reserves the right to approve Subcontractors and to require the Contractor to replace Subcontractors found to be unacceptable. The Contractor is totally responsible for adherence by the

Subcontractor to all provisions of the Contract. Any change in Subcontractors must be approved by the State, in writing, prior to such change.

2.070 Subcontracting by Contractor

2.071 Contractor Full Responsibility

Contractor has 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 the Contract, including payment of any and all charges for Services and Deliverables.

2.072 State Consent to Delegation

Contractor must not delegate any duties under the Contract to a Subcontractor unless the DNR-Procurement Service has given written consent to such delegation. The State reserves the right of prior 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 must be written with reasonable detail outlining the reasons for the removal request. Additionally, the State's request must be based on legitimate, good-faith reasons. Replacement Subcontractor(s) for the removed Subcontractor must 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. If any such incident with a removed Subcontractor results in delay not reasonable anticipatable under the circumstances and which is attributable to the State, the applicable SLA for the affected Work will not be counted for a time agreed upon by the parties.

2.073 Subcontractor Bound to Contract

In any subcontracts entered into by Contractor for the performance of the Services, Contractor must require the Subcontractor, to the extent of the Services to be performed by the Subcontractor, to be bound to Contractor by the terms of the Contract and to assume toward Contractor all of the obligations and responsibilities that Contractor, by the 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 is the responsibility of Contractor, and Contractor must remain responsible for the performance of its Subcontractors to the same extent as if Contractor had not subcontracted such performance. Contractor must 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 the Contract will not relieve Contractor of any obligations or performance required under the Contract.

2.074 Flow Down

Except where specifically approved in writing by the State on a case-by-case basis, Contractor must flow down the obligations in **Sections 2.031, 2.060, 2.100, 2.110, 2.120, 2.130, 2.200** in all of its agreements with any Subcontractors.

2.075 Competitive Selection

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

2.080 State Responsibilities

2.081 Equipment

The State must provide only the equipment and resources identified in the Statements of Work and other Contract Exhibits.

2.082 Facilities

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

Facilities or access any State information systems provided for the Contractor's use, or to which the Contractor otherwise gains access in the course of performing the Services, for any purpose other than providing the Services to the State.

2.090 Security

2.091 Background Checks

On a case-by-case basis, the State may investigate the Contractor's personnel before they may have access to State facilities and systems. 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. The 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 must comply with the State's security and acceptable use policies for State IT equipment and resources. See <http://www.michigan.gov/dit>. Furthermore, Contractor personnel must 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. The Contractor must present these documents to the prospective employee before the Contractor presents the individual to the State as a proposed resource. Contractor staff must comply with all Physical Security procedures in place within the facilities where they are working.

2.092 Security Breach Notification

If the Contractor breaches this Section, the Contractor must (i) promptly cure any deficiencies and (ii) comply with any applicable federal and state laws and regulations pertaining to unauthorized disclosures. Contractor and the State will cooperate to mitigate, to the extent practicable, the effects of any breach, intrusion, or unauthorized use or disclosure. Contractor must 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 10 days of becoming aware of the use or disclosure or the shorter time period as is reasonable under the circumstances.

2.093 PCI Data Security Requirements – Reserved

2.100 Confidentiality

2.101 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 must 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 must mean any information which is retained in confidence by the State (or otherwise required to be held in confidence by the State under applicable federal, state and local laws and regulations) or which, in the case of tangible materials provided to Contractor by the State under its performance under the Contract, is marked as confidential, proprietary, or with a similar designation by the State. "Confidential Information" excludes any information (including the Contract) that is publicly available under the Michigan FOIA.

2.102 Protection and Destruction of Confidential Information

The State and Contractor must 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 the 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 must limit disclosure of the other party's Confidential Information to employees and Subcontractors who must have access to fulfill the purposes of the Contract. Disclosure to, and use by, a Subcontractor is permissible where (A) use of a Subcontractor is authorized under the Contract, (B) the disclosure is necessary or otherwise naturally occurs in connection with work that is within the 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 the Confidential Information from unauthorized use or disclosure.

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

2.103 Exclusions

Notwithstanding the foregoing, the provisions of **Section 2.100** 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 the 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 **Section 2.100** will not apply to any particular Confidential Information to the extent the receiving party is required by law to disclose the 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 the disclosure as reasonably requested by the furnishing party.

2.104 No Implied Rights

Nothing contained in this Section must 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.

2.105 Respective Obligations

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

2.110 Records and Inspections

2.111 Inspection of Work Performed

The State's authorized representatives must at all reasonable times and with 10 days prior written request, have the right to enter Contractor's premises, or any other places, where the Services are being performed, and must have access, upon reasonable request, to interim drafts of Deliverables or work-in-progress. Upon 10 Days prior written notice and at all reasonable times, the State's representatives must be allowed to inspect, monitor, or otherwise evaluate the work being performed and to the extent that the access will not reasonably interfere or jeopardize the safety or operation of the systems or facilities. Contractor must provide all reasonable facilities and assistance for the State's representatives.

2.112 Examination of Records

For seven (7) years after the Contractor provides any work under the Contract (the "Audit Period"), the State may examine and copy any of Contractor's books, records, documents and papers pertinent to establishing Contractor's compliance with the Contract and with applicable laws and rules. The State must notify the Contractor 20 days before examining the Contractor's books and records. The State does not have the right to review any information deemed confidential by the Contractor to the extent access would require the confidential information to become publicly available. This provision also applies to the books, records, accounts, documents and papers, in print or electronic form, of any parent, affiliated or subsidiary organization of Contractor, or any Subcontractor of Contractor performing services in connection with the Contract.

2.113 Retention of Records

Contractor must maintain at least until the end of the Audit Period, all pertinent financial and accounting records (including time sheets and payroll records, information pertaining to the Contract, and to the Services, equipment, and commodities provided under the Contract) pertaining to the Contract according to generally accepted accounting principles and other procedures specified in this Section. Financial and accounting records must be made available, upon request, to the State at any time during the Audit Period. If an audit, litigation, or other action involving Contractor's records is initiated before the end of the Audit Period, the records must be retained until all issues arising out of the audit, litigation, or other action are resolved or until the end of the Audit Period, whichever is later.

2.114 Audit Resolution

If necessary, the Contractor and the State will meet to review each audit report promptly after issuance. The Contractor must respond to each audit report in writing within 30 days from receipt of the report, unless a shorter response time is specified in the report. The Contractor and the State must develop, agree upon and monitor an action plan to promptly address and resolve any deficiencies, concerns, and/or recommendations in the audit report.

2.115 Errors

(a) If the audit demonstrates any errors in the documents provided to the State, then the amount in error must 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) invoices. If a balance remains after four (4) invoices, then the remaining amount will be due as a payment or refund within 45 days of the last quarterly invoice 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 must pay all of the reasonable costs of the audit.

2.120 Warranties

2.121 Warranties and Representations

The Contractor represents and warrants:

(a) It is capable in all respects of fulfilling and must fulfill all of its obligations under the Contract. The performance of all obligations under the Contract must be provided in a timely, professional, and workman-like manner and must meet the performance and operational standards required under the 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 the 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 the 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 the 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 the items in the Contract, Contractor must 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 the 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, must have, or must 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 the Contract or otherwise create an appearance of impropriety with respect to the award or performance of this Agreement. Contractor must notify the State about the nature of the conflict or appearance of impropriety within two (2) days of learning about it.

(h) If any of the certifications, representations, or disclosures made in the Contractor's original bid response change after the Contract start date, the Contractor must report those changes immediately to DNR-Procurement Service.

2.122 Warranty of Merchantability - Reserved

2.123 Warranty of Fitness for a Particular Purpose- Reserved

2.124 Warranty of Title - Reserved

2.125 Equipment Warranty - Reserved

2.126 Equipment to be New - Reserved

2.127 Prohibited Products - Reserved

2.128 Consequences For Breach

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

2.130 Insurance

2.131 Liability Insurance

The Contractor must provide proof of the minimum levels of insurance coverage as indicated below. The insurance must protect the State from claims which may arise out of or result from the Contractor's performance of Services under the terms of the Contract, whether the Services are performed by the Contractor, or by any Subcontractor, or by anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable.

The Contractor waives all rights against 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 under the Contract.

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

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

The insurers selected by Contractor must have an A.M. Best rating of A or better, or as otherwise approved in writing by the State, or if the ratings are no longer available, with a comparable rating from a recognized insurance rating agency. All policies of insurance required in the Contract must be issued by companies that have been approved to do business in the State. See www.michigan.gov/deleg.

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

The 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

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

- 2. If a motor vehicle is used to provide services or products under the 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.

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

3. Workers' compensation coverage must be provided according to 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.

The Contractor also agrees to provide evidence that insurance policies contain a waiver of subrogation by the insurance company. This provision must 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 \$1,000,000.00 with a maximum deductible of \$50,000.00.

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

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

8. Fire and Personal Property Insurance covering against any loss or damage to the office space used by Contractor for any reason under the Contract, and the equipment, software and other contents of the office space, including without limitation, those contents used by Contractor to provide the Services to the State, up to its replacement value, where the office space and its contents are under the care, custody and control of Contractor. The policy must 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 must be endorsed on the policy as a loss payee as its interests appear.

2.132 Subcontractor Insurance Coverage

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

2.133 Certificates of Insurance and Other Requirements

Contractor must furnish to DNR-Procurement Service, certificate(s) of insurance verifying insurance coverage or providing satisfactory evidence of self-insurance as required in this Section (the "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) must contain a provision indicating that coverages afforded under the policies **MUST 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 Procurement Service, DNR. The notice must include the Contract or Purchase Order number affected.

Before the Contract is signed, and not less than 20 days before the insurance expiration date every year thereafter, the Contractor must 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.

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

2.140 Indemnification

2.141 General Indemnification

To the extent permitted by law, the Contractor must 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 the 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.

2.142 Code Indemnification

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

2.143 Employee Indemnification

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

2.144 Patent/Copyright Infringement Indemnification

To the extent permitted by law, the Contractor must 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 the action or proceeding is based on a claim that any piece of equipment, software, commodity or service supplied by the Contractor or its Subcontractors, or the operation of the equipment, software, commodity or service, or the use or reproduction of any documentation provided with the equipment, software, commodity or service infringes any United States patent, copyright, trademark or trade secret of any person or entity, which is enforceable under the laws of the United States.

In addition, should the equipment, software, commodity, or service, or its operation, become or in the State's or Contractor's opinion be likely to become the subject of a claim of infringement, the Contractor must at the Contractor's sole expense (i) procure for the State the right to continue using the equipment, software, commodity or service or, if the option is not reasonably available to the Contractor, (ii) replace or modify to 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 the 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 has 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; (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 the Contract.

2.145 Continuation of Indemnification Obligations

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

2.146 Indemnification Procedures

The procedures set forth below must apply to all indemnity obligations under the Contract.

(a) After the State receives notice of the action or proceeding involving a claim for which it will seek indemnification, the State must promptly notify Contractor of the claim in writing and take or assist Contractor in taking, as the case may be, any reasonable action to avoid the imposition of a default judgment against Contractor. No failure to notify the Contractor relieves the Contractor of its indemnification obligations except to the extent that the Contractor can prove damages attributable to the failure. Within 10 days following receipt of written notice from the State relating to any claim, the Contractor must 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 before the State receiving Contractor's Notice of Election, the State is entitled to defend against the claim, at the Contractor's expense, and the Contractor will be responsible for any reasonable costs incurred by the State in defending against the claim during that period.

(b) If Contractor delivers a Notice of Election relating to any claim: (i) the State is entitled to participate in the defense of the claim and to employ counsel at its own expense to assist in the handling of the claim and to monitor and advise the State about the status and progress of the defense; (ii) the Contractor must, at the request of the State, demonstrate to the reasonable satisfaction of the State, the Contractor's financial ability to carry out its defense and indemnity obligations under the Contract; (iii) the Contractor must periodically advise the State about the status and progress of the defense and must obtain the prior written approval of the State before entering into any settlement of the claim or ceasing to defend against the claim and (iv) to the extent that any principles of Michigan governmental or public law may be involved or challenged, the State has the right, at its own expense, to control the defense of that portion of the claim involving the principles of Michigan governmental or public law. But the State may retain control of the defense and settlement of a claim by notifying the Contractor in writing within 10 days after the State's receipt of Contractor's information requested by the State under clause (ii) of this paragraph if the State determines that the Contractor has failed to demonstrate to the reasonable satisfaction of the State the Contractor's financial ability to carry out its defense and indemnity obligations under this Section. Any litigation activity on behalf of the State, or any of its subdivisions under this Section, must be coordinated with the Department of Attorney General. In the event the insurer's attorney represents the State under 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 may defend the claim in the manner as it may deem appropriate, at the cost and expense of Contractor. If it is determined that the claim was one against which Contractor was required to indemnify the State, upon request of the State, Contractor must promptly reimburse the State for all the reasonable costs and expenses.

2.150 Termination/Cancellation

2.151 Notice and Right to Cure

If the Contractor breaches the Contract, and the State, in its sole discretion, determines that the breach is curable, then the State must provide the Contractor with written notice of the breach and a time period (not less than 30 days) to cure the Breach. The notice of breach and opportunity to cure is inapplicable for successive or repeated breaches or if the State determines in its sole discretion that the breach poses

a serious and imminent threat to the health or safety of any person or the imminent loss, damage, or destruction of any real or tangible personal property.

2.152 Termination for Cause

(a) The State may terminate the Contract, for cause, by notifying the Contractor in writing, if the Contractor (i) breaches any of its material duties or obligations under the Contract (including a Chronic Failure to meet any particular SLA), or (ii) fails to cure a breach within the time period specified in the written notice of breach provided by the State

(b) If the Contract is terminated for cause, the Contractor must pay all costs incurred by the State in terminating the 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 the Contract from other sources. Re-procurement costs are not consequential, indirect or incidental damages, and cannot be excluded by any other terms otherwise included in the Contract, provided the costs are not in excess of 50% more than the prices for the Service/Deliverables provided under the Contract.

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

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

2.153 Termination for Convenience

The State may terminate the Contract for its convenience, in whole or part, if the State determines that a termination is in the State's best interest. Reasons for the termination must 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 the Contract for its convenience, in whole or in part, by giving Contractor written notice at least 30 days before the date of termination. If the State chooses to terminate the Contract in part, the charges payable under the Contract must be equitably adjusted to reflect those Services/Deliverables that are terminated. Services and related provisions of the Contract that are terminated for cause must cease on the effective date of the termination.

2.154 Termination for Non-Appropriation

(a) Contractor acknowledges that, if the Contract extends for several fiscal years, continuation of the Contract is subject to appropriation or availability of funds for the Contract. If funds to enable the State to effect continued payment under the Contract are not appropriated or otherwise made available, the State must terminate the 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 must give Contractor at least 30 days advance written notice of termination for non-appropriation or unavailability (or the 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 unavailable, the State may, upon 30 days written notice to Contractor, reduce the level of the Services or the change the production of Deliverables in the manner and for the periods of time as the State may elect. The charges payable under the Contract will be equitably adjusted to reflect any equipment, services or commodities not provided by reason of the reduction.

(c) If the State terminates the Contract, eliminates certain Deliverables, or reduces the level of Services to be provided by Contractor under this Section, the State must pay Contractor for all Work-in-Process performed through the effective date of the termination or reduction in level, as the case may be and as determined by the State, to the extent funds are available. This Section will not preclude

Contractor from reducing or stopping Services/Deliverables 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.

2.155 Termination for Criminal Conviction

The State may terminate the 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 related to a State, public or private Contract or subcontract.

2.156 Termination for Approvals Rescinded

The State may terminate the Contract if any final administrative or judicial decision or adjudication disapproves a previously approved request for purchase of personal services under Constitution 1963, Article 11, § 5, and Civil Service Rule 7-1. In that case, the State must pay the Contractor for only the work completed to that point under the Contract. 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 the written notice.

2.157 Rights and Obligations upon Termination

(a) If the State terminates the Contract for any reason, the Contractor must (a) stop all work as specified in the notice of termination, (b) 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 the Contract that may be in Contractor's possession, (c) return all materials and property provided directly or indirectly to Contractor by any entity, agent or employee of the State, (d) 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 must be provided to the State on an "As-Is" basis except to the extent the amounts paid by the State in respect of the items included compensation to Contractor for the provision of warranty services in respect of the materials), and (e) 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) If the State terminates the Contract before its expiration for its own convenience, the State must pay Contractor for all charges due for Services provided before the date of termination and, if applicable, as a separate item of payment under the 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 under the Contract, at the option of the State, becomes the State's property, and Contractor is entitled to receive equitable fair compensation for the Deliverables. Regardless of the basis for the termination, the State is not obligated to pay, or otherwise compensate, Contractor for any lost expected future profits, costs or expenses incurred with respect to Services not actually performed for the State.

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

2.158 Reservation of Rights

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

2.160 Termination by Contractor

2.161 Termination by Contractor

If the State breaches the Contract, and the Contractor in its sole discretion determines that the breach is curable, then the Contractor will provide the State with written notice of the breach and a time period (not less than 30 days) to cure the breach. The Notice of Breach and opportunity to cure is inapplicable for successive and repeated breaches.

The Contractor may terminate the Contract if the State (i) materially breaches its obligation to pay the Contractor undisputed amounts due and owing under the Contract, (ii) breaches its other obligations under the Contract to an extent that makes it impossible or commercially impractical for the Contractor to

perform the Services, or (iii) does not cure the breach within the time period specified in a written notice of breach. But the Contractor must discharge its obligations under **Section 2.190** before it terminates the Contract.

2.170 Transition Responsibilities

2.171 Contractor Transition Responsibilities

If the State terminates the Contract, for convenience or cause, or if the Contract is otherwise dissolved, voided, rescinded, nullified, expires or 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. If the Contract expires or terminates, 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 30 days. These efforts must include, but are not limited to, those listed in **Sections 2.171, 2.172, 2.173, 2.174, and 2.175.**

2.172 Contractor Personnel Transition

The Contractor must 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 must 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 the 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 must notify all of Contractor's subcontractors of procedures to be followed during transition.

2.173 Contractor Information Transition

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 the Contract. The Contractor must provide the State with asset management data generated from the inception of the Contract through the date on which the Contractor is terminated in a comma-delineated format unless otherwise requested by the State. The Contractor must deliver to the State any remaining owed reports and documentation still in Contractor's possession subject to appropriate payment by the State.

2.174 Contractor Software Transition

The Contractor must reasonably assist the State in the acquisition of any Contractor software required to perform the Services/use the Deliverables under the Contract. This must include any documentation being used by the Contractor to perform the Services under the Contract. If the State transfers any software licenses to the Contractor, those licenses must, 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.

2.175 Transition Payments

If the transition results from a termination for any reason, reimbursement must be governed by the termination provisions of the 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 agreed upon by the State. The Contractor must prepare an accurate accounting from which the State and Contractor may reconcile all outstanding accounts.

2.176 State Transition Responsibilities

In the event that the 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.

2.180 Stop Work

2.181 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 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 must be identified as a stop work order and must indicate that it is issued under this **Section 2.180**. Upon receipt of the stop work order, Contractor must immediately comply with its terms and take all reasonable steps to minimize incurring 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 must either: (a) cancel the stop work order; or (b) terminate the work covered by the stop work order as provided in **Section 2.150**.

2.182 Cancellation or Expiration of Stop Work Order

The Contractor must resume work if the State cancels a Stop Work Order or if it expires. The parties will agree upon an equitable adjustment in the delivery schedule, the Contract price, or both, and the Contract must 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 must conform to the requirements of **Section 2.024**.

2.183 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, the termination must be deemed to be a termination for convenience under **Section 2.150**, and the State will pay reasonable costs resulting from the stop work order in arriving at the termination settlement. For the avoidance of doubt, the State is not liable to Contractor for loss of profits because of a stop work order issued under this **Section 2.180**.

2.190 Dispute Resolution

2.191 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 must 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 must submit a letter, together with all data supporting the claims, executed by Contractor's Contract Administrator or the Contract Administrator's 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 claim and the supporting data are current and complete to Contractor's best knowledge and belief.

2.192 Informal Dispute Resolution

(a) All disputes between the parties must be resolved under the Contract Management procedures in the Contract. If the parties are unable to resolve any disputes after compliance with the processes, the parties must meet with the Director of Procurement Service, DNR, or designee, for the purpose of attempting to resolve the dispute without the need for formal legal proceedings, as follows:

(i) The representatives of Contractor and the State must meet as often as the parties reasonably deem necessary 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 must 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 (1) party to another for non-privileged information reasonably related to the Contract must 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 Procurement Service, DNR, or designee, must issue a written opinion regarding the issue(s) in dispute within 30 calendar days. The opinion regarding the dispute must be considered the State's final action and the exhaustion of administrative remedies.

(b) This Section must 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 under **Section 2.193**.

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

2.193 Injunctive Relief

The only circumstance in which disputes between the State and Contractor will not be subject to the provisions of **Section 2.192** is where a party makes a good faith determination that a breach of the terms of the Contract by the other party is the that the damages to the 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.

2.194 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 must not be deemed to preclude performance) and without limiting either party's right to terminate the Contract as provided in **Section 2.150**, as the case may be.

2.200 Federal and State Contract Requirements

2.201 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, or physical or mental disability. Contractor further agrees that every subcontract entered into for the performance of the Contract or any purchase order resulting from the Contract must contain a provision requiring non-discrimination in employment, as specified here, binding upon each Subcontractor. This covenant is required under 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.

2.202 Unfair Labor Practices

Under 1980 PA 278, MCL 423.321, et seq., the State must 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 under 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, must not enter into a contract with a Subcontractor, manufacturer, or supplier whose name appears in this register. Under Section 4 of 1980 PA 278, MCL 423.324, the State may void any Contract if, after 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.

2.203 Workplace Safety and Discriminatory Harassment

In performing Services for the State, the Contractor must 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 must 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>.

2.204 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 the Contract in privity of contract with the Contractor must not be less than the wage rates and fringe benefits established by the Michigan Department of Energy, 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 must 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 the Contract in privity of contract with the Contractor must 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 Energy, Labor and Economic Development, the office responsible for enforcement of the wage rates and fringe benefits. The Contractor must keep an accurate record showing the name and occupation of the actual wage and benefits paid to each individual employed in connection with the Contract. This record must 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 must also be paid not less than the wage rate and fringe benefits prevailing in the local where the work is to be performed.

2.210 Governing Law

2.211 Governing Law

The Contract must in all respects be governed by, and construed according to, 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.

2.212 Compliance with Laws

Contractor must comply with all applicable state, federal and local laws and ordinances in providing the Services/Deliverables.

2.213 Jurisdiction

Any dispute arising from the Contract must 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 the jurisdiction on the grounds of lack of personal jurisdiction of the court or the laying of venue of the 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.

2.220 Limitation of Liability

2.221 Limitation of Liability

Neither the Contractor nor the State is liable to each other, regardless of the form of action, for consequential, incidental, indirect, or special damages. This limitation of liability does not apply to claims for infringement of United States patent, copyright, trademark or trade secrets; to claims for personal injury or damage to property caused by the gross negligence or willful misconduct of the Contractor; to claims covered by other specific provisions of the 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 the Contract.

2.230 Disclosure Responsibilities

2.231 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, to which Contractor (or, to the extent Contractor is aware, any Subcontractor) 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; or (ii) a claim or written allegation of fraud against Contractor or, to the extent Contractor is aware, any Subcontractor by a governmental or public entity arising out of their business dealings with governmental or public entities. The Contractor must disclose in writing to the Contract Administrator any litigation, investigation, arbitration or other proceeding (collectively, "Proceeding") within 30 days of its occurrence. Details of settlements which are prevented from disclosure by the terms of the settlement may be annotated. 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. If any Proceeding disclosed to the State under this Section, or of which the State otherwise becomes aware, during the term of the Contract would cause a reasonable party to be concerned about:

- (i) the ability of Contractor (or a Subcontractor) to continue to perform the Contract according to its terms and conditions, or
 - (ii) whether Contractor (or a Subcontractor) in performing Services for the State is engaged in conduct which is similar in nature to conduct alleged in the Proceeding, which conduct would constitute a breach of the Contract or a violation of Michigan law, regulations or public policy, then the Contractor must provide the State all reasonable assurances requested by the State to demonstrate that:
 - (a) Contractor and its Subcontractors must be able to continue to perform the Contract and any Statements of Work according to its terms and conditions, and
 - (b) Contractor and its Subcontractors have not and will not engage in conduct in performing the Services which is similar in nature to the conduct alleged in the Proceeding.
- (c) Contractor must 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 must notify DNR-Procurement Service.
 - (2) Contractor must also notify DNR Procurement Service 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 must also notify DNR Procurement Service within 30 days whenever changes to company affiliations occur.

2.232 Call Center Disclosure - Reserved

2.240 Performance

2.241 Time of Performance - Reserved

2.242 Service Level Agreements (SLAs) - Reserved

2.243 Liquidated Damages - Reserved

2.244 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 the default, damage or delay is caused by government regulations or requirements (executive, legislative, judicial, military, or otherwise), power failure, 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 a party; provided the non-performing party and its Subcontractors are without fault in causing the default or delay, and the 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.

If a party does not perform its contractual obligations for any of the reasons listed above, the non-performing party will be excused from any further performance of its affected obligation(s) for as long as the circumstances prevail. but the party must use commercially reasonable efforts to recommence performance whenever and to whatever extent possible without delay. A party must promptly notify the other party in writing immediately after the excusable failure occurs, and also when it abates or ends.

If any of the above-enumerated circumstances substantially prevent, hinder, or delay the 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 is not be liable for payment for the unperformed Services/ Deliverables not provided under the Contract for so long as the delay in performance continues; (b) the State may terminate any portion of the Contract so affected and the charges payable will 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 the Contractor, except to the extent that the State must pay for Services/Deliverables provided through the date of termination.

The 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.

2.250 Approval of Deliverables

2.251 Delivery Responsibilities - Reserved

2.252 Delivery of Deliverables - Reserved

2.253 Testing - Reserved

2.254 Approval of Deliverables, In General

(a) All Deliverables (Physical Deliverables and Written Deliverables) and Services require formal written approval by the State, according to the following procedures. Formal approval by the State requires the State to confirm in writing that the Deliverable meets its specifications. Formal approval may include the successful completion of Testing as applicable in **Section 2.253**, to be led by the State with the support and assistance of Contractor. The approval process will be facilitated by ongoing consultation between the parties, inspection 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) Before 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 according to **Section 2.253**.

(d) The State must approve in writing a Deliverable/Service after confirming that it conforms to and performs according to its specifications without material deficiency. The State may, but is 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), the Contractor is unable to correct all deficiencies preventing Final Acceptance of a Deliverable/Service, the State may: (i) demand that the Contractor cure the failure and give the Contractor additional time to cure the failure at the sole expense of the Contractor; or (ii) keep the Contract in force and do, either itself or through other parties, whatever the Contractor has failed to do, and recover the difference between the cost to cure the deficiency and the contract price plus an additional sum equal to 10% of the cost to cure the deficiency to cover the State's general expenses provided the State can furnish proof of the 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 the breach. Notwithstanding the foregoing, the State cannot 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 the process reveals deficiencies in or problems with a Deliverable/Service in a sufficient quantity or of a sufficient severity that renders continuing the process unproductive or unworkable. If that happens, the State may stop using the Service or return the applicable Deliverable to Contractor for correction and re-delivery before resuming the testing or approval process.

2.255 Process For Approval of Written Deliverables

The State Review Period for Written Deliverables will be the number of days set forth in the applicable Statement of Work following delivery of the final version of the Deliverable (and if the Statement of Work does not state the State Review Period, it is by default five (5) Business Days for Written Deliverables of 100 pages or less and 10 Business Days for Written Deliverables of more than 100 pages). The duration of the State Review Periods will be doubled if the State has not had an opportunity to review an interim draft of the Written Deliverable before its submission to the State. 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 before approval of the Deliverable (or at the State's election, after approval of the Deliverable). If the State notifies the Contractor about deficiencies, the Contractor must 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 must be made at no additional charge. Upon receipt of a corrected Deliverable from Contractor, the State must 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.

2.256 Process for Approval of Services

The State Review Period for approval of Services is governed by the applicable Statement of Work (and if the Statement of Work does not state the State Review Period, it is by default 30 Business Days for Services). The State agrees to notify the Contractor in writing by the end of the State Review Period either stating that the Service is approved in the form delivered by the Contractor or describing any deficiencies that must be corrected before approval of the Services (or at the State's election, after approval of the Service). If the State delivers to the Contractor a notice of deficiencies, the Contractor must 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. The Contractor's correction efforts must be made at no additional charge. Upon implementation of a corrected Service from Contractor, the State must 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.

2.257 Process for Approval of Physical Deliverables

The State Review Period for approval of Physical Deliverables is governed by the applicable Statement of Work (and if the Statement of Work does not state the State Review Period, it is by default 30 continuous Business Days for a Physical Deliverable). The State agrees to notify the Contractor in writing by the end of the State Review Period either stating that the Deliverable is approved in the form delivered by the Contractor or describing any deficiencies that must be corrected before approval of the Deliverable (or at the State's election, after approval of the Deliverable). If the State delivers to the Contractor a notice of deficiencies, the Contractor must 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. The Contractor's correction efforts must be made at no additional charge. Upon receipt of a corrected Deliverable from the Contractor, the State must 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.

2.258 Final Acceptance

Unless otherwise stated in the Article 1, Statement of Work or Purchase Order, "Final Acceptance" of each Deliverable must occur when each Deliverable/Service has been approved by the State following the State Review Periods identified in **Sections 2.251-2.257**. 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.

2.260 Ownership

2.261 Ownership of Work Product by State - Reserved

2.262 Vesting of Rights - Reserved

2.263 Rights in Data - Reserved

2.264 Ownership of Materials - Reserved

2.270 State Standards

2.271 Existing Technology Standards

The Contractor must adhere to all existing standards as described within the comprehensive listing of the State's existing technology standards at <http://www.michigan.gov/dit>.

2.272 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>. 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.

2.273 Systems Changes

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

2.280 Extended Purchasing

2.281 MIDEAL- RESERVED

2.282 State Employee Purchases - Reserved

2.290 Environmental Provision

2.291 Environmental Provision

Hazardous Materials:

For the purposes of this Section, "Hazardous Materials" is a generic term used to describe asbestos, ACBMs, PCBs, petroleum products, construction materials including paint thinners, solvents, gasoline, oil, 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.

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

(b) Upon receipt of a written notice, the State will investigate the conditions. If (a) the material is a Hazardous Material that may present a substantial danger, and (b) 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 must order a suspension of Work in writing. The State must proceed to have the Hazardous Material removed or rendered harmless. In the alternative, the State must terminate the affected Work for the State's convenience.

(c) Once the Hazardous Material has been removed or rendered harmless by the State, the Contractor must resume Work as directed in writing by the State. Any determination by the Michigan Department of Community Health or the Michigan Department of Environmental Quality that the Hazardous Material has either been removed or rendered harmless is binding upon the State and Contractor for the purposes of resuming the Work. If any 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 **Section 2.242** 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 must bear its proportionate share of the delay and costs involved in cleaning up the site and removing and rendering harmless the Hazardous Material according to Applicable Laws to the condition approved by applicable regulatory agency(ies).

Michigan has a Consumer Products Rule pertaining to labeling of certain products containing volatile organic compounds. For specific details visit http://www.michigan.gov/deq/0,1607,7-135-3310_4108-173523--,00.html

Refrigeration and Air Conditioning:

The Contractor must comply with the applicable requirements of Sections 608 and 609 of the Clean Air Act (42 U.S.C. 7671g and 7671h) as each or both apply to the Contract.

Environmental Performance:

Waste Reduction Program: Contractor must establish a program to promote cost-effective waste reduction in all operations and facilities covered by the Contract. The Contractor's programs must comply with applicable Federal, State, and local requirements, specifically including Section 6002 of the Resource Conservation and Recovery Act (42 U.S.C. 6962, et seq.).

2.300 Other Provisions

2.311 Forced Labor, Convict Labor, Forced or Indentured Child Labor, or Indentured Servitude Made Materials

Equipment, materials, or supplies, that will be furnished to the State under the Contract must not be produced in whole or in part by forced labor, convict labor, forced or indentured child labor, or indentured servitude.

“Forced or indentured child labor” means all work or service: exacted from any person under the age of 18 under the menace of any penalty for its nonperformance and for which the worker does not offer himself voluntarily; or performed by any person under the age of 18 under a contract the enforcement of which can be accomplished by process or penalties.

Attachment A, Price Proposal

The State shall consider offers of payment for the salmon and eggs and/or payment to the contractor for the harvesting services. Pricing will be considered in determining the Best Value to the State.

Contractor shall PAY the State

CATEGORY-- CHINOOK AND COHO SALMON

(Regardless of specie, sex, grade, condition--see note)

Note: 50% Telephone and All utility costs are the responsibility of the Contractor.

Estimated harvest

Return for past 3 years 811,479.00 pounds @ \$.02/LB = \$16,229.58/TOTAL

NOTE: PRICING PROPOSALS (\$/LB) FOR THE TOTAL ANNUAL HARVEST OF SALMON SHALL INCLUDE A SINGLE PRICING PROPOSAL FOR ALL CATEGORIES OF SALMON. **INCLUDING "MORTALITIES" AND "STRIPPED FEMALES"**. IN GENERAL, 2% OF THE TOTAL NUMBER OF CHINOOK AND 4% OF THE TOTAL NUMBER OF COHO WERE CATEGORIZED AS "MORTALITIES". "STRIPPED FEMALES" COMPRISED 6% OF THE TOTAL WEIGHT OF CHINOOK AND 4% OF THE TOTAL WEIGHT OF COHO.

CATEGORY-- LOOSE EGGS

(Regardless of specie, grade, condition--see note below)

Note: 50% Telephone and All utility costs are the responsibility of the Contractor.

Estimated harvest

Return for past 3 years 71,118 pounds @ \$.50/LB = \$35,559.00/TOTAL

NOTE: PRICING PROPOSALS (\$/LB) FOR THE TOTAL ANNUAL HARVEST OF LOOSE SALMON EGGS SHALL INCLUDE A SINGLE PRICING PROPOSAL FOR ALL CATEGORIES OF LOOSE SALMON EGGS, **INCLUDING "DEAD" FERTILIZED HATCHERY EGGS**.

TOTAL BID (Chinook and Coho Salmon Total + Loose Eggs Total) \$51,788.58 (3 years)

State shall PAY the Contractor

\$175,000.00/HARVEST SEASON to include all services. No other costs shall be reimbursed.

Note: 50% Telephone and All utility costs are the responsibility of the Contractor.

Total for 3 years \$525,000.00

Total Estimated Contract Amount

State Shall Pay Contractor:	\$525,000.00 (Set Amount)
Contractor Shall Pay State:	\$ 51,788.58 (Estimated)
	\$473,211.42

Attachment B, DNR Field Staff Contacts

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):

Richard O'Neal, Acting On-Site Coordinator, Cadillac Operations Service Center
(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, ext. 14, for:

- Lower Platte River Harvest Weir
- Platte River State Fish Hatchery

Dave Borgeson, Gaylord Operations Service Center, (989) 732-3541, ext. 5070, for:

- Swan River Harvest Weir

Attachment C, Estimates of Labor, Equipment and Other Direct Costs

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

Estimates of Labor:

I. Little Manistee River Harvest Weir/Egg Taking Station

A. Watchmen

Approximate Hours Required	1,200 hours
Estimated Starting Date	September 15
Estimated Ending Date	October 31
Estimated Days Required	45 days
Coverage	One person present from 8 a.m. to 5 p.m.
Coverage	Two persons present from 5 p.m. to 8 a.m.

B. Salmon Harvest/Egg-Take Laborers

Approximate Hours Required	384 hours
Estimated Days Needed	12 Days

C. Foreman

Number Required	One (1) person
Estimated Starting Date	August 15
Estimated Ending Date	November 15

II. Lower Platte River Harvest Weir

A. Watchmen

Approximate Hours Required	1,500 hours
Estimated Starting Date	August 15
Estimated Ending Date	November 15
Estimated Days Required	92 days
Coverage	One person, 24 hours a day, Aug – Oct; Nov. 8 p.m. 5 a.m.

B. Salmon Harvest/Egg-Take Laborers

Approximate Hours Required	400 hours
Estimated Days Needed	10 Days

C. Foreman

Number Required	One (1) person
Estimated Starting Date	August 15
Estimated Ending Date	November 15

III. Platte River State Fish Hatchery

A. Watchmen

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Approximate Hours Required	Zero persons
Estimated Starting Date	September 1
Estimated Ending Date	December 1
Estimated Days Required	41 days
Coverage	One person present from 5 p.m. to 8 a.m.

B. Salmon Harvest/Egg-Take Laborers

Approximate Hours Required	250 hours
Estimated Days Needed	10 Days

C. Foreman

Number Required	Zero persons (Same Foreman as at Lower Platte River Weir)
Estimated Starting Date	August 15
Estimated Ending Date	November 15

IV. Boardman River Harvest Weir

A. Watchmen

Approximate Hours Required	1,800 hours
Estimated Starting Date	September 1
Estimated Ending Date	October 1
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	6 Days

C. Foreman

Number Required	One person
Estimated Starting Date	September 1
Estimated Ending Date	October 31

V. Medusa Creek Harvest Weir

A. Watchmen

Approximate Hours Required	1,400 hours
Estimated Starting Date	September 15
Estimated Ending Date	November 10
Estimated Days Required	45 days
Coverage	One person, 24 hours a day

B. Salmon Harvest/Egg-Take Laborers

Approximate Hours Required	200 hours
Estimated Days Needed	6 Days

C. Foreman

Number Required	Zero person
Estimated Starting Date	
Estimated Ending Date	

VI. Swan River Harvest Weir/Egg Taking Station

A. Watchmen

Approximate Hours Required	200 hours
Estimated Starting Date	September 15
Estimated Ending Date	October 31
Estimated Days Required	20 days
Coverage	One 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	240 hours
Estimated Days Needed	10 Days

C. Foreman

Number Required	Zero person
Estimated Starting Date	
Estimated Ending Date	

(At each Weir site, at least one (1) of the laborers or foremen provided by the Contractor MUST have a license to operate a fork lift and be capable of operating 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	September 1
Estimated Ending Date	October 31
Estimated Days Required	20 days

ESTIMATE OF EQUIPMENT

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

Salmon Weir Sites	Fork Lift Truck	Pallet Jack	Blocking Net	Portable Toilet
Little Manistee River Harvest Weir/Egg Taking Station	Yes	Yes		
Lower Platte River Harvest Weir	Yes	Yes		
Platte River Fish Hatchery	Yes	Yes		
Boardman River Harvest Weir	Yes	Yes		
Medusa Creek Harvest Weir	Yes	Yes	Yes	Yes
Swan River Harvest Weir/Egg Taking Station	Yes	Yes		Yes

ESTIMATE OF 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.**

Salmon Weir Sites	Telephone	Electricity	Propane	CO2 & Propane	Natural Gas	Diesel Fuel
Little Manistee River Harvest Weir/Egg Taking Station	\$100	\$6,000	\$			
Lower Platte River Harvest Weir	\$150	\$200	\$			
Platte River Fish Hatchery	\$				\$250	
Boardman River Harvest Weir	\$80	\$5,000		\$300		
Medusa Creek Harvest Weir	\$100	\$500				
Swan River Harvest Weir/Egg Taking Station	\$50	\$1,000				\$400