



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. 751B3200004**  
**Between**  
**STATE OF MICHIGAN**  
**and**

*Required by authority of 1984 PA 431, as amended.*

Name and Address of Contractor <b>Michigan State University</b> <b>Office of Sponsored Programs</b> <b>426 Auditorium Rd</b> <b>301 Administration Building</b> <b>East Lansing, MI 48824-1046</b>	Primary Contact <b>Lisa Somers</b>	
	Email <b>Somersl@osp.msu.edu</b>	
	Telephone <b>(517) 884-4279</b>	Contractor #, Mail Code

State Contact	Agency	Name	Telephone	Email
Contract Compliance Inspector	DNR	Steve Schmidt	(517) 336-5030	Schmitts@michigan.gov
Buyer	DNR	Jana Harding-Bishop	(517) 373-1190	HardingJ3@michigan.gov

Contract Summary			
Description (Provide a basic but comprehensive description of services) Lab Testing Services and Incineration Services			
Initial Term <b>5 years</b>	Effective Date <b>November 1, 2012</b>	Initial Expiration Date <b>October 31, 2012</b>	Available Options <b>5 - 1 year</b>
Payment Terms <b>Net 45</b>	F.O.B. <b>N/A</b>	Shipped <b>N/A</b>	Shipped From <b>N/A</b>
Minimum Delivery Requirements <b>N/A</b>	Alternate Payment Options <input type="checkbox"/> P-Card <input type="checkbox"/> Direct Voucher (DV)		Available to MiDeal Participants <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Miscellaneous Information <b>The terms and conditions of this Contract is this Contract Agreement. 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.</b>			
<b>ESTIMATED CONTRACT VALUE AT TIME OF EXECUTION: \$449,500.00</b>			



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

**CONTRACT NO. 751B3200004**  
**Between**  
**THE STATE OF MICHIGAN**  
**And**

*Required by authority of 1984 PA 431, as amended.*

Name of Contractor Michigan State University	Primary Contact Lisa Somers
Address of Contractor Office of Sponsored Programs	Email Somersl@osp.msu.edu
Address of Contractor 426 Auditorium Rd 301 Administration Building	Telephone (517) 884-4279
City, State, ZIP East Lansing, MI 48824-1046	Contractor #, Mail Code

STATE CONTACTS	AGENCY	NAME	TELEPHONE	EMAIL
Contract Compliance Inspector	DNR	Steve Schmitt	(517) 336-5030	Schmitts@michigan.gov
Buyer	DNR	Jana Harding-Bishop	(517) 373-1190	HardingJ3@michigan.gov

CONTRACT SUMMARY				
Description Lab Testing Services and Incineration Service				
Initial Term 5 years	Effective Date November 1, 2012	Initial Expiration Date October 31, 2017	Available Options 5 – 1 year options	
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 N/A				
Miscellaneous Information <b>The terms and conditions of this Contract is this Contract Agreement. 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.</b>				
ESTIMATED CONTRACT VALUE AT TIME OF EXECUTION: <b>\$449,500.00</b>				

**THIS IS NOT AN ORDER:** This Contract Agreement is awarded on the basis of our inquiry and published rates of the Contractor/Agreed upon pricing. 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:**

**Michigan State University**  
 Firm Name

**On-file in DNR Procurement**  
 Authorized Agent Signature

**Lisa Somers**  
 Authorized Agent (Print or Type)

**10/23/2012**  
 Date

**FOR THE STATE:**

**On-file in DNR Procurement**  
 Signature

**Sharon Walenga-Maynard/Procurement Services Manager**  
 Name/Title

**Financial Services/Procurement**  
 DNR/Procurement

**10/26/2012**  
 Date

Table of Contents

**Article 1 – Statement of Work (SOW)..... 6**

1.010 **Project Identification** .....6

1.111 Project Request.....6

1.012 Background .....6

1.020 **Scope of Work and Deliverables** .....7

1.021 In Scope .....7

1.022 Work and Deliverable .....7

1.030 **Roles and Responsibilities** .....9

1.031 Contractor Staff, Roles, and Responsibilities .....9

1.040 **Project Plan**.....9

1.041 Project Plan Management .....9

1.042 Reports/Statements/Invoices .....9

1.050 **Acceptance** .....10

1.051 Criteria.....10

1.052 Final Acceptance - Reserved .....10

1.060 **Proposal Pricing** .....10

1.061 Proposal Pricing .....10

1.062 Price Term.....10

1.063 Tax Excluded from Price .....10

1.064 Holdback - Reserved.....10

1.070 **Additional Requirements** .....10

1.071 Additional Terms and Conditions specific to this RFP - Reserved.....10

**Article 2, Terms and Conditions ..... 11**

2.000 **Contract Structure and Term**.....11

2.001 Contract Term .....11

2.002 Options to Renew.....11

2.003 Legal Effect .....11

2.004 Attachments & Exhibits .....11

2.005 Ordering .....11

2.006 Order of Precedence .....11

2.007 Headings .....11

2.008 Form, Function & Utility .....12

2.009 Reformation and Severability .....12

2.010 Consents and Approvals .....12

2.011 No Waiver of Default .....12

2.012 Survival .....12

2.020 **Contract Administration**.....12

2.021 Issuing Office .....12

2.022 Contract Compliance Inspector .....12

2.023 Project Manager - Reserved .....13

2.024 Change Requests.....13

2.025 Notices .....13

2.026 Binding Commitments .....13

2.027 Relationship of the Parties .....13

2.028 Covenant of Good Faith .....13

2.029 Assignments.....14

2.030 **General Provisions** .....14

2.031 Media Releases.....14

2.032 Contract Distribution.....14

2.033 Permits .....14

2.034 Website Incorporation .....14

2.035 Future Bidding Preclusion .....14

2.036 Freedom of Information .....14

2.037 Disaster Recovery .....14

2.040 **Financial Provisions**.....15

2.041 Fixed Prices for Services/Deliverables .....15

2.042 Adjustments for Reductions in Scope of Services/Deliverables .....15

2.043 Services/Deliverables Covered .....15

2.044 Invoicing and Payment – In General .....15

2.045 Pro-ration .....15

2.046 Antitrust Assignment .....15

2.047 Final Payment - Reserved.....15

2.048 Electronic Payment Requirement.....15

<b>2.050</b>	<b>Taxes</b> .....	15
	2.051 Employment Taxes.....	16
	2.052 Sales and Use Taxes .....	16
<b>2.060</b>	<b>Contract Management</b> .....	16
	2.061 Contractor Personnel Qualifications .....	16
	2.062 Contractor Key Personnel .....	16
	2.063 Re-assignment of Personnel at the State's Request .....	17
	2.064 Contractor Personnel Location .....	17
	2.065 Contractor Identification .....	17
	2.066 Cooperation with Third Parties .....	17
	2.067 Contractor Return of State Equipment/Resources .....	17
	2.068 Contract Management Responsibilities .....	17
<b>2.070</b>	<b>Subcontracting by Contractor</b> .....	17
	2.071 Contractor Full Responsibility.....	17
	2.072 State Consent to Delegation .....	17
	2.073 Subcontractor Bound to Contract .....	18
	2.074 Flow Down .....	18
	2.075 Competitive Selection.....	18
<b>2.080</b>	<b>State Responsibilities</b> .....	18
	2.081 Equipment .....	18
	2.082 Facilities .....	18
<b>2.090</b>	<b>Security</b> .....	18
	2.091 Background Checks .....	18
	2.092 Security Breach Notification .....	19
	2.093 PCI Data Security Standard .....	19
<b>2.100</b>	<b>Confidentiality</b> .....	19
	2.101 Confidentiality.....	19
	2.102 Protection and Destruction of Confidential Information .....	19
	2.103 Exclusions .....	19
	2.104 No Implied Rights.....	20
	2.105 Respective Obligations.....	20
<b>2.110</b>	<b>Records and Inspections</b> .....	20
	2.111 Inspection of Work Performed .....	20
	2.112 Examination of Records .....	20
	2.113 Retention of Records.....	20
	2.114 Audit Resolution .....	20
	2.115 Errors .....	20
<b>2.120</b>	<b>Warranties</b> .....	21
	2.121 Warranties and Representations.....	21
	2.122 Warranty of Merchantability - Reserved .....	21
	2.123 Warranty of Fitness for a Particular Purpose - Reserved .....	21
	2.124 Warranty of Title - Reserved .....	21
	2.125 Equipment Warranty - Reserved .....	21
	2.126 Equipment to be New - Reserved.....	22
	2.127 Prohibited Products - Reserved.....	22
	2.128 Consequences For Breach.....	22
<b>2.130</b>	<b>Insurance</b> .....	22
	2.131 Liability Insurance.....	22
	2.132 Subcontractor Insurance Coverage.....	23
	2.133 Certificates of Insurance and Other Requirements.....	23
<b>2.140</b>	<b>Indemnification</b> .....	23
	2.141 General Indemnification .....	23
	2.142 Code Indemnification.....	23
	2.143 Employee Indemnification .....	23
	2.144 Patent/Copyright Infringement Indemnification.....	24
	2.145 Continuation of Indemnification Obligations .....	24
	2.146 Indemnification Procedures .....	24
<b>2.150</b>	<b>Termination/Cancellation</b> .....	25
	2.151 Notice and Right to Cure .....	25
	2.152 Termination for Cause .....	25
	2.153 Termination for Convenience .....	25
	2.154 Termination for Non-Appropriation .....	26
	2.155 Termination for Criminal Conviction .....	26
	2.156 Termination for Approvals Rescinded .....	26
	2.157 Rights and Obligations upon Termination .....	26
	2.158 Reservation of Rights .....	27

<b>2.160</b>	<b>Termination by Contractor</b> .....	27
	2.161 Termination by Contractor.....	27
<b>2.170</b>	<b>Transition Responsibilities</b> .....	27
	2.171 Contractor Transition Responsibilities.....	27
	2.172 Contractor Personnel Transition.....	27
	2.173 Contractor Information Transition.....	27
	2.174 Contractor Software Transition.....	28
	2.175 Transition Payments.....	28
	2.176 State Transition Responsibilities.....	28
<b>2.180</b>	<b>Stop Work</b> .....	28
	2.181 Stop Work Orders.....	28
	2.182 Cancellation or Expiration of Stop Work Order.....	28
	2.183 Allowance of Contractor Costs.....	28
<b>2.190</b>	<b>Dispute Resolution</b> .....	29
	2.191 In General.....	29
	2.192 Informal Dispute Resolution.....	29
	2.193 Injunctive Relief.....	29
	2.194 Continued Performance.....	29
<b>2.200</b>	<b>Federal and State Contract Requirements</b> .....	29
	2.201 Nondiscrimination.....	29
	2.202 Unfair Labor Practices.....	30
	2.203 Workplace Safety and Discriminatory Harassment.....	30
	2.204 Prevailing Wage.....	30
<b>2.210</b>	<b>Governing Law</b> .....	30
	2.211 Governing Law.....	30
	2.212 Compliance with Laws.....	30
	2.213 Jurisdiction.....	30
<b>2.220</b>	<b>Limitation of Liability</b> .....	31
	2.221 Limitation of Liability.....	31
<b>2.230</b>	<b>Disclosure Responsibilities</b> .....	31
	2.231 Disclosure of Litigation.....	31
	2.232 Call Center Disclosure - Reserved.....	32
	2.233 Bankruptcy.....	32
<b>2.240</b>	<b>Performance</b> .....	32
	2.241 Time of Performance.....	32
	2.242 Service Level Agreements (SLAs) - Reserved.....	32
	2.243 Liquidated Damages - Reserved.....	32
	2.244 Excusable Failure.....	32
<b>2.250</b>	<b>Approval of Deliverables - Reserved</b> .....	33
	2.251 Delivery Responsibilities - Reserved.....	33
	2.252 Delivery of Deliverables - Reserved.....	33
	2.253 Testing - Reserved.....	33
	2.254 Approval of Deliverables, In General.....	33
	2.255 Process For Approval of Written Deliverables.....	34
	2.256 Process for Approval of Services.....	34
	2.257 Process for Approval of Physical Deliverables.....	34
	2.258 Final Acceptance.....	34
<b>2.260</b>	<b>Ownership</b> .....	35
	2.261 Ownership of Work Product by State.....	35
	2.262 Vesting of Rights.....	35
	2.263 Rights in Data.....	35
	2.264 Ownership of Materials.....	35
<b>2.270</b>	<b>State Standards</b> .....	36
	2.271 Existing Technology Standards.....	36
	2.272 Acceptable Use Policy.....	36
	2.273 Systems Changes.....	36
<b>2.280</b>	<b>Extended Purchasing</b> .....	36
	2.281 MIDEAL - RESERVED.....	36
	2.282 State Employee Purchases - Rerved.....	36
<b>2.290</b>	<b>Environmental Provision</b> .....	36
	2.291 Environmental Provision.....	36
<b>2.300</b>	<b>Other Provisions</b> .....	37
	2.311 Forced Labor, Convict Labor, Forced or Indentured Child Labor, or Indentured Servitude Made Materials.....	37

## **Article 1 – Statement of Work (SOW)**

### **1.010 Project Identification**

#### **1.11 Project Request**

This is a formal contract for diagnostic testing services for biological specimens and incineration disposal of tissues and lab waste. Testing services will include all of those listed in Attachment A (Pricing proposed and per current fee schedule.)

The contract includes incineration of tissue and lab waste – tissue specimens must be incinerated using appropriate Biosafety Level 1, 2 and 3 Protocols. The Michigan Department of Natural Resources Wildlife Disease Laboratory (MDNR WDL) generates over 50,000 pounds of waste per year that must be incinerated.

#### **1.012 Background**

The MDNR WDL is legally mandated under Michigan's Compiled Laws 324.503 (1) to monitor the health and well-being of the wildlife in the State of Michigan and to respond to disease concerns and outbreaks.

The MDNR WDL processes thousands of samples annually. Without laboratory diagnostics the DNR would be basing diagnoses on a gross examination (necropsy) only. Many of the diseases diagnosed by the State can be suspected on necropsy examination but must be confirmed in laboratory testing. This is the case regardless of the entity that is carrying the disease (virus, bacteria, or the toxic substance). Some of the diseases which are diagnosed can only be diagnosed on microscopic examination or diagnostic testing (Eastern Equine Encephalitis),

Without laboratory diagnostics, samples would not be processed, resulting in the loss of crucial data used for wildlife management decisions. The MDNR WDL is known worldwide and provides detailed information on diseases in the State affecting its wildlife. It has a long history of involvement with health concerns of wildlife, and the relationship between human, wildlife and livestock disease.

The MDNR WDL participates with the toxicology testing of various species, for example, the testing of waterfowl that could be donated to soup kitchens.

The DNR requires confirmatory analyses and examinations on tissues from animals that are submitted to the MDNR WDL on an on-going basis throughout the year. It is critical that these tests/examinations be performed in a timely manner that allows the MDNR WDL to arrive at a diagnosis and report the results. In the event of a serious disease outbreak, the timely reporting of results is critical.

#### **[Mandates for the testing for Chronic Wasting Disease and Bovine Tuberculosis](#)**

**Chronic Wasting Disease (CWD)** poses a serious threat to the health of Michigan's deer and elk populations, both free-ranging and captive, and to their long-term management. Infection of free-ranging cervid populations may establish long-term foci of infection. Implications of CWD for free-ranging cervid populations may be dire. While the long-term effects on the dynamics of these populations are not yet known with certainty, modeling and a recent study in Colorado suggest they could be dramatically negative. Surveillance and control programs necessitated by CWD are demanding of both monetary and personnel resources of wildlife management agencies, which are often quite limited. Perhaps most ominously, public and agency concerns about potential human health risks associated with CWD, while thus far groundless, may nevertheless undermine participation in hunting, with potentially marked effects on local and state economies, habitat degradation, and the ability of wildlife agencies to manage free-ranging cervid herds.

Executive Order (EO) 2004-3, dated April 15, 2004 transferred some powers of the Michigan Department of Agriculture and Rural Development (MDARD) to the MDNR regarding the regulation and biosecurity of privately-owned cervidae (POC; i.e., captive deer, elk and other animals in the deer family). Section II(C)(7) of that order transfers to MDNR the authority, duties, responsibilities and rule-making authority associated with Michigan Compiled Laws (MCL) 287.960(10), specifically "approving disease herd plans and ... investigations of violations of this act (viz, Public Act (PA) 190 of 2000, the Privately Owned Cervidae Producers Marketing Act, or the Cervidae Act for short). Further section II(C) (11) of EO 2004-3 transfers duties, responsibilities and rule-making

authority for “promulgation of rules necessary to implement and enforce the Cervidae Act”. Among those legally mandated duties is investigations of escapes or releases from POC facilities per MCL 287.967(17) (1) and (3b). Surveillance (i.e. testing) for Chronic Wasting Disease in deer is an integral part of investigating the risk escaped captive cervids pose to the health of free-ranging deer and elk populations. MDNR is legally mandated to “protect and conserve the natural resources of this state” under MCL 324.503(1). Free-ranging deer and elk are one of the natural resources of Michigan. Because over 800 POC facilities exist virtually statewide, and the 2004 Risk-Based Audit of the Captive/POC Industry in Michigan (MDNR Issue Report 1, dated March 10, 2005, p. 36) documented that hundreds of escapes and releases from POC facilities have occurred, and could occur at any time, CWD testing of free-ranging deer and elk must continue statewide on an ongoing basis.

Furthermore, Section 5.74(4) of the Wildlife Conservation Order confers authority to “a department (i.e., MDNR) veterinarian” to identify “illnesses, diseases and symptoms of special concern” within wildlife rehabilitation permits “or by permit amendments.” Addendum I (1) to MDNR’s Permit of Wildlife for Rehabilitation - Mandatory Reporting Requirements - Signs of Disease/Conditions of Special Concern identifies “any animal exhibiting signs of a neurological (i.e. nervous system) disorder” as constituting a disease of special concern. Testing of such animals to determine the cause of their illness and assess the risk to free-ranging wildlife is necessitated by MDNR’s legal mandate to “protect and conserve the natural resources of this state” under MCL 324.503(1).

Furthermore, in Recommendation #11 Specific to the Charges, located on pages 15-16 in the Final Report of the Michigan Chronic Wasting Disease Task Force dated October 15, 2003, the Task Force specifically “recommends that surveillance (i.e. testing for CWD) of captive facilities, ranches and free-ranging populations be accelerated and increased immediately”, because “the levels (sic) of surveillance for wild white-tailed deer is too low relative to the risk of having the disease in Michigan.” The formation and activity of the CWD Task Force was legally mandated by EO 2003-5 “Governor’s Chronic Wasting Disease Task Force”. Section II (A) (2) specifically charges the Task Force to “develop and make recommendations to implement a comprehensive and coordinated state chronic wasting disease prevention plan.” Clearly, ongoing MDNR CWD testing was intended to be and is an integral part of that plan.

### **Bovine Tuberculosis**

*Governor Engler’s Executive Directive 1998-1: calls for strategy to eliminate bovine TB in Michigan.*

The presence of bovine tuberculosis (bovine TB) in Michigan’s white-tailed deer herd is a serious problem. The elimination of bovine TB from free-ranging deer is an important and difficult goal to accomplish. To help reach that goal, comprehensive surveillance of wildlife populations in Northeastern Michigan and statewide is necessary. Comprehensive monitoring is necessary to identify areas that need intensive management and to monitor the success of that management. The continued evaluation of the prevalence of the disease will allow the MDNR to determine the prevalence rate, areas of infection and an assessment of the trend. The laboratory has tested more than 180,000 deer as part of Michigan’s strategy to eliminate bovine tuberculosis in deer and elk.

## **1.020 Scope of Work and Deliverables**

### **1.021 In Scope**

This contract is for laboratory testing services and incineration services for lab tissue and waste as requested by the DNR WDL. Services are requested on an “as-needed” basis.

### **1.022 Work and Deliverable**

The 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:

The MDNR-WDL will request laboratory tests listed on Attachment A needed from Michigan State University’s Diagnostic Center for Population and Animal Health (DCPAH).

Test results must be available on the internet at least within one week of the request for testing, unless other arrangements are made with the Veterinarian-in-Charge of the MDNR WDL. On occasion, the MDNR WDL must be notified immediately by phone at 517-336-5030. The contact name will be listed on the testing request form.

For CWD testing:

The laboratory must be a USDA CWD testing contract laboratory through USDA-APHIS with the capacity to accommodate and process 800 samples for CWD diagnosis by ELISA per day and between 300-400 samples per day for IHC. The laboratory must use USDA approved diagnostic tools in order to assess CWD in cervids. CWD tests are approved by the USDA regulatory agency in accordance with the type of cervid (i.e. free-ranging versus C/PO), species and tissue sampled (i.e. Retropharyngeal Lymph Node or/and brain obex). Return time for testing with ELISA must be 48 hours and results must be available on the internet.

If the Contractor's laboratory concludes that a CWD test is positive (therefore CWD-suspect), they will forward the samples directly to the NVSL for confirmation. The laboratory must be able to process 5,000 CWD samples for the MDNR WDL in approximately 3 weeks.

### Sample submission

1. DNR will use DCPAH submission forms (AD.ADM.Form.014 Necropsy/Biopsy Form) that are pre-printed with our account information. DNR has three account numbers: 70132 for bovine TB testing, 26257 for CWD testing and 9012 for all other testing (which we call "necropsy").
2. Samples are packaged following MSU's Environmental Health & Safety and DCPAH's instructions. They are then placed in DNR's locked pass-through window from DNR's biolevel 2 laboratory to the Lab Block hallway. DNR staff enters the Lab Block, retrieve the samples and walk them down to the DCPAH sample submission window.
3. CWD and bovine TB samples are also collected in the biolevel 3 laboratory. The CWD samples (slices of lymph nodes) are placed in a pass-through window. DCPAH personnel pick them up from the outside of the window. Bovine TB samples collected in the biolevel 3 laboratory are sanitized and then moved from the biolevel 3 to the DNR biolevel 2 laboratory, where the same procedure is followed as outlined in paragraph 2.
4. DNR pathologists will work with DCPAH's pathologists regarding specific cases, what tests will be needed, and how the samples need to be submitted.
5. When the DCPAH testing is complete, DNR will receive reports by fax and also have access to each of the three account reports at this website:  
<http://www.animalhealth.msu.edu/Bin/Account/Account.exe?Webview>
6. DNR will receive monthly billing statements for each account. If DNR has questions regarding the bill they will contact Nicole Weatherby at the DCPAH's business office.

### Incineration process

1. Materials for incineration are placed in ULAR carts that are lined with large heavy duty plastic bags. When a cart is full, the plastic is wrapped over the top and duct taped shut. These carts were made by MSU's Physical Plant to work specifically with the incinerator machinery and the weight of the cart is known.
2. When DNR has a full cart(s) in our biolevel 2 laboratory cooler, one of DNR's pathologists will call the Office of Environmental Health & Safety personnel who works at DCPAH and operates the incinerator.
3. The incinerator operator moves the carts from DNR's cooler to the incinerator, and returns them empty. The incinerator room has a scale which measures the weight of the contents.
4. Carts filled in the biolevel 3 laboratory are moved by the DNR directly into the coolers that are in the incineration room.
5. DNR will receive quarterly bills for incineration from the Office of Environmental Health & Safety documenting the type of waste, number of pounds and cost.

### **1.030 Roles and Responsibilities**

#### **1.031 Contractor Staff, Roles, and Responsibilities**

DNR's primary contacts at MSU-DCPAH will be:

Lab Testing:

Nicole L. Weatherby  
Business Office Manager  
Michigan State University - DCPAH  
4125 Beaumont Road, #120  
Lansing, MI 48910  
PH: (517) 432-5753  
Fax: (517) 432-1895  
Email: [weatherbyn@dcpah.msu.edu](mailto:weatherbyn@dcpah.msu.edu)

Incineration Services:

Lindsey Brownlee  
Office of Environmental Health and Safety  
Engineering Research Complex  
1449 Engineering Research Court, C-125  
East Lansing, MI 48824  
PH: 517-355-0106  
Email: [jameslin@msu.edu](mailto:jameslin@msu.edu)

### **1.040 Project Plan**

#### **1.041 Project Plan Management**

Quality Assurance Standards:

The Contractor must be accredited by the American Association of Veterinary Laboratory Diagnosticians (AAVLD) as a full-service animal diagnostic laboratory, all species. The quality standard used for accreditation is based on the *OIE Quality Standard and Guidelines for Veterinary Laboratories: Infectious Diseases, 2008*, entitled *AAVLD Requirements for an Accredited Veterinary Medical Diagnostic Laboratory*. The Quality Assurance program must be directed by a Quality Assurance Manager, who oversees the program and reports directly to the Director Laboratory.

The Quality Assurance Unit ensures that all tests performed by laboratories are appropriately controlled.

One part of this effort is ongoing participation in a variety of proficiency test programs to confirm the accuracy of our test results. The laboratory must participate in programs administered by the National Veterinary Services Laboratories (Ames, IA), Centers for Disease Control and Prevention (Atlanta, GA), College of American Pathologists (Chicago, IL), and Veterinary Laboratory Associates (Oxford, CT).

#### **1.042 Reports/Statements/Invoices**

Laboratory reports must be available privately on-line at a secure website. Test results must be available on the internet at least within one week of the request for testing, unless other arrangements are made with the Veterinarian-in-Charge of the MDNR WDL.

On occasion, the MDNR WDL must be notified immediately by phone at 517-336-5030. The contact name will be listed on the testing services request form.

Invoices must include the following details and should be mailed at least monthly:

**Lab Testing:**

Date test was performed  
Test Performed  
Specimen identification  
Results of test

**Incineration:**

Date/Month of Incineration  
What was incinerated and how many  
Total number of pounds incinerated  
Gas charge  
Incineration charge  
Total charge

Statements/Invoices will be provided via email (preferred) or by mail to:

Jean Fierke  
MDNR Wildlife Disease Lab  
4125 Beaumont Rd., Rm. 250  
Lansing, MI 48910-8106  
[fierkej@michigan.gov](mailto:fierkej@michigan.gov)

**1.050 Acceptance**

**1.051 Criteria**

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

Accurate and timely test results shall be provided to the MDNR WDL.

1.052 Final Acceptance - Reserved

**1.060 Proposal Pricing**

**1.061 Proposal Pricing**

MSU will reimburse a price per test or per pound for incineration services as stated in Attachment A

**1.062 Price Term**

Pricing for this contract will be based on MSU's published charges. Testing fees are published October 1<sup>st</sup> of each year, Incineration fees are published January 1<sup>st</sup> of each year.

Changes may be either increases or decreases, and may be requested by either party. An updated fee schedule must be RECEIVED IN WRITING AT LEAST 15 DAYS PRIOR TO THEIR EFFECTIVE DATE. 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.**

**1.063 Tax Excluded from Price**

(a) Sales Tax: For purchases made directly by the State, the State is exempt from State and Local Sales Tax. Prices must not include the taxes. Exemption Certificates for State Sales Tax will be furnished upon request.

(b) Federal Excise Tax: The State may be exempt from Federal Excise Tax, or the taxes may be reimbursable, if articles purchased under any resulting Contract are used for the State's exclusive use. Certificates showing exclusive use for the purposes of substantiating a tax-free or tax-reimbursable sale will be sent upon request. If a sale is tax exempt or tax reimbursable under the Internal Revenue Code, prices must not include the Federal Excise Tax.

**1.064 Holdback - Reserved**

**1.070 Additional Requirements**

**1.071 Additional Terms and Conditions specific to this RFP - Reserved**

## **Article 2, Terms and Conditions**

### **2.000 Contract Structure and Term**

#### **2.001 Contract Term**

The Contract is for a period of 5 years beginning 11/1/2012 through 10/31/2017. 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 5 additional 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 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, DNR-Procurement. DNR-Procurement is the sole point of contact in the State with regard to all procurement and contractual matters relating to the Contract. DNR-Procurement **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 for the Contract is:

Jana Harding-Bishop, Buyer  
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 receives the properly executed Contract, it is anticipated that DNR-Procurement, in consultation with Wildlife Division, 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.** The CCI for the Contract is:

Stephen M. Schmitt, Wildlife Health Section Supervisor  
Department of Natural Resources  
MDNR Wildlife Disease Laboratory  
4125 Beaumont Rd., Rm. 250  
Lansing, MI 48910-8106  
Schmitts@michigan.gov  
PH: 517-336-5030

## **2.023 Project Manager - Reserved**

### **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.
- (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 novations 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**

Media releases pertaining to this Contract or the services, study, data, or project to which it relates will not be made without prior written State approval, which will not be unduly withheld.

### **2.032 Contract Distribution**

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

### **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 – In General**

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

(b) Each Contractor invoice must show details as to charges by Service/Deliverable component and location at a level of detail reasonably necessary to satisfy the State's accounting and charge-back requirements. Invoices for Services performed on a time and materials basis must show, for each individual, the number of hours of Services performed during the billing period, the billable skill/labor category for such person and the applicable hourly billing rate. Prompt payment by the State is contingent on the Contractor's invoices showing the amount owed by the State minus any holdback amount to be retained by the State in accordance with **Section 1.064**.

(c) Correct invoices will be due and payable by the State, in accordance with the State's standard payment procedure as specified in 1984 PA 279, MCL 17.51 et seq., within 45 days after receipt, provided the State determines that the invoice was properly rendered.

(d) All invoices should reflect actual work done.

### **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 - Reserved**

### **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, 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 has given written consent to such delegation. The State reserves the right of prior written approval of all

Subcontractors and to require Contractor to replace any Subcontractors found, in the reasonable judgment of the State, to be unacceptable. The State's request 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 Standard - 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 three (3) 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 knowingly 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.

### **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 shall purchase and maintain such insurance as will protect them from claims set forth below which may arise out of, or result from, the Contractor's operations under the Contract (Purchase Order), whether such operations be by themselves or by any Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

NOTE: CONTRACTOR MAY SUBMIT EVIDENCE OF SELF-INSURANCE AND/OR AMENDMENT OF EXISTING LIABILITY COVERAGE IN FULFILLMENT OF ABOVE PROVISIONS, IF THE STATE ACCEPTS THE EVIDENCE OR AMENDED LIABILITY COVERAGE AS PROVIDING COMPARABLE PROTECTION OF THE STATE'S INTEREST.

The Contractor is required to provide proof of the minimum levels of insurance coverage as indicated below. The purpose of this coverage shall be to protect the State from claims which may arise out of, or result from, the Contractor's performance of services under the terms of this Contract, whether such services are performed by the Contractor, or by any subcontractor, or by anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable.

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 pursuant to this contract, unless such damages are the result of the negligence or omission of the State of Michigan.

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

BEFORE THE CONTRACT IS SIGNED BY BOTH PARTIES OR BEFORE THE PURCHASE ORDER IS ISSUED BY THE STATE, THE CONTRACTOR MUST FURNISH TO THE DNRE, FS, CERTIFICATE(S) OF INSURANCE VERIFYING INSURANCE COVERAGE. THE CERTIFICATE MUST BE ON THE STANDARD "ACCORD" FORM. THE CONTRACT OR PURCHASE ORDER NUMBER MUST BE SHOWN ON THE CERTIFICATE OF INSURANCE TO ASSURE CORRECT FILING. All such Certificate(s) shall contain a provision indicating that coverage afforded under the policies WILL NOT BE CANCELLED OR MATERIALLY CHANGED without THIRTY (30) days prior written notice having been given to the DNRE, FS. Such NOTICE must include the CONTRACT NUMBER affected.

The Contractor is required to provide the type and amount of insurance checked () below:

- 1. Commercial General Liability with the following minimum coverage:
  - \$2,000,000 General Aggregate Limit other than Products/Completed Operations
  - \$2,000,000 Products/Completed Operations Aggregate Limit
  - \$1,000,000 Personal & Advertising Injury Limit
  - \$1,000,000 Each Occurrence Limit
  - \$500,000 Fire Damage Limit (any one fire)
- 2. If a motor vehicle is used to provide services or products under this Contract, the Contractor must have vehicle liability insurance for bodily injury and property damage as required by law.
- 3. Worker's disability compensation, disability benefit or other similar employee benefit act with minimum statutory limits. NOTE: (1) If coverage is provided by a State fund or if Contractor has qualified as a self-insurer, separate certification must be furnished that coverage is in the state fund or that Contractor has approval to be a self-insurer; (2) Any citing of a policy of insurance must

include a listing of the States where that policy's coverage is applicable; and (3) Any policy of insurance must contain a provision or endorsement providing that the insurers' rights of subrogation are waived. This provision shall not be applicable where prohibited or limited by the laws of the jurisdiction in which the work is to be performed.

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

### **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, 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, DNR. The notice must include the Contract or Purchase Order number affected. 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.

#### **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 60 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, 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, 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 Licensing and Regulatory Affairs, Wage and Hour Division, 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 Licensing and Regulatory Affairs, 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.
- (2) Contractor must also notify DNR Procurement 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 within 30 days whenever changes to company affiliations occur.

## **2.232 Call Center Disclosure - Reserved**

### **2.233 Bankruptcy**

The State may, without prejudice to any other right or remedy, terminate the Contract, in whole or in part, and, at its option, may take possession of the "Work in Process" and finish the Works in Process by whatever appropriate method the State may deem expedient if:

- (a) the Contractor files for protection under the bankruptcy laws;
- (b) an involuntary petition is filed against the Contractor and not removed within 30 days;
- (c) the Contractor becomes insolvent or if a receiver is appointed due to the Contractor's insolvency;
- (d) the Contractor makes a general assignment for the benefit of creditors; or
- (e) the Contractor or its affiliates are unable to provide reasonable assurances that the Contractor or its affiliates can deliver the services under the Contract.

Contractor will fix appropriate notices or labels on the Work in Process to indicate ownership by the State. To the extent reasonably possible, materials and Work in Process must be stored separately from other stock and marked conspicuously with labels indicating ownership by the State.

## **2.240 Performance**

### **2.241 Time of Performance**

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

(b) Without limiting the generality of **Section 2.241(a)**, Contractor must notify the State in a timely manner upon becoming aware of any circumstances that may reasonably be expected to jeopardize the timely and successful completion of any Deliverables/Services on the scheduled due dates in the latest State-approved delivery schedule and must inform the State of the projected actual delivery date.

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

## **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 - Reserved**

#### **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**

The State owns all Deliverables as they are works made for hire by the Contractor for the State. The State owns all United States and international copyrights, trademarks, patents, or other proprietary rights in these Deliverables.

### **2.262 Vesting of Rights**

With the sole exception of any preexisting licensed works and information provided by the Contractor, the Contractor assigns, and upon creation of each Deliverable automatically assigns, to the State, ownership of all United States and international copyrights, trademarks, patents, or other proprietary rights in each and every Deliverable, whether or not registered by the Contractor, insofar as any the Deliverable, by operation of law, may not be considered work made for hire by the Contractor for the State. From time to time upon the State's request, the Contractor must confirm the assignment by execution and delivery of the assignments, confirmations of assignment, or other written instruments as the State may request. The State may obtain and hold in its own name all copyright, trademark, and patent registrations and other evidence of rights that may be available for Deliverables.

The Contractor retains its preexisting ownership, proprietary, and other such rights in its materials and any other item it owns and is used during the performance of this Contract but which is not a deliverable. The State retains its preexisting ownership, proprietary, and other such rights in its materials and any other item it owns and is used during the performance of this Contract.

### **2.263 Rights in Data**

(a) The State is the owner of all data made available by the State to the Contractor or its agents, Subcontractors or representatives under the Contract. The Contractor must not use the State's data for any purpose other than providing the Services, nor will any part of the State's data be disclosed, sold, assigned, leased or otherwise disposed of to the general public or to specific third parties or commercially exploited by or on behalf of the Contractor. No employees of the Contractor, other than those on a strictly need-to-know basis, have access to the State's data. Contractor must not possess or assert any lien or other right against the State's data. Without limiting the generality of this Section, the Contractor must only use personally identifiable information as strictly necessary to provide the Services and must disclose the information only to its employees who have a strict need-to-know the information. The Contractor must comply at all times with all laws and regulations applicable to the personally identifiable information.

(b) The State is the owner of all State-specific data under the Contract. The State may use the data provided by the Contractor for any purpose. The State must not possess or assert any lien or other right against the Contractor's data. Without limiting the generality of this Section, the State may use personally identifiable information only as strictly necessary to utilize the Services and must disclose the information only to its employees who have a strict need to know the information, except as provided by law. The State must comply at all times with all laws and regulations applicable to the personally identifiable information. Other material developed and provided by the State remains the State's sole and exclusive property.

### **2.264 Ownership of Materials**

The State and the Contractor will continue to own their respective proprietary technologies developed before entering into the Contract. Any hardware bought through the Contractor by the State, and paid for by the State, will be owned by the State. Any software licensed through the Contractor and sold to the State, will be licensed directly to the State.

## **2.270 State Standards**

### **2.271 Existing Technology Standards**

The Contractor must adhere to all existing and applicable 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](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**

I. Incineration Costs:

Gas Charge	\$.015/lb
Incineration Charge	\$.105/lb
Total Cost	\$.115/lb

II. Special Negotiated Pricing for CWD Testing

Per letter dated 9/21/12 by Carole A. Bolin DVM, PhD  
CWD ELISA testing will be \$24.00 per test based on DNR "trimming" the specimen

III. Testing Services  
See attached Fee Schedule

**FEE SCHEDULE DATED 10/1/2012**

Disease Symptom Panels		
Code	Description	Price
95506	Adult Bovine Enteric Disease Panel	100.70
95505	Adult Bovine Respiratory Disease Panel	159.00
80126	Bovine Abortion Screen Tissue, PCR	80.00
80123	Bovine Viral Enteric Screen	70.00
95504	Calf Enteric Disease Panel	94.00
95503	Calf Respiratory Disease Panel	166.42
80984	Canine Respiratory Disease Core Panel	123.00
80985	Canine Respiratory Disease Core Panel Plus	145.00
60993	Equine Diarrhea Panel + PHF	159.00
60994	Equine Diarrhea Panel, Adult	132.50
80989	Equine Neurologic Disease Core Panel	116.60
80131	Equine Respiratory Disease Core Panel	72.00
80987	Equine Respiratory Disease Core Panel Plus	86.00
80988	Equine Respiratory Disease Full Panel	125.00
60989	Equine Tick Core Panel	46.00
95994	Equine Wellness Panel	97.00
80100	Feline Respiratory Disease Core Panel	90.00
80983	Feline Respiratory Disease Core Panel Plus	140.00
60995	Foal Diarrhea Panel	153.70
95501	Neonatal Calf Enteric Disease - Core Panel	82.00
95502	Neonatal Calf Enteric Disease - Full Panel	140.00
95500	Neonatal Calf Respiratory Disease Panel	116.00

Bacteriology		
Code	Description	Price
95998	Abortion Screen, Serum - Bovine	70.00
95997	Abortion Screen, Serum - Equine	27.00
95004	Anaerobic Culture	20.00
95005	Blood Culture & Susceptibility	48.00
95006	Body Fluid Culture	40.00
95007	Body Fluid Culture & Susceptibility	45.00
95051	Brucella Culture	48.00

95009	Campylobacter Culture	25.00
95996	Canine Vaccine Panel + Lepto	57.00
95010	Clostridium perfringens Culture	45.00
95011	Ear Culture	40.00
95012	Ear Culture & Susceptibility	45.00
95047	Environmental Mycobacterium Culture	77.00
95013	Fecal/Intestinal Culture	40.00
95014	Fecal/Intestinal Culture & Susceptibility	45.00
95015	Fungal Culture	30.00
95016	General Culture	40.00
95017	General Culture & Susceptibility	45.00
95018	Isolate Identification	40.00
95019	Isolate Identification & Susceptibility	45.00
95054	Lepto MA Additional Serovar	6.00
95995	Lepto Urine & Serum if Positive	21.00
95038	Leptospira by FA (Tissue)	22.00
95039	Leptospira by FA (Urine)	21.00
95055	Leptospiral Microscopic Agglutination, Canine	22.00
95040	Leptospiral Microscopic Agglutination, Other	16.00
95020	Listeria Culture	40.00
95021	Listeria Culture & Susceptibility	45.00
95043	Milk Culture	13.00
95044	Milk Culture & Susceptibility	15.00
95048	Mycobacterium Culture	70.00
95050	Mycobacterium Culture - Sterile	30.00
95056	Mycobacterium Paratuberculosis Cul. Accelerated	33.00
95057	Mycobacterium Paratuberculosis Cul. Maximum	35.00

Bacteriology		
Code	Description	Price
95058	Mycobacterium Paratuberculosis Cul. Pooled Fecal	29.00
95060	Mycobacterium Paratuberculosis Cul. Routine	26.00
95023	Mycoplasma Culture	20.00
95024	Mycoplasma/Ureaplasma Culture	27.00

95026	Reproductive Culture	40.00
95027	Reproductive Culture & Susceptibility	45.00
95028	Respiratory Culture	40.00
95029	Respiratory Culture & Susceptibility	45.00
95033	Salmonella Culture	27.00
95034	Salmonella Culture & Susceptibility	27.00
95064	Salmonella Culture, Enriched	40.00
95030	Tissue Culture	40.00
95031	Tissue Culture & Susceptibility	45.00
95001	Urine Culture	40.00
95032	Urine Culture & Susceptibility	45.00
95035	Wound Culture	40.00
95036	Wound Culture & Susceptibility	45.00

### Biopsy & Immunohistochemistry

Code	Description	Price
40001	Add'l H&E Slide	10.00
40016	Biopsy Consultation	45.00
40003	Biopsy, Standard	55.00
40020	Cut Slide	8.00
40004	Decalcification	25.00
40066	Electron Microscopy	350.00
40015	Embed Only	8.00
40014	Embed, Cut and Stain H&E	11.00
40061	Feline Intestinal Lymphoma Panel	160.00
40017	H&E Stain	9.00
40006	Hemimandibulectomy/ Hemimaxillectomy	60.00
40005	IHC Stain	30.00
40100	In-Situ Hybridization	60.00
40007	Margin Study <2cm	38.00
40008	Margin Study >8cm	160.00
40009	Margin Study 2 to <4cm	60.00
40010	Margin Study 4 to <6cm	83.00
40011	Margin Study 6 to <8cm	115.00
40062	Mast Cell Tumor (MCT) Prognostic Panel	210.00
40065	Melanoma Panel - Complete	100.00
40063	Melanoma Panel - Diagnostic	70.00
40064	Melanoma Panel - Prognostic	45.00
40012	Multiple Tissue/Tumor Charge	20.00
40018	PCR Prep	5.00
40019	Special Stain	12.00
40013	Toe/Hoof Biopsy	40.00

### Clinical Pathology

Code	Description	Price
10304	Albumin Fluid	25.00

10301	Albumin Serum	16.00
10431	Albumin/Globulin Ratio Serum (TP, Albumin, Globulin)	28.00
10314	Alkaline Phosphatase Fluid	25.00
10311	Alkaline Phosphatase Serum	16.00
10494	ALT Fluid	25.00
10491	ALT Serum	16.00
10324	Amylase Fluid	26.00
10321	Amylase Serum	22.00
11402	Antinuclear Antibody (ANA)	58.00
11711	Antithrombin III, Canine	39.00
11714	Antithrombin III, Feline	39.00
11704	APTT [Activated Partial Thromboplastin Time]	26.50
10484	AST Fluid	25.00
10481	AST Serum	16.00
10295	Bence Jones (Screening)	17.50
11992	Bile Acid 2 Hour Post Prandial Only	29.00
11988	Bile Acid Fasting Only	29.00
11996	Bile Acid Profile (Fasting and 2 Hour)	47.00
11993	Bile Acid Random (Equine Only)	29.00
10351	Bilirubin Profile Serum (Total, Direct, Indirect)	30.00
10345	Bilirubin, Total Fluid	25.00
10341	Bilirubin, Total Serum	16.00
11660	Blood Parasite	30.00
10704	Blood Type DEA 1.1 Canine	43.50
10705	Blood Type Feline	39.00
10374	BUN Fluid	25.00
10371	BUN Serum	16.00
10384	Calcium Fluid	25.00
10381	Calcium Serum	16.00
11600	CBC with Differential	33.00
11612	CBC with Differential & Est Fibrinogen	42.00
10767	CBC, Avian	53.00
10041	Chemistry Profile & Lipase, Small Animal	58.00
11997	Chemistry Profile Liver, Small Animal	50.00
10030	Chemistry Profile, Avian Maxi	38.00
10020	Chemistry Profile, Avian Mini	25.00
10010	Chemistry Profile, Bovine	44.00
10000	Chemistry Profile, Equine	45.00

### Clinical Pathology

Code	Description	Price
10022	Chemistry Profile, Other Large Animal	44.00
10868	Chemistry Profile, Renal	34.00

10040	Chemistry Profile, Small Animal	44.00
10897	Cholesterol Fluid	25.00
10391	Cholesterol Serum	16.00
10404	CK Fluid	25.00
10401	CK Serum	16.00
11707	Coagulation Profile Large Animal	92.00
11712	Coagulation Profile, Canine	125.00
11700	Coagulation Profile, Feline	99.00
11701	Coagulation-Mini Auto (PT,APTT)	44.00
10457	Colloid Osmotic Pressure	26.50
10641	Coombs Canine	79.00
10414	Creatinine Fluid	25.00
10411	Creatinine Serum	16.00
11271	Cytology Bone Marrow	67.00
11020	Cytology CSF	72.00
11200	Cytology Other Fluid (Includes Cell Count)	56.00
11297	Cytology Other Fluid (No Cell Count)	52.00
11000	Cytology Peritoneal Fluid	56.00
11100	Cytology Pleural Fluid	56.00
11160	Cytology Semen	64.00
11294	Cytology Slide Only	55.00
11080	Cytology Synovial Fluid	60.50
11331	Cytology Urine	52.00
11180	Cytology Wash/BAL (No Cell Count)	52.00
10871	Electrolytes Expanded Fluid	38.50
10050	Electrolytes Expanded Serum	29.00
10150	Electrolytes Fluid	29.00
10130	Electrolytes Serum	22.00
11351	Fecal Occult Blood (Herbivore)	22.00
11706	Fibrin Degradation Products (Plasma)	43.50
11710	Fibrinogen Estimated	15.00
11708	Fibrinogen Quantitative	43.50
10021	Fractional Clearance	76.00
11415	Fructosamine Serum	30.00
10424	GGT (GGTP) Fluid	25.00
10873	GGT Creatinine Ratio Urine	37.50
10421	GGT Serum	16.00
10444	Glucose Fluid	25.00
10441	Glucose Serum	16.00
10520	Glucose Tolerance Test	55.00
11296	ICC - CD3/CD79a Profile	79.50
11530	IgG Bovine	25.50
11516	IgG Equine	39.50
11972	IgG Llama	46.50

11522	IgM Equine	45.50
10899	Iron Serum	16.00
10254	Lipase Fluid	39.00
10251	Lipase Serum	31.00
10454	Magnesium Fluid	25.00
10451	Magnesium Serum	16.00
11240	Nucleated Cell Count Fluid	17.50
11650	Packed Cell Volume & Total Solids	15.00
20034	Phenobarbital post pill	25.00
10464	Phosphorus Fluid	25.00
10461	Phosphorus Serum	16.00
10885	Presurgical Profile Large Animal (CBC/Est FIB, GGT)	55.00
10870	Presurgical Profile Small Animal (CBC, BUN, ALT)	50.00
11440	Protein Electrophoresis (Fluid)	69.00
11430	Protein Electrophoresis (Serum)	69.00
10865	Protein, Total Fluid	28.00
10501	Protein, Total Serum	16.00
11702	Prothrombin Time (PT)	26.50
11690	Reticulocyte (Canine)	24.00
11692	Reticulocyte (Feline)	24.00
10474	SDH (ID) Fluid	31.00
10471	SDH (ID) Serum	30.00
11060	Semen Evaluation	62.50
11067	Sperm Count CP	16.50
10869	Total Protein Creatinine Ratio Urine	39.50
10874	Total Protein/Creatinine & GGT/ Creatinine Ratios Urine	50.00
10856	Triglyceride Serum	22.00
11973	Triglycerides Fluid	30.00
10514	Uric Acid Fluid	28.00
10511	Uric Acid Serum	22.00
11300	Urinalysis Complete	24.00
<b>Endocrinology</b>		
Code	Description	Price
20001	25-Hydroxyvitamin D	37.00
20002	Aldosterone, Baseline	18.00
20009	Aldosterone, Post	16.00
20024	Autoantibody (T3/T4)	16.00
20524	Calcitriol	55.00
20012	Canine Therapeutic Monitoring	40.00
20010	Canine Thyroid Diagnostic Profile	47.00
20218	Cortisol High dose DEX, Post	13.00
20318	Cortisol Low dose DEX, Post	13.00
20420	Cortisol post ACTH	13.00

Endocrinology		
Code	Description	Price
20422	Cortisol Post DEX (Equine DEX Suppression)	13.00
20118	Cortisol Post TRH	13.00
20017	Cortisol, Baseline	16.00
20020	Endocrinology Interpretation	6.00
20006	Endogenous ACTH	27.00
20021	Free T4 by Dialysis	42.00
20007	Gastrin, Baseline	26.00
20025	Gastrin, Post	22.00
20032	Insulin and Glucose, Post	15.50
20031	Insulin Autoantibody	16.00
20005	Insulin Like Growth Factor-1	52.00
20026	Ionized Calcium	8.50
20030	Malignancy Profile	65.00
20015	Non-Canine Thyroid Profile	29.00
20014	OFA Canine Thyroid Profile	56.00
20033	Parathyroid Hormone and Ionized Calcium	36.00
20004	Parathyroid Hormone Related Protein	44.00
20011	Premium Canine Thyroid Profile	66.00
20016	Premium Non-canine Thyroid Profile	51.00
20040	Premium T3 Suppression, Post	42.50
20013	Premium Therapeutic Monitoring	57.00
20037	Progesterone-Same Day	18.50
20008	Serum Insulin and Glucose, fasting	17.50
20038	Testosterone Baseline	18.00
20039	Testosterone post HCG	16.00
20022	Thyroglobulin Autoantibody	20.00
20023	Thyroid Stimulating Hormone	21.00
20041	Thyroid T3 Suppression, Post	21.00
20019	Urinary cortisol/creatinine	20.00
20035	Vitamin D Profile	53.00
Immunodiagnosics/Parasitology		
Code	Description	Price
90051	Anaplasma PCR	39.00
60033	Anaplasma phagocytophilum IFA	24.00
90006	Aspergillus AGID	13.00
90005	Avian Influenza AGID	6.50
60001	Babesia canis IFA Titer	26.00
60003	Babesia sp. PCR	39.00
60061	Baermann Test for Lungworm Larvae	13.50
60041	Bartonella sp. PCR	39.00
90007	Blastomyces AGID	13.00
90008	Brucella abortus Plate Agglutination	8.00

90009	Brucella canis Antibody	23.00
90010	Brucella suis Plate Agglutination	8.00
60063	C. difficile ELISA	43.00
60062	C. perfringens ELISA	33.00
60996	Canine Donor Mini Panel	104.00
60998	Canine Donor Super Panel	115.00
60064	Clostridium ELISA Panel	70.00
90020	Coccidioides immitis AGID	13.00
90026	Cryptococcal Antigen Latex Agglutination	18.00
60026	Cryptosporidia	15.00
90041	Eastern Equine Encephalitis PCR	39.00
90040	Eastern Equine Encephalitis Virus Isolation	55.00
60027	Ectoparasite Screen	25.00
60010	Ehrlichia & Lyme Panel	64.00
60008	Ehrlichia canis IFA	24.00
60048	Ehrlichia canis PCR	39.00
60035	Fecal Sedimentation	14.00
60997	Feline Donor	74.00
90021	Fungal Serology	48.00
90011	Gamma Interferon Bovine TB	45.00
90003	Gamma Interferon Primate TB	66.50
60024	Giardia Antigen Test	29.00
60018	Heartworm Antibody Test - Feline	21.00
60019	Heartworm Antigen Test	21.00
90025	Histoplasma AGID	13.00
60040	IDEXX 4DX	30.00
90052	Infectious Bronchitis Virus ELISA	7.00
90027	Johnes AGID	12.00
90031	Johnes ELISA	7.25
60022	Leishmania IFA	25.50
60014	Lyme IFA	24.00
60059	Lyme PCR	39.00
60015	Lyme Western Blot	48.00
90022	M. gallisepticum HI	11.00
90029	M. gallisepticum Plate Agglutination	4.25
90023	M. meleagridis HI	11.00
90030	M. meleagridis Plate Agglutination	4.25
90024	M. synoviae HI	11.00
90033	M. synoviae Plate Agglutination	4.25
60050	Melamine ELISA	45.00
60034	Microfilaria Differentiation	22.00
60044	Mycoplasma PCR (Canine)	39.00
60030	Mycoplasma PCR (Feline)	42.00
60020	Neorickettsia risticii IFA	25.00

60038	Neorickettsia risticii PCR	39.00
60017	Neospora caninum cELISA	8.00
Immunodiagnosics/Parasitology		
Code	Description	Price
60016	Neospora caninum IFA	24.00
60043	Neospora caninum PCR	39.00
90053	Newcastle Disease Virus ELISA-Chicken	7.00
90015	Newcastle Disease Virus ELISA-Turkey	7.00
90044	Porcine Circovirus Type 1 PCR	39.00
90043	Porcine Circovirus Type 2 PCR	39.00
60011	Qualitative Fecal	16.00
60012	Quantitative Fecal	20.00
60021	Rickettsia rickettsii IFA	24.00
60060	Rickettsia rickettsii PCR	39.00
90001	Salmonella pullorum Tube Agglutination	6.50
90002	Salmonella typhimurium Tube Agglutination	6.50
60004	Sarcocystis neurona IFA	42.00
60002	Sarcocystis neurona PCR	39.00
60006	Sarcocystis neurona Western Blot-CSF	58.00
60007	Sarcocystis neurona Western Blot-Serum	58.00
60013	Tick Borne Disease Antibody Screen	90.00
60066	Tick Identification	10.00
60065	Tick PCR	55.00
60037	Toxoplasma gondii IFA IgG & IgM	42.50
60031	Toxoplasma gondii IgG IFA	24.00
60032	Toxoplasma gondii IgM IFA	24.00
60042	Toxoplasma gondii PCR	39.00
60023	Tritrichomonas foetus Culture	20.00
90034	West Nile Virus Isolation	55.00
90036	West Nile Virus VN Serum	32.00
Necropsy & Cremation Services		
Code	Description	Price
99200	After Hours Necropsy Handling Fee	180.00
30027	Amputated Limb, Gross/Microscopic Exam	160.00
99003	Cremains Return Handling Fee	43.00
99015	Cremation - Companion/Other	75.00
99215	Cremation - Equine	150.00
99315	Cremation - Food Animal	64.00
30025	Field Necropsy - Bovine	170.00
30024	Field Necropsy - Equine	170.00
30026	Field Necropsy - Other	170.00

30001	Full Necropsy Companion Animal	240.00
30002	Full Necropsy Equine	300.00
30003	Full Necropsy Farm Animal	170.00
30004	Full Necropsy Other Species	200.00
30021	Necropsy Abortion - Bovine	260.00
30020	Necropsy Abortion - Equine	380.00
30022	Necropsy Abortion - Other	300.00
30009	Necropsy Legal Case Surcharge	400.00
30010	Spinal Cord Removal	170.00
Nutrition		
Code	Description	Price
50240	Acid Detergent Fiber	22.00
50994	Animal By-Product Analysis by Wet Chemistry	63.00
50214	Ascorbic Acid	50.00
50218	Ash, Bone	55.00
50236	Ash, Feed	22.00
50216	Beta Carotene, Feed	130.00
50215	Beta Carotene, Other	130.00
50217	Beta Carotene, Serum	25.00
50244	Beta Hydroxybutyrate	16.00
70053	Copper	25.00
50239	Crude Fat	22.00
50238	Crude Fiber	22.00
50237	Crude Protein	22.00
50235	Dry Matter	22.00
50702	Electrolyte & Primary Trace Nutrient Panel	65.00
50993	Equine Feed Analysis by Wet Chemistry	95.00
95993	Equine Wellness Panel Add-on	90.00
50225	Fat, Liver	43.00
50231	Fatty Acid Profile	95.00
50219	Feed Analysis, Equine Hay	53.00
50242	Feed Label - Wet Chem	62.00
50247	Iodine Inorganic, Serum	27.00
50246	Iodine Total, Serum	27.00
50249	Iodine, Feed	82.00
50251	Iodine, Milk	27.00
50250	Iodine, Other	82.00
50248	Iodine, Tissue	30.00
50245	Metabolic Profile	37.00
50998	NEFA Plus BHB	32.00
50241	Neutral Detergent Fiber	22.00
50243	Non-Esterified Fatty Acids	16.00
50701	Primary Trace Nutrient Panel	40.00

50700	Selenium & Copper Panel	33.00
50201	Selenium, Feed	82.00
50205	Selenium, Other	82.00
50203	Selenium, Serum	25.00
50202	Selenium, Tissue	30.00
50204	Selenium, Whole Blood	25.00
<b>Nutrition</b>		
Code	Description	Price
50991	Standard Feed Analysis by NIR	58.00
50992	Standard Feed Analysis by Wet Chemistry	60.00
50703	Trace Nutrient Elements - Tissue	42.00
50206	Vitamin A, Feed	130.00
50209	Vitamin A, Other	130.00
50208	Vitamin A, Serum	25.00
50207	Vitamin A, Tissue	30.00
50234	Vitamin D, Feed	220.00
50210	Vitamin E, Feed	130.00
50213	Vitamin E, Other	130.00
50212	Vitamin E, Serum	25.00
50211	Vitamin E, Tissue	30.00
50229	Vitamin Profile, Serum	53.00
<b>Toxicology</b>		
Code	Description	Price
70033	25-OH-Vitamin D3, Kidney	55.00
70014	Anions	50.00
70066	Anticoagulants, Blood	88.00
70015	Anticoagulants, Tissue/Bait	98.00
70061	Avitrol/Starlicide	85.00
70001	Bromide	37.00
70203	Chlorinated Compounds - DBS	110.00
70067	Cholinesterase, Blood	30.00
70018	Cholinesterase, Tissue/Retina	35.00
70021	Convulsants	75.00
70022	Cyanide	40.00
70023	Ethylene Glycol	53.00
70024	Fat, Bone Marrow	50.00
70006	GCMS General Organic Compounds Screen	140.00
70055	GCMS, Quantification	140.00
70029	Glomerular Filtration Rate/Iohexol Clearance	95.00
70031	Ionophores Quantification	45.00
70032	Ionophores, Qualitative	70.00
70019	Lead, Blood	32.00
70068	Melamine and Related Compounds	205.00

70034	Mercury	43.00
70062	Methylxanthines	65.00
70059	Minerals - Water	32.00
70037	Mycotoxins	75.00
70036	Mycotoxins Quantification	45.00
70039	Nitrates	18.00
70038	Nitrates Quantification	20.00
70040	Ochratoxins	110.00
70005	Ochratoxins Quantification	50.00
70020	Pesticides, Chlorinated	130.00
70042	pH Determination	8.00
70063	Phosphine	55.00
70043	Plant Identification	60.00
70045	Polychlorinated Biphenyls	130.00
70052	Strychnine	35.00
70017	Toxic Elements - Biopsy	34.00
70027	Toxic Elements - Feed/Other	42.00
70025	Toxic Elements - Fluid	32.00
70046	Toxic Elements - Premix	50.00
70051	Toxic Elements - Soil/Sludge	50.00
70004	Toxic Elements - Tissue	34.00
70200	Toxic Elements in Whole Blood	60.00
70201	Toxic Elements in Whole Blood - Extended	93.00
<b>Virology</b>		
Code	Description	Price
80302	AIV H5 PCR	42.00
80303	AIV H7 PCR	42.00
80107	Avian Influenza Virus PCR	42.00
80108	Avian Influenza Virus VI	53.00
80215	B-cell Clonality PCR	159.00
80002	Bovine Adenovirus VI	53.00
80040	Bovine Coronavirus PCR	39.00
80201	Bovine Leukemia Virus ELISA	9.00
80203	Bovine Parainfluenza 3 VI	53.00
80204	Bovine Parainfluenza 3 VN	11.00
80129	Bovine Parainfluenza-3 Virus PCR	39.00
80124	Bovine Respiratory Screen PCR, Non-Tissue	152.00
80205	Bovine Respiratory Syncytial Virus PCR	39.00
80209	Bovine Rotavirus ELISA	28.00
80007	Bovine Viral Diarrhea PCR	39.00
80311	Bovine Viral Diarrhea PCR - Ear	3.50
80006	Bovine Viral Diarrhea VI	53.00
80009	Bovine Viral Diarrhea VN Type 1	11.00

80008	Bovine Viral Diarrhea VN Type 2	11.00
80041	Canine Adenovirus PCR	39.00
80046	Canine Adenovirus VI	53.00
80047	Canine Adenovirus VN	11.00
80105	Canine Coronavirus PCR	39.00
80049	Canine Distemper Virus PCR	39.00
80050	Canine Distemper Virus VN	11.00
80015	Canine Herpesvirus PCR	39.00
80014	Canine Herpesvirus VI	53.00
80039	Canine Parainfluenza-2 Virus PCR	39.00

80026	Feline Leukemia Virus ELISA	26.00
80027	Feline Leukemia Virus PCR	39.00
80032	Feline Panleukopenia FA	25.00
80035	Feline Panleukopenia HI	15.00
80033	Feline Panleukopenia PCR	39.00
80102	Feline Vaccine Screen	35.00
80024	Ferret Aleutian Disease PCR	39.00
80025	Ferret Enteric Coronavirus PCR	39.00
80036	Ferret Rotavirus A PCR	39.00
80037	Ferret Rotavirus C PCR	39.00
80071	Infectious Bovine Rhinotracheitis PCR	39.00
80072	Infectious Bovine Rhinotracheitis VI	53.00
80073	Infectious Bovine Rhinotracheitis VN	11.00
80074	Infectious Bronchitis Virus by PCR	39.00
80075	Infectious Bronchitis Virus by VI	53.00
80076	Infectious Laryngotracheitis PCR	39.00
80077	Infectious Laryngotracheitis VI	53.00
80114	Malignant Catarrhal Fever PCR	39.00
80078	Newcastle Disease Virus PCR	39.00
80079	Newcastle Disease Virus VI	53.00
80115	Ovine Progressive Pneumonia AGID	11.00
80084	Porcine Parvovirus PCR	39.00
80090	Porcine Respiratory & Reproductive Syndrome PCR	39.00
80085	Porcine Rotavirus ELISA	28.00
80087	Porcine Rotavirus PCR	39.00
80092	Pseudorabies VI	53.00
80096	Swine Influenza Virus PCR	39.00
80095	Swine Influenza Virus VI	53.00
80214	T-cell Clonality PCR	100.00
80109	Transmissible Gastroenteritis FA	25.00
80110	Transmissible Gastroenteritis PCR	39.00
80132	West Nile Virus IgM Capture ELISA	32.00

### Additional Services - Products & Supplies

Virology		
Code	Description	Price
80053	Canine Parvovirus FA	25.00
80054	Canine Parvovirus HI	15.00
80101	Canine Vaccine Antibody Panel	35.00
80130	Canine Viral Resp. Screen PCR	115.00
80135	Caprine Arthritis Encephalitis Virus ELISA	10.00
80044	Caprine Arthritis Encephalitis Virus PCR	39.00
80012	Chlamydia VI	53.00
80010	Chlamydia PCR	39.00
80213	c-Kit PCR	77.00
80300	Classical Swine Fever PCR	42.00
80018	Equine Arteritis Virus PCR	39.00
80017	Equine Arteritis Virus VI	53.00
80056	Equine Herpesvirus PCR	39.00
80058	Equine Herpesvirus VI	53.00
80059	Equine Herpesvirus VN	11.00
80256	Equine Herpesvirus-4 PCR	39.00
80113	Equine Infectious Anemia AGID	10.00
80112	Equine Infectious Anemia ELISA	10.00
80062	Equine Influenza Virus PCR	39.00
80063	Equine Influenza Virus VI	53.00
80023	Equine Rotavirus ELISA	28.00
80022	Equine Rotavirus PCR	39.00
80301	Exotic Newcastle Disease Virus PCR	39.00
80064	Feline Calicivirus PCR	39.00
80065	Feline Calicivirus VI	53.00
80066	Feline Calicivirus VN	11.00
80067	Feline Coronavirus PCR	39.00
80028	Feline Herpesvirus PCR	39.00
80030	Feline Herpesvirus VI	53.00
80031	Feline Herpesvirus VN	11.00
80069	Feline Immunodeficiency Virus ELISA	26.00

Code	Description	Price
99604	Dried Blood Spot Kit	16.00
99028	Endo Normals	Free
99033	Fee Schedule	Free
99031	Form - Clin Path	Free
99025	Form - CTR	Free
99030	Form - Endo	Free
99035	Form - General	Free
99125	Form - Necropsy/Biopsy	Free
99021	Mailer - 12 Box Fed Ex Prepaid	89.00
99121	Mailer - 12 Box USPS Prepaid	64.00

99022	Mailer - 24 Box Fed Ex Prepaid	172.00
99122	Mailer - 24 Box USPS Prepaid	128.00
99221	Mailer - 3 Insulated w/Fed Ex Return Delivery	48.00
99020	Mailer - 6 Box Fed Ex Prepaid	46.00
99120	Mailer - 6 Box USPS Prepaid	33.00
99222	Mailer - 6 Insulated w/Fed Ex Return Delivery	96.00
99603	Mailer - Bacti Enteric	18.00

99114	Mailer - Biopsy Large w/Fed Ex	16.00
99124	Mailer - Biopsy Small w/Fed Ex	8.00
99004	Mailer - Biopsy Small w/USPS	5.50
99220	Mailer - Insulated w/Fed Ex Return Delivery	16.00
99012	Tubes - Set of 5 Royal Blue	16.00

