

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

CHANGE NOTICE NO. 02
 to
CONTRACT NO. 751B3200069
 between
THE STATE OF MICHIGAN
 and

NAME & ADDRESS OF CONTRACTOR	PRIMARY CONTACT	EMAIL
J.F. Griffin Publishing, LLC 430 Main Street Williamstown, MA 01267	P. Jeremy Garnish	Jeremy@jfgriffin.com
	PHONE	VENDOR TAX ID # (LAST FOUR DIGITS ONLY)
	(413) 212-1923	4458/001

STATE CONTACTS	DIVISION	NAME	PHONE	EMAIL
CONTRACT MANAGER	Fisheries	Elyse Walter	(517) 284-5839	WalterE@michigan.com
CONTRACT ADMINISTRATOR	Finance and Operations	Jana Harding-Bishop	(517) 284-5938	HardingJ3@michigan.gov

CONTRACT SUMMARY			
DESCRIPTION: Publication of Fishing Digest			
<u>INITIAL EFFECTIVE DATE</u>	<u>INITIAL EXPIRATION DATE</u>	<u>INITIAL AVAILABLE OPTIONS</u>	<u>EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW</u>
9/10/2013	8/27/2016	2 – 2 year options	8/27/16
PAYMENT TERMS	F.O.B.	SHIPPED TO	
Net 45	N/A	N/A	
<u>ALTERNATE PAYMENT OPTIONS</u>			<u>EXTENDED PURCHASING</u>
<input type="checkbox"/> P-card <input type="checkbox"/> Direct Voucher (DV) <input type="checkbox"/> Other			<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
MINIMUM DELIVERY REQUIREMENTS			
N/A			

DESCRIPTION OF CHANGE NOTICE				
<u>EXTEND CONTRACT EXPIRATION DATE</u>	<u>EXERCISE CONTRACT OPTION YEAR(S)</u>	<u>EXTENSION BEYOND CONTRACT OPTION YEARS</u>	<u>LENGTH OF EXTENSION/OPTION</u>	<u>EXPIRATION DATE AFTER CHANGE</u>
<input type="checkbox"/> No <input checked="" type="checkbox"/> Yes	<input checked="" type="checkbox"/>	<input type="checkbox"/>	1 year	8/27/2017
CURRENT VALUE	VALUE/COST OF CHANGE NOTICE	ESTIMATED REVISED AGGREGATE CONTRACT VALUE		
\$296,243.55	\$158,787.21	\$447,030.76		

DESCRIPTION:
 Change notice is to extend the contract 1 year to get on a 2 year publication cycle – next guide will be for 2016/2017.
 Add \$158,787.21 to cover the cost of the 2 year guide
 See attached revised schedule

Change Notice Number: 02
Contract Number: 751B3200069

FOR THE CONTRACTOR:

J.F. Griffin Publishing, LLC
Firm Name

On-file in DNR Procurement
Authorized Agent Signature

P. Jeremy Garnish
Authorized Agent (Print or Type)

8/5/15
Date

FOR THE STATE:

On-file in DNR Procurement
Signature

Laura Gyorkos, Procurement Manager
Name & Title

DNR – Finance and Operations Div
Agency

8/6/15
Date

The 2016-2017 Michigan Fishing Guide will be a two-year guide.
 Quantity will be 1.5 million
 Pricing provided as stated below:

Guide Size	5.375" x 8.375"
Est. # of pages	72 pages (+4 page cover)
Paper for Cover	70# No. 3 Gloss, 4/4 with bleeds
Paper for Content and Advertisement	38# No. 5 Gloss, 4/4 with bleeds
Pricing Details	
Printing Cost	\$260,000.00
Design Cost	\$6,080.00
Total Cost	\$266,080.00
Advertising Sales*	140,000.00
Cost to the State	\$189,080.00
	55%
Cost for Additional 100,000 Guides**	\$17,000.00
Cost for Additional 200,000 Guides**	\$33,000.00

Cost per additional 1,000 Guides	\$190.00
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2016-2017 Michigan Fishing Guide Schedule

Action Item	Date	Notes
DNR to give contractor the list of Retail License Sales Agents for ad solicitation purposes	May 15	
DNR to give contractor the list of Potential Advertisers for ad solicitation purposes	May 15	
Contractor to provide marketing plan and rate card to DNR	June 1	
Contractor to provide DNR with list of contacts made to Potential Advertisers list	June 15	
Project conference call and template delivered	September 12	
Final production schedule delivered	September 19	
Template delivered by contractor	October 6	
Contractor to provide DNR with list of advertising contacts made to Retail License Sales Agents list	October 15	
Materials due to contractor	October 22	
Draft #2 provided by contractor	November 6	
Contractor to provide list of secured advertisers	November 15	
Revisions of Draft #2 provided to contractor	November 19	
INTERNAL: Review field office list locations and quantities	December 2	
Draft #3 provided by contractor	December 3	
INTERNAL: Review license agent list locations and quantities (scale by percentage?)	December 8	

Revisions of Draft #3 provided to contractor	December 12	
DNR to approve or deny ads	December 15	
Printer proofs delivered	December 19	
DNR to provide shipping lists to Contractor	December 17	
Final approval due!	January 9	
Contractor to provide scrubbed shipping list	January 9	
Production of printed guides to begin	January 16	
Contractor to ship guides to DNR Operations Service Centers, Field Offices and Lansing Offices	February 4	1 st Wednesday of February
Contractor to provide tracking numbers to DNR for the above shipment	February 11	Within 5 business days of ship date
Contractor to ship guides to Retail License Sales Agent list	February 11	2 nd Wednesday of February
Contractor to provide tracking numbers to DNR for above shipment	February 18	Within 5 business days of ship date
INTERNAL: Cross-reference shipping list(s) with UPS bills to confirm payments for processing	Approx. March 1	
Contractor to ship remaining guides to QCI warehouse	Approx. February 25	To be done within one week of 2 nd shipment. Contractor must notify DNR and QCI in advance of delivery.
Contractor to provide raw design file to DNR	Approx. February 10	Within 10 days of printing
Contractor to provide advertising sales report to DNR	Approx. March 1	
Contractor to provide summary report to DNR	Approx. March 1	After completion of printed guide
Contractor to provide DNR with updated electronic version of guide, including all changes made SINCE physical guide was printed	March 31 of following year	

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

CHANGE NOTICE NO. 01
 to
CONTRACT NO. 751B3200069
 between
THE STATE OF MICHIGAN
 and

NAME & ADDRESS OF CONTRACTOR:	PRIMARY CONTACT	EMAIL
J.F. Griffin Publishing, LLC 430 Main Street Williamstown, MA 01267	P. Jeremy Garnish	Jeremy@jgriffin.com
	TELEPHONE	CONTRACTOR #, MAIL CODE
	(413) 212-1923	*****4458/001

STATE CONTACTS	DIVISON	NAME	PHONE	EMAIL
CONTRACT MANAGER	FISHERIES	ELYSE WALTER	(517) 284-5839	WALTERE@MICHIGAN.GOV
BUYER	FINANCE AND OPERATIONS	JANA HARDING-BISHOP	(517) 284-5938	HARDINGJ3@MICHIGAN.GOV

CONTRACT SUMMARY:

DESCRIPTION: Publication of Fishing Digest			
<u>INITIAL EFFECTIVE DATE</u>	<u>INITIAL EXPIRATION DATE</u>	<u>INITIAL AVAILABLE OPTIONS</u>	<u>EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW</u>
3 years	8/27/2016	2 – 2 year	8/27/2016
<u>PAYMENT TERMS</u>	<u>F.O.B</u>	<u>SHIPPED</u>	<u>SHIPPED FROM</u>
Net 45	N/A	N/A	N/A
<u>ALTERNATE PAYMENT OPTIONS:</u>			<u>AVAILABLE TO MIDEAL PARTICIPANTS</u>
<input type="checkbox"/> P-card <input type="checkbox"/> Direct Voucher (DV) <input type="checkbox"/> Other			<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
MINIMUM DELIVERY REQUIREMENTS:			
None			

DESCRIPTION OF CHANGE NOTICE:

<u>EXTEND CONTRACT EXPIRATION DATE</u>	<u>EXERCISE CONTRACT OPTION YEAR(S)</u>	<u>EXTENSION BEYOND CONTRACT OPTION YEARS</u>	<u>LENGTH OF OPTION/EXTENSION</u>	<u>EXPIRATION DATE AFTER CHANGE</u>
<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	<input type="checkbox"/>	<input type="checkbox"/>		
<u>VALUE/COST OF CHANGE NOTICE:</u>		<u>ESTIMATED REVISED AGGREGATE CONTRACT VALUE:</u>		
\$0.00		\$296,243.55		

Provide the detail of the change notice:

Change the Contract Manager to Elyse Walter

Change 2015 Fishing Guide from a 2 year to a 1 year guide – Adjust the quantity and cost:

2015 Fishing Guides – Quantity of 1,250,000

Guide Size	5.375" x 8.375"
Est. # of pages	72 pages
Paper for Cover	70# No. 3 Gloss, 4/4 with bleeds
Paper for Content and Advertisement	38# No. 5 Gloss, 4/4 with bleeds
Pricing Details	
Printing Cost	\$216,671.00
Design Cost	\$5,760.00
Total Cost	\$222,431.00
Advertising Sales	\$160,000.00
Cost to the State	\$134,431.00
% of Advertising Dollar used to offset Cost to State	55%

55% of advertising sales revenue will be applied to cover the total cost.

This (total) pricing is guaranteed maximum cost. If advertising revenues are OVER the projection listed above, 55 cents of every dollar will be used to further offset the costs.

All other Contract Terms will remain unchanged.

Change Notice Number 01

Contract Number 751B3200069

FOR THE CONTRACTOR:

J.F. Griffin Publishing, LLC

Firm Name

On-file in DNR Procurement

Authorized Agent Signature

P. Jeremy Garnish

Authorized Agent (Print or Type)

12/1/14

Date

FOR THE STATE:

On-file in DNR Procurement

Signature

Laurie Gyorkos/Procurement Manager

Name/Title

DNR/Finance and Operations

Enter Name of Agency

12/1/14

Date



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

NOTICE OF CONTRACT NO. 751B3200069
Between
STATE OF MICHIGAN
and

Required by authority of 1984 PA 431, as amended.

Name and Address of Contractor		Primary Contact	
J.F. Griffin Publishing, LLC 430 Main St Williamstown, MA 01267		P. Jeremy Garnish	
		Email Jeremy@jfgriffin.com	
		Telephone (413) 212-1923	Contractor #, Mail Code *****4458/001

State Contact	Agency	Name	Telephone	Email
Contract Compliance Inspector	DNR	Christine Schwerin	(517) 335-7792	schwerinc@michigan.gov
Buyer	DNR	Jana Harding-Bishop	(517) 373-1190	Hardingj3@michigan.gov

Contract Summary

Description (Provide a basic but comprehensive description of services) Publication of Fishing Guide			
Initial Term 3 years	Effective Date 9/10/2013	Initial Expiration Date 8/27/2016	Available Options 2 - 2 year options
Payment Terms Net 45	F.O.B. N/A	Shipped N/A	Shipped From N/A
Minimum Delivery Requirements N/A		Alternate Payment Options <input type="checkbox"/> P-Card <input type="checkbox"/> Direct Voucher (DV)	Available to MiDeal Participants <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No

Miscellaneous Information
The terms and conditions of this Contract are those of ITB #RFP-JH-FISH-751R3201250, this Contract Agreement and the vendor's quote. In the event of any conflicts between the specifications, and terms and conditions, indicated by the State and those indicated by the

ESTIMATED CONTRACT VALUE AT TIME OF EXECUTION: \$296,243.55



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

CONTRACT NO. 751B3200069

**Between
 STATE OF MICHIGAN**

and

Required by authority of 1984 PA 431, as amended.

Name and Address of Contractor J.F. Griffin Publishing, LLC 430 Main St Williamstown, MA 01267	Primary Contact P. Jeremy Garnish	
	Email Jeremy@jfgriffin.com	
	Telephone (413) 212-1923	Contractor #, Mail Code *****4458/001

State Contact	Agency	Name	Telephone	Email
Contract Compliance Inspector	DNR	Christine Schwerin	(517) 335-7792	schwerinc@michigan.gov
Buyer	DNR	Jana Harding-Bishop	(517) 373-1190	Hardingj3@michigan.gov

Contract Summary			
Description (Provide a basic but comprehensive description of services) Publication of Fishing Guide			
Initial Term 3 years	Effective Date 9/10/2013	Initial Expiration Date 8/27/2016	Available Options 2 - 2 year options
Payment Terms Net 45	F.O.B. N/A	Shipped N/A	Shipped From N/A
Minimum Delivery Requirements N/A		Alternate Payment Options <input type="checkbox"/> P-Card <input type="checkbox"/> Direct Voucher (DV)	Available to MiDeal Participants <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Miscellaneous Information The terms and conditions of this Contract are those of ITB #RFP-JH-FISH-751R3201250, this Contract Agreement and the vendor's quote. In the event of any conflicts between the specifications, and terms and conditions, indicated by the State and those indicated by the ESTIMATED CONTRACT VALUE AT TIME OF EXECUTION: \$296,243.55			

THIS IS NOT AN ORDER: This Contract Agreement is awarded on the basis of our inquiry bearing the ITB No. RFP-JH-FISH-751R3201250. 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:

J.F. Griffin Publishing, LLC

 Firm Name
 On-file in DNR Procurement

 Authorized Agent Signature
 P. Jeremy Garnish

 Authorized Agent (Print or Type)
 9/11/13

 Date

FOR THE STATE:

On-file in DNR Procurement

 Signature
 Sharon Walenga-Maynard, Manager

 Name/Title
 Finance and Operations, Procurement

 Division
 9/13/13

 Date

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DEFINITIONS

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

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

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

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

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

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

CCI means Contract Compliance Inspector.

Days means calendar days unless otherwise specified.

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

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

DNR means the Michigan Department of Natural Resources.

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

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

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

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

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

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

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

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

Recycling means the series of activities by which materials that are no longer useful to the generator are collected, sorted, processed, and converted into raw materials and used in the production of new products. This definition excludes the use of these materials as a fuel substitute or for energy production.

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

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

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

SLA means Service Level Agreement.

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

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

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

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

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

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

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

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

Article 1 – Statement of Work (SOW)

1.010 Project Identification

1.011 Project Request

The purpose of this multi- year contract is for the publication of the Michigan Department of Natural Resources (DNR) Fishing Guide. The Contractor will provide publishing services for this guide, to include advertising sales, design, layout, printing, binding and delivery of final products. Contractor will be allowed to sell and place paid advertisements in the guide to offset costs and generate a profit. The Contractor will assume full responsibility for the services referenced above.

The DNR at this time is planning for a one year guide to be published in spring of 2014, then a 2-year guide to be published and printed in 2015 leaving 2016 as a non-printing year, though changes may be requested in the electronic version of the guide.

1.012 Background

The DNR provides anglers with a condensed guide of Michigan fishing regulations and laws. The guide provides important information that anglers should know in order to participate in fishing in the state of Michigan.

The guides are 5.375" x 8.375" in size and are printing on the following types of paper – Cover 70# No.3 Gloss Text 4/4, bleeds with advertising and content on 38# No.5 Gloss Text 4/4, bleeds. It is the DNR's desire that future guides adhere to this size and standard.

1.020 Scope of Work and Deliverables

1.021 In Scope

The Contractor will provide publishing services for the guide referenced above and the Contractor will produce a final printed product at the lowest possible cost to the DNR. The price does not include the cost of shipping guides, however the State reserves the right to request shipping costs from the Contractor once the final shipping list has been determined and possibly add to the contract at that time. The Contractor will be responsible for selling and placing paid advertisements in the guide to offset costs and generate a profit. The DNR does not expect the Contractor to remit any advertising income. The Contractor must solicit and provide the DNR Retail Sales License Agents and other Potential Advertisers provided by the DNR with the opportunity to purchase advertisements in the guide.

1.022 Work and Deliverable

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

Errors in a printed guide that occur after the DNR has given its final approval for printing and do not appear in the final proof approved by the DNR shall be the Contractor's responsibility, and the DNR reserves all rights to require the Contractor to reprint upon request of the DNR.

Deliverable 1 - Advertising

Advertising sales – The Contractor will be responsible for all aspects of advertising sales for this guide including promotional materials, sales contacts, billing, collection, and advertisement layouts.

Within twenty (20) days of the contract being issued, the Contractor will supply the DNR Project Manager with a complete State of Michigan marketing plan detailing how the Contractor will solicit paid advertising and the advertising rates. The advertising rate card must include the rate for each size of advertisement, i.e., full page, half page, quarter page, third page, etc. The Contractor will keep prices within a reasonable range which will allow even the smaller retailer to fit these advertisements into their budget.

The Contractor may be provided with two lists of advertising contacts. The Contractor MUST contact each company listed to provide advertising opportunities,

1. The Contractor will be given a list of Retail Sales License Agents to contact by September 10, 2013 and on April 1 of subsequent years. The Contractor is required to provide a report to the DNR Project Manager by October 15th of each year stating the method of contact, follow-up, and results of contact with each License Agent provided. The Contractor must keep the Retail Sales License Agent's information confidential and the data may not be used for any other purpose than to solicit advertising for the Michigan DNR Fishing guide.
2. If the DNR is approached by any potential advertisers, a list of these businesses and contact information will be provided to the contractor by September 10, 2013 and April 1 of subsequent years. The Contractor must agree to contact each potential advertisers on the list within 45 days on the list and provide them with the opportunity to purchase advertising space within the Fishing Guide.

Griffin's response:

J.F. Griffin Publishing learned a lot about the fishing marketplace in Michigan during our effort to sell advertising into the 2012/13 Michigan Fishing Guide. One important lesson learned was regarding the large number of license agents that are in the state and the magnitude of the challenge that effectively reaching them all represents. To add further challenge, it was determined by our sales staff that many of the companies on that list are low probability prospects. This is due to many factors including the cost of the advertisements and their lack of interest in spending advertising dollars in a statewide product that reaches consumers far outside of what they perceive to be their geographic reach.

In reaction to this list, we will take the following actions:

1. Send a note through the POS system to all vendors, notifying them of a special advertising opportunity that has been put together for them to make it affordable to get into the guide. This offer will include a listing (estimated cost of \$150) that will be run in the guide by region.
2. Send a follow up email to all agents for whom we can obtain an email address for, reminding them that the special offer is still open and there is still space is currently still available.

Also, now that we have a full year cycle this time, we plan to more fully assess the Outdoor Expo schedule in the state and have sales staff attend any that appear worth the trip.

In addition, J.F. Griffin will continue to use the more standard plan that was applied last year in Michigan and around the country:

In order to maximize the potential advertising revenues for these titles, J.F. Griffin Publishing breaks the available advertising space into segments. Each segment is handled in a manner that has proven most appropriate after years of refinement. Each segment has groups of prospects who expect certain treatment and potentially uses different metrics to influence their purchasing decisions. By identifying which leads are most appropriate for which segment and choosing a sales approach that is most pertinent J.F. Griffin Publishing has demonstrated its ability to effectively sell advertising into hunting and fishing regulations nationwide. Using our rich resources and dedicated sales force we sell more advertising units into these titles than any other company by a large margin.

A brief summary of the segments and the accompanying sales approach is outlined below:

Segment 1: Display Advertising

These are the feature placements integrated within the copy and on the cover positions.

Ranging in size from a twelfth of a page up to the full pages these ads make up a large portion of the advertising revenue. Depending on the size of the ad, there are multiple types of accounts that are going to be interested in the display options.

Prospect Types:

1A. Local Retailers

Description: Small specialized retail outlets that cater to a combination of local and tourist anglers.

Forecasted Percent of sales: 20%

Support requirements: Ad design and revisions.

Methods to be employed: Attend regional tradeshow, put outside sales force to work visiting shop locations, execute direct mail and cold-calling campaign.

1B. Large National Retailers

Description: Large chain retailers that may operate many locations across the country, additionally these companies may market products through catalogs and websites.

Forecasted Percent of sales: 15%

Support requirements: Comply with budgeting schedule

Methods to be employed: Leverage existing contacts.

1C. Large Manufacturing Houses

Description: Large product manufacturers who manufacture products that are distributed either directly or through retail outlets. This market segment represents the greatest challenge as many of these companies have become set in their ways regarding the titles that they are buying.

Forecasted Percent of sales: 15%

Support requirements: Comply with budgeting schedule

Methods to be employed: Leverage existing contacts. Attend all regional and national tradeshow. Utilize a direct mail campaign with follow up appointment setting and personal visits by outside sales staff.

1D. Small Manufacturing Houses

Description: Small specialized product manufacturers who manufacture products that are distributed either directly or through retail outlets. Annual sales less than four million dollars.

Forecasted Percent of sales: 15%

Support requirements: Comply with budgeting schedule, possible design support.

Methods to be employed: Leverage existing contacts. Attend all regional and national tradeshow. Utilize a direct mail and cold-call campaign with follow up appointment setting and personal visits by outside sales staff.

1E. Non-Endemics

Forecasted Percent of sales: 15%

Description: Any advertiser that is not directly related to hunting and angling is referred to as Non-Endemic. A potentially diverse group of accounts, these could be anything from hardware to legal services to the automobile manufacturers. These accounts run the gamut from large, full page positions to the smallest twelve of a page and the methods that we employ are appropriate, per prospect size, to the methods above.

Segment 2: Classified (aka: micro-display, or Showcase) Advertising

This advertising is placed in a specialized section of the publication and are small business card style placements. These placements have become increasingly important as they represent a way for even the smallest businesses with small budgets to participate in these titles. We offer 3 size options in the back of the book in color and black and white options. Many types of products and service providers have found these units to be successful and we offer individual states as well as regional and multi-state combination packs.

Prospect Types:

2A. Local Retailers

Description: Small specialized retail outlets that cater to a combination of local and tourist anglers.
 Forecasted Percent of sales: 5%
 Support requirements: Ad design and revisions.
 Methods to be employed: Attend regional tradeshows. Execute targeted email campaign with follow up by telephone. Cold calling.

2B. Small, Specialty Manufacturing Houses
 Description: Small specialized product manufacturers who manufacture products that are distributed either directly or through retail outlets.
 Forecasted Percent of sales: 5%
 Support requirements: Comply with budgeting schedule
 Methods to be employed: Leverage existing contacts. Attend regional and national tradeshows. Put outside sales force to work visiting ad planners at corporate headquarters. Utilize an email campaign with follow up appointment setting and personal visits.

2C. Guides and Outfitters
 Description: Small companies and individuals who host trips to local and tourist clientele.
 Forecasted Percent of sales: 10%
 Methods to be employed: Attend regional and national tradeshows. Execute targeted email campaign with follow up by telephone. Cold calling.

Discount Schedule:
 It has become the industry standard that very few customers pay 'open' (rate card) rates. Especially over the past three years it has become clear that all advertisers expect discounts as high as 50-70% off of the rates listed on any advertising rate card. Because pricing is an important part of the marketing mix, J.F. Griffin has been forced to allow significant discounting to take place off of the published rates to conform to the industry norms in many cases. Outside of these price negotiations, we do offer some standard discounts:
 Conservation Rates -for not-for-profit wildlife groups and NGO's = Open rate less 30%
 Frequency Discounts - available for purchasers of multiple titles/states = depends on frequency

Although average prices paid were far below card for 2012/2013, we do not planning on making adjustments to the published rates for 2014 and beyond.

The Contractor must provide the Project Manager with a list of all advertising contacts made each year. The list must include the company's name, how they were contacted, follow up, the name of the person contacted and the response by October 15 of each year. The Contractor must also provide a list of secured advertisers committed for the guide no later than November 15th of each year. The DNR will approve or deny ads no later than December 15.

Griffin response:

Contractor shall check only one box below and identify exception(s):	
<input checked="" type="checkbox"/>	Contractor has reviewed the above section and will comply with no exception(s).

All advertisements are subject to the review and approval of the DNR Project Manager with the preferred method to review all advertisements for a guide at one time. Final authority to accept or reject any individual advertisement rests solely with the DNR. Advertisement approvals and rejections will be communicated to the Contractor through electronic mail.

Advertising for the following products and services shall be prohibited:

- Alcohol/liquor products
- Tobacco products
- Any ATV or ORV advertisements shown operating in an illegal manner
- Political or issue advocacy advertisements
- Gambling, casino gaming and lottery advertisements
- Religious advertisements

- Any materials of a sexual nature whether explicit or implied
- Any items or services that conflict with DNR management objectives

Griffin's response:

Contractor shall check only one box below and identify exception(s):	
<input checked="" type="checkbox"/>	Contractor has reviewed the above section and will comply with no exception(s).

The guide may contain no more than forty percent (40%) advertising content. Percentage will be determined by total number of column inches in the publication.

The DNR Project Manager must review and approve the physical layout of the ads within the guide. The purpose of this is to ensure the flow of similar information within the guide. At no time will the Contractor put an advertisement for a sporting goods retailer on the outside of the guide.

Griffin's response:

Contractor shall check only one box below and identify exception(s):	
<input checked="" type="checkbox"/>	Contractor has reviewed the above section and will comply with no exception(s).

All matters relating to advertising including contracts, invoices and advertising copy are to be handled between the Contractor and the advertiser. The DNR will not be responsible for the invoicing or collecting of advertising revenue.

The Contractor will be required to provide a report detailing how many advertisements were sold, the revenue generated from those sales, cost per advertisement and the dollar amount used to offset the cost of providing the Fishing Guide.

Contractor shall check only one box below and identify exception(s):	
<input checked="" type="checkbox"/>	Contractor has reviewed the above section and will comply with no exception(s).

Deliverable 2 – Guide Quantity, Content and Design

Quantity:

The Contractor shall produce the following number of completed guides:

1. 2014 - 1,250,000 guides
2. 2015 – 1,500,000 guides (minimum) – this guide will cover 2015 and 2016 license years.

Content:

The DNR Project Manager will be responsible for providing all editorial content to the Contractor in an electronic format (Microsoft Word /InDesign). The guide must include all content provided by the DNR Project Manager.

It is not uncommon for information provided in the guide to change after printing has been approved and executed. The Contractor will not be required to re-print the guide, however any updates or changes must be completed at no cost in the electronic version of the document and a revised e-document posted on the Contractor's website within 48 working hours of notification by the DNR Project Manager.

It is anticipated that the fiscal year 2014 Fisheries Guide will contain, at a minimum, the amount of editorial content that is contained in the previous year. The most current guide can be viewed at the following website:

Fishing Guide:

http://www.michigan.gov/dnr/0,4570,7-153-10364_63235-274824--,00.html

Size/Layout:

The DNR guide is to be 5.375" x 8.375" in size printed in four colors throughout. The binding shall be saddle stitched using two staples running through the gutter with the paper trimmed to 5.375" x 8.375".

The number of pages; color content; photo content; and other design specifications will be determined through joint agreement of the DNR Project Manager and the Contractor.

The guide must at a minimum contain the advertisement/cost reduction statement listed below, the advertisement must be a minimum of one-quarter page in size and be of no cost to the State.

"The State of Michigan allows appropriate advertising in its annual regulations to reduce costs of printing. Many states have adopted a similar strategy. Promotional advertising does not constitute endorsement by the Michigan Department of Natural Resources."

The Contractor shall work with the DNR Project Manager in formatting and laying out the guides to meet best practices in ADA standards.

Paper:

Listed below are the minimum paper requirements.

- Cover 70# No.3 Gloss, 4/4 with bleeds
- Advertising and content on 38# No. 5 Gloss, 4/4 with bleeds

Pre-press/Proofing:

The Contractor will be responsible for pre-press functions, page layout and design.

Proofing will be a joint responsibility of the Contractor and DNR Project Manager. The DNR Project Manager will review and approve all hardcopy proofs. All costs associated with preparing pre-press materials, including all color proofs will be the responsibility of the Contractor.

Final authority for editorial layout and design decisions are reserved by the DNR.

Printing:

The DNR reserves the right to travel to the Contractor's or Subcontractor's site at any time during the printing process.

DNR Project Manager reserves the right to require the Contractor to attend the press check. The DNR Project Manager will notify the Contractor no less than 20 days before the anticipated print date if the press check is required.

Prior to final printing the Contractor shall obtain written approval by the DNR Project Manager.

Electronic Version Guide:

The Contractor will provide the DNR Project Manager each guide 100% camera ready in interactive PDF format or other approved electronic format suitable for access online using a responsive design that may be easily accessed on mobile devices. The Contractor must also provide a raw file of the guide in whatever application was used to do the design work within 10 days of printing. The electronic version of the guide must have at a minimum a word search capability.

The Contractor will provide an offline mobile app which would allow anglers to access the rules and regulations from their mobile device even when they are not connected to the internet. The mobile application will be available within 7 business days of the guide being printed.

Griffin's response:

J.F. Griffin will develop and maintain the online version of the Fishing Digest in HTML, 'Virtual Print' and PDF formats on our eRegulations platform. The online version(s) will include all content from the printed guide. Pages will be served by J.F. Griffin Publishing and linked through the

DNR website. Pages are built in such a manner as to display easily and efficiently on mobile devices such as Android and iPhone. Should content updates occur at any time during the year, it is required that all online locations are updated by contractor within 2 business days of notification.

The DNR requires that the Contractor shall provide the guide in HTML format at no cost.

A final electronic copy of the publication as PDF or other approved electronic format shall be delivered to DNR Project Manager prior to printing.

An updated, electronic version of the guide shall be delivered to the DNR Project Manager at the conclusion of each license year (March 31). This shall include ALL CHANGES made to the online version of the guide SINCE the physical guide was printed.

Deliverable 3 – Packaging and Delivery

Packaging:

The finished guide shall be bundled in quantities of 25 guides per bundle.

The Contractor is responsible for packaging the bundled guides in the most cost effective method for shipping to various locations (number 1 and number 2) listed below.

Griffin's response

Books are placed in 275# test cartons, all are cross tied in 25's.
Boxing would be planned to be very similar to last year (we understand minor adjustments may always be requested/required and will not impact cost).

Carton Count (Books/Box)	# of Cartons	Carton Weight (Lbs.)	Total Weight
25	242	5	1,210
50	183	9	1,647
75	179	12	2,148
100	169	16	2,704
125	182	20	3,640
150	151	24	3,624
175	169	27	4,563
200	4,896	31	151,776

Extra copies (not picked up by UPS) are in packages of 200/ctn on skids. Skids are assembled and prepared as spec'd by standard freight requirements.

The final shipment to the DNR Distribution Center (currently QCI, Inc.) will need to be palletized. It is preferred by the distribution center that the guides be boxed and placed on standard pallets, 40" x 48" in size, with four-way entry and not exceed 48" in height.

Griffin's response:

Although we are always trying to find creative ways to reduce costs, 200/ctn, placed on skids seems to be the most efficient method of transport right now.

Shipping:

The DNR Project Manager will provide the Contractor with an electronic file of shipping addresses and quantity of guides for each location no less than 30 days of projected ship date. The list provided to the Contractor must be treated as confidential.

The DNR Project Manager must be notified in advance of the date of each shipment and all tracking numbers must be provided for each shipment within 5 business days of ship date so DNR can use them as a reference for Retail Sales License Agents.

The Contractor will ship guides in the following order:

1. DNR Operation Service Centers, Field Offices and Lansing, Michigan offices per the spreadsheet provided.
 - The Contractor must ship 10 copies of the guide to the DNR Project Manager at the same time this shipment is sent.
2. Retail Sales License Agents (1 week after initial shipment as specified in time line below) per the spreadsheet provided.
3. The DNR Distribution Center: QCI Inc., 3753 Old U.S. Highway 23, Suite 200, Brighton, MI 48114 per the spreadsheet provided which will note the remaining balance to ship.
 - The Contractor must coordinate delivery to QCI to ensure staff will be available to accept the delivery.
 - The Contractor must notify the DNR Project Manager at 517-335-7792 with the exact number of guides shipped to QCI for inventory purposes.

All shipments from the Contractor, regardless of their destinations must include QCI Inc.'s return mailing address so undeliverable shipments will be returned to the Brighton, MI address.

This Contract does not include the cost of shipping; however the DNR may request a quote from the Contractor for shipping costs once the final address list has been confirmed. Should the Contractor be able to ship at a lower cost than the State, the State reserves the right to amend the contract to include shipping costs.

Griffin's Response:

Contractor shall check only one box below and identify exception(s):	
<input checked="" type="checkbox"/>	Contractor has reviewed the above section and will comply with no exception(s).

Deliverable 4 – Project Management/Time Tables

The Contractor shall publish the guide according to the following delivery schedule:

It will be the DNR's intent to deliver the guides to meet the production schedule outlined below; however the Contractor is advised that last minute changes or additions to regulations may occur. Should this situation occur the DNR Project Manager will work with the Contractor to adapt the time line for acceptable delivery dates. Any changes must be documented in writing.

Michigan Fishing Guide

Delivery must be completed to DNR offices and Retail Sales License Agents no later than February 18, 2014. The following dates are the schedule of actions and deadlines. The DNR and Contractor will finalize this schedule, along with a production schedule of the actual guide (drafts/reviews/revisions) collaboratively.

Michigan Fishing Guide Schedule		
Action Item	Date	Notes
Anticipated contract start date	September 10 th	
Conference call with DNR and Contractor to discuss project	September 10 th	
DNR to give contractor the list of Retail License Sales Agents for ad	September 10 th	(April 1 on subsequent years)

solicitation purposes		
DNR to give contractor the list of Potential Advertisers for ad solicitation purposes	September 10 th	(April 1 on subsequent years)
Contractor to provide marketing plan and rate card to DNR	Approx. September 20 th	Within 20 days of contract issued (May 1 on subsequent years)
Contractor to provide DNR with list of contacts made to Potential Advertisers list.	October 15 th	Within 45 days of receipt of the list, this would be Oct. 15 the first year, and May 15 of subsequent years.
Contractor to provide DNR with list of advertising contacts made to Retail License Sales Agents List	October 15 th	
Contractor to provide list of secured advertisers	November 15 th	
DNR to approve or deny ads	December 15 th	
DNR to provide shipping lists to Contractor	Approx. January 6 th	At least 30 days before projected ship date for first shipment
Contractor to ship guides to DNR Operations Service Centers, Field Offices, and Lansing Offices	February 5 th	1st Wednesday of February
Contractor to provide tracking numbers to DNR for this shipment	February 12 th	within 5 business days of ship date
Contractor to ship guides to Retail License Sales Agent list	February 12 th	2nd Wednesday of February
Contractor to provide tracking numbers to DNR for RSS shipment	February 19 th	within 5 business days of ship date
Contractor to ship remaining guides to QCI warehouse	Approx. February 21 st	To be done within a week of the 2nd shipment. Contractor must notify DNR and QCI in advance of

		delivery.
Contractor to provide raw design file to DNR	Approx. February 10 th	within 10 days of printing
Contractor to provide advertising sales report	Approx. March 1 st	
Contractor to provide a summary report to DNR.	Approx. March 1 st	After completion of the printed guide
Contractor to provide DNR with updated electronic version of the guide, including all changes made SINCE the physical guide was printed.	March 31 st of the following year	For example, the updated e-version of the 2014 guide is due to DNR on March 31, 2015.

Production Schedule dates for actual guide drafts/revisions/reviews will be determined in coordination with Contractor.

Due to holiday and vacation schedules, Thursday and Friday of Thanksgiving and December 24th – January 1st are not considered working days.

Griffin's response:

Contractor shall check only one box below and identify exception(s):	
<input checked="" type="checkbox"/>	Contractor has reviewed the above section and will comply with no exception(s).

1.030 Roles and Responsibilities

1.031 Contractor Staff, Roles, and Responsibilities

Name	Role/Responsibility	Contact Information (phone and email)
<u>Jeremy Garnish</u>	<u>Production Supervisor</u>	<u>(413) 884-1001 x101</u> <u>jeremy@jfgriffin.com</u>
<u>Jon Gulley</u>	<u>Art Director</u>	<u>(413) 884-1001 x108</u> <u>jugulley@jfgriffin.com</u>
<u>Allen P. Crolius</u>	<u>Advertising Sales</u>	<u>(413) 884-1001 x101</u> <u>apcrolius@jfgriffin.com</u>
<u>Gary McNamara</u>	<u>Subcontractor - Print Rep</u>	<u>(517) 663-5270</u> <u>gmcnamara@grpinc.com</u>

1.032 State Staff Roles, and Responsibilities

The DNR Project Manager for this project

Christine Schwerin
Marketing and Outreach

schwerinc@michigan.gov
(517) 335-7792

The DNR Project Manager will work closely with the Contractor to provide content, review layout, proof read and approves the digest before printing.

The DNR Project Manager will also be responsibility for providing the Contractor with potential advertising opportunities as well as delivery locations and number of guides to each location.

1.040 Project Plan

1.041 Project Plan Management

The Contractor and the DNR Project Manager will communicate weekly, at a minimum, to review progress and discuss any problems real or anticipated during the guide development and production. Additionally, the Contractor will need to be available for monthly teleconferences with the DNR Project Manager as requested.

The Contractor Project Manager needs to be available to travel to Lansing, Michigan upon DNR Project Manager's request. The Contractor will be given as much notice as possible.

Griffin's reponse:

Contractor shall check only one box below and identify exception(s):	
<input checked="" type="checkbox"/>	Contractor has reviewed the above section and will comply with no exception(s).

The Contractor will be required to ensure quality and timely responses throughout the process of working with the DNR to produce the guide. The Contractor must describe their quality assurance practices from beginning to end for the advertising, designing, planning, production and delivery of the guides.

Griffin's response:

<p>J.F. Griffin Publishing, LLC is the leading publisher of glossy stock, magazine quality regulations in the United States. The company works with twenty state fish & wildlife agencies in the production of high quality information and education materials. The company has won multiple awards (via our state partners) in the production of fish & wildlife regulation guides. We are very happy with the current Michigan Fishing Regulations Guide. A look back to the pre-Griffin Fishing Guide provides (in our slightly biased opinion) a clear affirmation of our production and design parameters and approach, while clearly demonstrating our ability to execute them effectively. Working in close partnership with DNR staff, we have created one of the finest fishing regulation publications in the nation.</p> <p>In 2014 and beyond we plan to make any and all updates and improvements requested by The DNR. Using the same '3 pass' process that we employed last year, we anticipate a continuation of the successes from last year while working hard to eliminate any challenges that may have been encountered. A summary of that process follows:</p> <p>JFG Standard Production events using the standard J.F.Griffin '3 pass' process:</p> <p>(1) Material Submission</p> <ul style="list-style-type: none">• Ideally, the material submission should be presented to publisher as complete as possible in single, orderly delivery.• This submission should contain:• Final Articles, edited for spelling, style, grammar and content (see submission requirement sheet).• Complete list of regulation updates (It is understood that certain updates will not become available until a later date). Those TBD updates should be noted in a designated folder.

- Complete images and images requested list. Note: Images with specific destinations should include the destination in the file title. Also: Please segment submission disk into folders per article/ sections.
- (2) First Pass- Collaborative Problem Solving
- ~Twenty business days after material submission has been received, publisher will provide digital copies of publication for review by appropriate staff. This copy will be proofed by appropriate staff. Appropriate alterations at this time would include but are not limited to the following:
 - Final text/ regulation edits. This should include mistake corrections and style edits.
 - Evaluation and review of layout and design elements. First pass is the time when input from division staff can identify areas that may be improved upon and solutions can be discussed.
- (3) Second Pass- Fine Tuning
- ~Twelve to fifteen business days after first pass revision submissions have been received; publisher will provide digital copies of publication for review by appropriate staff. This copy will be proofed by appropriate staff. Appropriate alterations at this time would include to the following:
 - A check that all revisions submitted during first pass have been addressed by publisher. Text revision can include changes to words and/ or sentences as not to create major re-flow of document.
 - Address any design fine-tuning that may improve document. Photo and design adjustment should not create major re-flow of document.
 - Ideally, introduction of new text revisions to be light (i.e. 3-5%). Publisher does not expect any new articles, artwork or content at this time.
- (4) Third Pass-Final Review
- ~Five to seven business days after second pass revision submissions have been received; publisher will provide digital copy of publication for review by appropriate staff. This copy will be proofed by appropriate staff. Appropriate alterations at this time would include but are not limited to the following:
 - A check that all revisions submitted during second pass have been addressed by publisher.
 - Identification of any mission-critical errors that have may have been overlooked.
 - Final review of all advertising placements.
- (5) Printers Proof- Accuracy of Uploaded file
- Based on printer's schedule, a printers proof will be sent to appropriate division staff.
 - Identification of any mission-critical errors that have may have been overlooked.
 - Identification of any errors that were created during file upload process. These would include elements that may have dropped out, corrupted fonts, etc.

The QA processes:

J.F. Griffin production management practices are intended to create optimal quality assurance verification points during the design and production phases. These practices include the following protocols, to be performed by the production coordinator and support staff:

- Obtain and distribute printing and production schedules (based on contracted or special on-shelf date) prior to the creation of an in-house production schedule
- Initiate kick-off calls or meetings (~5 weeks prior to expected materials submission), allowing the state ample time to compile materials, communicate any major changes taking place in the book, and approve/adjust the production schedule
 - Manage production schedule creation (along with the creative department) and take responsibility for timely schedule approval/revisions from the state
 - Manage production schedule adjustments (changes in on-shelf date, added passes, delays) with efficient communication of these changes to the creative department and the plant

- Manage ad deadlines on a common calendar (adjusting these dates along with any changes in on-shelf date), clearly communicating these dates and any changes with the sales and creative departments
- Initiate and communicate cover image options for publication prior to the 1st Pass and discuss photo acquisition (DNR to supply vs. JFG to source)
- Gather information from DNR about likely articles/features and discuss photo acquisition (state to supply vs. JFG to source)
- Manage contracted page counts and any changes to these numbers (checking at each pass to confirm correct counts and communicating any state-directed or JFG-directed changes to these counts to the creative department)
- Monitor ad counts in JFG CRM (to ensure consistency with state contracts)
- Monitor JFG CRM sales per book for general awareness of ad space available, objectionable ads, or any potential issues that can be caught early on.
- Maintain key contract data including:
 - Understanding and broadcasting regional ad restrictions, special circumstances to ad staff and management
 - Set alerts for renewal periods
 - Keep up to date COGS data and advertising revenue data to ensure that everything is on track to meet goals/expectations
- Co-design & maintain a utilization protocol print vs. online and prepare/present quarterly reports to DNR staff and potentially to advertisers
- Manage all shipment of books closely with American Litho, Inc.
- Ensure 100% customer satisfaction of DNR.

Escalation protocols involve flowing up challenges encountered by support staff to more senior staff until a solution is discovered. It is not typical for any issues to escalate outside of the realm that can be handled by these protocols and the JFG team.

Quality assurance performed while on press is conducted with time stamping protocols. Time stamps of all press and binding processes will be pulled and evaluated while job is running. Any issue will be discussed and evaluated with appropriate reprint or binding adjustments.

Recognizing that print, packaging and shipping is a large component of this contract and the potential is high that contractors will likely need to use a subcontractor for printing, the Contractor MUST describe in detail how the relationship will be managed, how they will ensure compliance with contract terms and conditions, communications, site visits, etc..

Griffin's response:

J.F. Griffin Publishing and Grand River Printing and Imaging (recently acquired by American Litho, Inc). worked together very well on the 2012/13 Michigan Fishing Guide and expect the next year(s) to go just as well.

J.F. Griffin Publishing will design the Digest in partnership with DNR and sell and integrate all of the advertising. Grand River Printing and imaging will work closely with our production coordinator to print, box and distribute the job per spec.

Total printing and paper costs will be paid to Grand River Printing and Imaging and all advertising dollars will be collected by J.F. Griffin Publishing.

The purchase of Grand River happened last year and it appears that this transaction will not impact the key staff who have worked on this guide last year during future years.

The relationship with American Litho, Inc. will adhere to all the standard trade practices present in any printing contract.

Our staff is very familiar with providing files to a printer in the proper specs and format to ensure a job is properly completed. Over the course of production there will be several milestones that will require direct communication between American Litho, Inc. and J.F. Griffin staff.

Schedule agreement. At such a time as we have agreed to a solid on-shelf target with DNR, J.F. Griffin staff will communicate that date to American Litho, Inc. staff to build a press schedule. Included on that schedule will be the following events that will require clear communication and follow up:

Paper order
Boxing/packaging material order
File delivery to pre-press
Printers proof delivery
Proof approval
Press Check

This schedule will be set and adhered to by J.F. Griffin and American Litho, Inc. Communications via telephone and email will be sufficient to manage this process up until the press check, where a final, on-site visit to the American Litho, Inc. (formerly Gran River) facility will be required to ensure that the printed product meets the expectations of J.F. Griffin and the DNR.

The Contractor must provide a list explaining the critical success factors and risks for this project and how they intend to address the factors and mitigate risk.

Griffin response:

1. We feel that most production related risks inherent in this type of project with a less experienced vendor are mitigated by our vast experience and adherence to the practices outlined above. Also, after one year through this process already we feel like we have a good sense of the advertising marketplace in Michigan, have a comfortable working relationship with DNR staff and an equally comfortable relationship with American Litho, Inc.
2. Paper Shortages, although not anticipated, would be mitigated through our relationship with American Litho, Inc. Should American Litho Inc. not have the ability to acquire the appropriate paper, J.F. Griffin Publishing has an additional purchasing relationship with Lindenmeyr Central and the Central National-Gottesman family of companies that provides us an additional paper resource should we need it.
3. Loss of key staff. Always a risk in any company/project we feel that in almost every case we have sufficiently trained support staff groomed to assume key positions that suddenly become vacated.
4. Advertising revenues fall far shorter than expectations. In this case, the total prices quoted per this bid should be considered a guaranteed maximum cost to DNR (assuming no major spec changes are requested by the state). J.F. Griffin has NEVER gone back to request payment above the guaranteed minimums agreed to in a bid (10 years, in 20 states). If this issue arises, J.F. Griffin recognizes that this project could end in a financial loss to us, but it is our expectation that even in the case of a single issue loss, it is our goal to perform flawlessly and become a valued partner for the long-term. This will allow us to recover those losses in future, more successful issues.
5. Problems on press result in a flawed printed product. In the unlikely event that there are problems on press resulting in a printed product that is unacceptable to DNR or our advertisers, it is agreed, per contract and all generally accepted trade practices that it is the obligation of the sub contractor (American Litho, Inc.) to produce an acceptable, approved product in order to receive payment. Should some catastrophic error occur on press, this may result in the delay in the on-shelf date as the job may require a re-print, but in this case, American Litho, Inc. recognizes that compensation for work performed is contingent upon successful completion of the work, and therefore will make it right as quickly as possible. Further, and as stated earlier, time stamps of all press and binding processes will be pulled and evaluated while job is running. Any issue will be discussed and evaluated with appropriate reprint or binding adjustments so problem should be limited to small portions of the run and fixed during the run.

1.042 Reports

Contractor must provide the marketing plan and rate card within 20 days of receipt of the purchase order for 2013 and May 1st of subsequent years.

Contractor must provide a report of contacts made to Potential Advertisers within 45 days ARO for 2013 and by May 15th of subsequent years.

Contractor must provide a report of advertising contacts made to RSS Agents List within 45 days ARO for 2013 and by May 15th of subsequent years.

Contractor must provide a report of secured advertisers by November 15th each year.

Contractor must provide a report listing the tracking numbers for shipment of digests within 5 business days of each shipment.

Contractor will provide a detailed advertising sales report showing how many ads were sold, the revenue generated from those sales, cost per advertisement, and the amount the advertisements offset the cost of the Fishing Guide to the State of Michigan.

The Contractor must submit a summary report to the DNR Project Manager once all of the deliverables have been received each year. The report shall include but not be limited to overall issues, problems, resolutions and recommendations for future projects.

Griffin's response:

Contractor shall check only one box below and identify exception(s):	
<input checked="" type="checkbox"/>	Contractor has reviewed the above section and will comply with no exception(s).

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:

At each phase of the project listed below the Contractor is required to get the **DNR Project Manager's** written/electronic approval of acceptance and approval to continue.

Advertising/Marketing plan
Layout/Design
Prepress Drafts
Packaging and delivery
Shipping

Before printing the Fishing Guide the Contractor must have the Project Manager's written approval of acceptance and approval to print.

Errors in the printed Fishing Guide that occur after the DNR has given its final approval for printing and do not appear in the final proof approved by the DNR shall be the Contractor's responsibility, and the DNR reserves all rights to require the Contractor to reprint upon request of the DNR.

1.052 Final Acceptance

Final acceptance will be when the Fishing Guides are received at all locations per contract specifications.

1.060 Proposal Pricing

1.061 Proposal Pricing

All costs of producing the Fishing Guide will be borne by the Contractor.

This contract does not include the cost of shipping; however the DNR may request a quote from the Contractor for shipping costs once the final address list has been confirmed. Should the Contractor be able to ship at a lower cost than the State, the State reserves the right to amend the contract to include shipping costs.

1.070 Additional Requirements

1.071 Additional Terms and Conditions specific to the SOW

Since the Fishing Guide will cost the state money (rather than costs covered 100% by advertising offset), the Contractor must abide by the State Printing Law – Act 153 of 1937 (MCL 24.62). The law states: All printing for the State of Michigan, except that which is printed for primary school districts, local government units and legal publications for elective state officers, must be printed in Michigan.

The link to the Michigan Printing Law is:

<http://legislature.mi.gov/doc.aspx?mcl-Act-153-of-1937>

Contractor Response:

The Printing Company being used is either a Union Firm or pays prevailing wages:

Yes No

Article 2, Terms and Conditions

2.000 Contract Structure and Term

2.001 Contract Term

The Contract is for a period of three (3) years beginning upon execution of the contract and going through August 27, 2016.

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 2 (two) additional 2 (two) year periods. (The extension periods would include years in which printing was not scheduled)

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 for 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

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, Procurement
Department of Natural Resources
Mason Bldg., 6th Floor
PO Box 30028
Lansing, MI 48909
HardingJ3@michigan.gov
517.373.1190

2.022 Contract Compliance Inspector

After DNR-Procurement receives the properly executed Contract, it is anticipated that the Procurement Services Manager, DNR-Procurement, 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:

Marlene Sublet-Bennett
Contract Compliance Inspector
8th Floor, Mason Building
530 West Allegan Street
Lansing, MI 48933
Sublet-bennettm@michigan.gov

2.023 Project Manager

After DNR-Procurement receives the properly executed Contract, it is anticipated that 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 following individual will oversee the project:

Christine Schwerin
Marketing Account Manager
6th Floor Mason Building 530 West Allegan Street
Lansing, MI 48933
schwerinc@michigan.gov
517-335-7792

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 Administrative Fee and Reporting

The Contractor must remit an administrative fee of 1% on all payments remitted to Contractor under the Contract for transactions with MiDEAL members, and other states (including governmental subdivisions and authorized entities). Contractor must submit an itemized purchasing activity report, which includes at a minimum, the name of the purchasing entity and the total dollar volume in sales.

Itemized purchasing activity reports should be mailed to DTMB-Procurement and the administrative fee payments shall be made by check payable to the State of Michigan and mailed to:

The Department of Technology, Management and Budget
Financial Services – Cashier Unit
Lewis Cass Building
320 South Walnut St.
P.O. Box 30681
Lansing, MI 48909

The administrative fee and purchasing activity report are due within 30 calendar days from the last day of each quarter.

2.032 Media Releases

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

2.033 Contract Distribution

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

2.034 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.

2.035 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.

2.036 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

2.037 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").

2.038 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 –

(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. Specific details of invoices and payments will be agreed upon between the Project Manager and the Contractor.

The specific payment schedule for any Contract(s) entered into, as the State and the Contractor(s) must mutually agree upon. The schedule must show payment amount and must reflect actual work done by the payment dates, less any penalty cost charges accrued by those dates. As a general policy, statements must be forwarded to the designated representative by the 15th day of the following month.

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 Project Manager, after negotiation. Contractor must show verification of measurable progress at the time of requesting progress payments.

2.045 Pro-ration

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

2.046 Antitrust Assignment

The Contractor assigns to the State any claim for overcharges resulting from antitrust violations to the extent that those violations concern materials or services supplied by third parties to the Contractor, toward fulfillment of the Contract.

2.047 Final Payment

The making of final payment by the State to Contractor does not constitute a waiver by either party of any rights or other claims as to the other party's continuing obligations under the Contract, nor will it constitute a waiver of any claims by one (1) party against the other arising from unsettled claims or failure by a party to comply with the Contract, including claims for Services and Deliverables not reasonably known until after acceptance to be defective or substandard. Contractor's acceptance of final payment by the State under the Contract must constitute a waiver of all claims by Contractor against the State for payment under the Contract, other than those claims previously filed in writing on a timely basis and still unsettled.

2.048 Electronic Payment Requirement

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

2.050 Taxes

2.051 Employment Taxes

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

2.052 Sales and Use Taxes

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

2.060 Contract Management

2.061 Contractor Personnel Qualifications

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

2.062 Contractor Key Personnel

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

(b) Key Personnel must be dedicated as defined in the Statement of Work to the Project for its duration in the applicable Statement of Work with respect to other individuals designated as Key Personnel for that Statement of Work.

(c) The State reserves the right to recommend and approve in writing the initial assignment, as well as any proposed reassignment or replacement, of any Key Personnel. Before assigning an individual to any Key Personnel position, Contractor must notify the State of the proposed assignment, must introduce the individual to the appropriate State representatives, and must provide the State with a resume and any other information about the individual reasonably requested by the State. The State reserves the right to interview the individual before granting written approval. In the event the State finds a proposed individual unacceptable, the State must provide a written explanation including reasonable detail outlining the reasons for the rejection.

(d) Contractor must not remove any Key Personnel from their assigned roles on the Contract without the prior written consent of the State. The Contractor's removal of Key Personnel without the prior written consent of the State is an unauthorized removal (“Unauthorized Removal”). Unauthorized Removals does not include replacing Key Personnel for reasons beyond the reasonable control of Contractor, including illness, disability, leave of absence, personal emergency circumstances, 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 - Reserved

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 - Reserved

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

(a) Contractors that process, transmit or store credit/debit cardholder data, must adhere to the Payment Card Industry (PCI) Data Security Standards. The Contractor is responsible for the security of cardholder data in its possession. The data may only be used to assist the State or for other uses specifically authorized by law.

(b) The Contractor must notify the CCI (within 72 hours of discovery) of any breaches in security where cardholder data has been compromised. In that event, the Contractor must provide full cooperation to the Visa, MasterCard, Discover and state Acquirer representative(s), and/or a PCI approved third party to conduct a thorough security review. The Contractor must make the forensic report available within two weeks of completion. The review must validate compliance with the current PCI Data Security Standards for protecting cardholder data.

(c) The Contractor must properly dispose of cardholder data, in compliance with DNR policy, when it is no longer needed. The Contractor must continue to treat cardholder data as confidential upon contract termination.

(d) The Contractor must provide the CCI with an annual Attestation of Compliance (AOC) or a Report on Compliance (ROC) showing the contractor is in compliance with the PCI Data Security Standards. The Contractor must notify the CCI of all failures to comply with the PCI Data Security Standard.

2.100 Confidentiality

2.101 Confidentiality

Contractor and the State each acknowledge that the other possesses, and will continue to possess, confidential information that has been developed or received by it. As used in this Section, "Confidential Information" of Contractor must mean all non-public proprietary information of Contractor (other than Confidential Information of the State as defined below) which is marked confidential, restricted, proprietary, or with a similar designation. "Confidential Information" of the State must mean any information which is retained in confidence by the State (or otherwise required to be held in confidence by the State under applicable federal, state and local laws and regulations) or which, in the case of tangible materials provided to Contractor by the State under its performance under the Contract, is marked as confidential, proprietary, or with a similar designation by the State. "Confidential Information" excludes any information (including the Contract) that is publicly available under the Michigan FOIA.

2.102 Protection and Destruction of Confidential Information

The State and Contractor must each use at least the same degree of care to prevent disclosing to third parties the Confidential Information of the other as it employs to avoid unauthorized disclosure, publication, or dissemination of its own confidential information of like character, but in no event less than reasonable care. Neither Contractor nor the State will (i) make any use of the Confidential Information of the other except as contemplated by the Contract, (ii) acquire any right in or assert any lien against the Confidential Information of the other, or (iii) if requested to do so, refuse for any reason to promptly return the other party's Confidential Information to the other party. Each party must limit disclosure of the other

party's Confidential Information to employees and Subcontractors who must have access to fulfill the purposes of the Contract. Disclosure to, and use by, a Subcontractor is permissible where (A) use of a Subcontractor is authorized under the Contract, (B) the disclosure is necessary or otherwise naturally occurs in connection with work that is within the Subcontractor's scope of responsibility, and (C) Contractor obligates the Subcontractor in a written Contract to maintain the State's Confidential Information in confidence. At the State's request, any employee of Contractor and of any Subcontractor having access or continued access to the State's Confidential Information may be required to execute an acknowledgment that the employee has been advised of Contractor's and the Subcontractor's obligations under this Section and of the employee's obligation to Contractor or Subcontractor, as the case may be, to protect the Confidential Information from unauthorized use or disclosure.

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

2.103 Exclusions

Notwithstanding the foregoing, the provisions of **Section 2.100** will not apply to any particular information which the State or Contractor can demonstrate (i) was, at the time of disclosure to it, in the public domain; (ii) after disclosure to it, is published or otherwise becomes part of the public domain through no fault of the receiving party; (iii) was in the possession of the receiving party at the time of disclosure to it without an obligation of confidentiality; (iv) was received after disclosure to it from a third party who had a lawful right to disclose the information to it without any obligation to restrict its further disclosure; or (v) was independently developed by the receiving party without reference to Confidential Information of the furnishing party. Further, the provisions of **Section 2.100** will not apply to any particular Confidential Information to the extent the receiving party is required by law to disclose the Confidential Information, provided that the receiving party (i) promptly provides the furnishing party with notice of the legal request, and (ii) assists the furnishing party in resisting or limiting the scope of the disclosure as reasonably requested by the furnishing party.

2.104 No Implied Rights

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

2.105 Respective Obligations

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

2.110 Records and Inspections

2.111 Inspection of Work Performed

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

2.112 Examination of Records

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

2.113 Retention of Records

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

2.114 Audit Resolution

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

2.115 Errors

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

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

2.120 Warranties

2.121 Warranties and Representations

The Contractor represents and warrants:

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

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

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

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

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

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

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

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

2.122 Warranty of Merchantability

Goods provided by Contractor under this agreement must be merchantable. All goods provided under the Contract must be of good quality within the description given by the State, must be fit for their ordinary purpose, must be adequately contained and packaged within the description given by the State, must conform to the agreed upon specifications, and must conform to the affirmations of fact made by the Contractor or on the container or label.

2.123 Warranty of Fitness for a Particular Purpose

When the Contractor has reason to know or knows any particular purpose for which the goods are required, and the State is relying on the Contractor's skill or judgment to select or furnish suitable goods, there is a warranty that the goods are fit for such purpose.

2.124 Warranty of Title

Contractor must, in providing goods to the State, convey good title in those goods, whose transfer is right and lawful. All goods provided by Contractor must be delivered free from any security interest, lien, or encumbrance of which the State, at the time of contracting, has no knowledge. Goods provided by Contractor, under the Contract, must be delivered free of any rightful claim of any third person by of infringement or the like.

2.125 Equipment Warranty – Reserved

2.126 Equipment to be New - Reserved

2.127 Prohibited Products

The State will not accept salvage, distressed, outdated or discontinued merchandise. Shipping of such merchandise to any State agency, as a result of an order placed against the Contract, is considered default by the Contractor of the terms and conditions of the Contract and may result in cancellation of the Contract by the State. The brand and product number offered for all items must remain consistent for the term of the Contract, unless DNR-Procurement has approved a change order pursuant to **Section 2.024**.

2.128 Consequences For Breach

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

2.130 Insurance

2.131 Liability Insurance

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

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

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

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

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

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

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

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

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

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

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

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

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

The Contractor also agrees to provide evidence that insurance policies contain a waiver of subrogation by the insurance company. This provision must not be applicable where prohibited or limited by the laws of the jurisdiction in which the work is to be performed.

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

\$500,000 aggregate disease

- 5. Employee Fidelity, including Computer Crimes, insurance naming the State as a loss payee, providing coverage for direct loss to the State and any legal liability of the State arising out of or related to fraudulent or dishonest acts committed by the employees of Contractor or its Subcontractors, acting alone or in collusion with others, in a minimum amount of \$1,000,000.00 with a maximum deductible of \$50,000.00.
- 6. Umbrella or Excess Liability Insurance in a minimum amount of ten million dollars (\$10,000,000.00), which must apply, at a minimum, to the insurance required in Subsection 1 (Commercial General Liability) above.
- 7. Professional Liability (Errors and Omissions) Insurance with the following minimum coverage: \$3,000,000.00 each occurrence and \$3,000,000.00 annual aggregate.
- 8. Fire and Personal Property Insurance covering against any loss or damage to the office space used by Contractor for any reason under the Contract, and the equipment, software and other contents of the office space, including without limitation, those contents used by Contractor to provide the Services to the State, up to its replacement value, where the office space and its contents are under the care, custody and control of Contractor. The policy must cover all risks of direct physical loss or damage, including without limitation, flood and earthquake coverage and coverage for computer hardware and software. The State must be endorsed on the policy as a loss payee as its interests appear.

2.132 Subcontractor Insurance Coverage

Except where the State has approved in writing a Contractor subcontract with other insurance provisions, Contractor must require all of its Subcontractors under the Contract to purchase and maintain the insurance coverage as described in this Section for the Contractor in connection with the performance of work by those Subcontractors. Alternatively, Contractor may include any Subcontractors under Contractor's insurance on the coverage required in this Section. Subcontractor must fully comply with the insurance coverage required in this Section. Failure of Subcontractor to comply with insurance requirements does not limit Contractor's liability or responsibility.

2.133 Certificates of Insurance and Other Requirements

Contractor must furnish to DNR-Procurement, 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. Before the Contract is signed, and not less than 20 days before the insurance expiration date every year thereafter, the Contractor must provide evidence that the State and its agents, officers and employees are listed as additional insureds under each commercial general liability and commercial automobile liability policy. In the event the State approves the representation of the State by the insurer's attorney, the attorney may be required to be designated as a Special Assistant Attorney General by the Attorney General of the State of Michigan.

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

of the cost from any payment due the Contractor, or the Contractor must pay that cost upon demand by the State.

2.140 Indemnification

2.141 General Indemnification

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

2.142 Code Indemnification

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

2.143 Employee Indemnification

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

2.144 Patent/Copyright Infringement Indemnification

To the extent permitted by law, the Contractor must indemnify, defend and hold harmless the State from and against all losses, liabilities, damages (including taxes), and all related costs and expenses (including reasonable attorneys' fees and costs of investigation, litigation, settlement, judgments, interest and penalties) incurred in connection with any action or proceeding threatened or brought against the State to the extent that the action or proceeding is based on a claim that any piece of equipment, software, commodity or service supplied by the Contractor or its Subcontractors, or the operation of the equipment, software, commodity or service, or the use or reproduction of any documentation provided with the equipment, software, commodity or service infringes any United States patent, copyright, trademark or trade secret of any person or entity, which is enforceable under the laws of the United States.

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

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

2.145 Continuation of Indemnification Obligations

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

2.146 Indemnification Procedures

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

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

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

(c) If Contractor does not deliver a Notice of Election relating to any claim of which it is notified by the State as provided above, the State may defend the claim in the manner as it may deem appropriate, at the cost and expense of Contractor. If it is determined that the claim was one against which Contractor was required to indemnify the State, upon request of the State, Contractor must promptly reimburse the State for all the reasonable costs and expenses.

2.150 Termination/Cancellation

2.151 Notice and Right to Cure

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

2.152 Termination for Cause

(a) The State may terminate the Contract, for cause, by notifying the Contractor in writing, if the Contractor (i) breaches any of its material duties or obligations under the Contract (including a Chronic

Failure to meet any particular SLA), or (ii) fails to cure a breach within the time period specified in the written notice of breach provided by the State

(b) If the Contract is terminated for cause, the Contractor must pay all costs incurred by the State in terminating the Contract, including but not limited to, State administrative costs, reasonable attorneys' fees and court costs, and any reasonable additional costs the State may incur to procure the Services/Deliverables required by the Contract from other sources. Re-procurement costs are not consequential, indirect or incidental damages, and cannot be excluded by any other terms otherwise included in the Contract, provided the costs are not in excess of 50% more than the prices for the Service/Deliverables provided under the Contract.

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

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

2.153 Termination for Convenience

The State may terminate the Contract for its convenience, in whole or part, if the State determines that a termination is in the State's best interest. Reasons for the termination must be left to the sole discretion of the State and may include, but not necessarily be limited to (a) the State no longer needs the Services or products specified in the Contract, (b) relocation of office, program changes, changes in laws, rules, or regulations make implementation of the Services no longer practical or feasible, (c) unacceptable prices for Additional Services or New Work requested by the State, or (d) falsification or misrepresentation, by inclusion or non-inclusion, of information material to a response to any RFP issued by the State. The State may terminate the Contract for its convenience, in whole or in part, by giving Contractor written notice at least 30 days before the date of termination. If the State chooses to terminate the Contract in part, the charges payable under the Contract must be equitably adjusted to reflect those Services/Deliverables that are terminated. Services and related provisions of the Contract that are terminated for cause must cease on the effective date of the termination.

2.154 Termination for Non-Appropriation

(a) Contractor acknowledges that, if the Contract extends for several fiscal years, continuation of the Contract is subject to appropriation or availability of funds for the Contract. If funds to enable the State to effect continued payment under the Contract are not appropriated or otherwise made available, the State must terminate the Contract and all affected Statements of Work, in whole or in part, at the end of the last period for which funds have been appropriated or otherwise made available by giving written notice of termination to Contractor. The State must give Contractor at least 30 days advance written notice of termination for non-appropriation or unavailability (or the time as is available if the State receives notice of the final decision less than 30 days before the funding cutoff).

(b) If funding for the Contract is reduced by law, or funds to pay Contractor for the agreed-to level of the Services or production of Deliverables to be provided by Contractor are not appropriated or otherwise unavailable, the State may, upon 30 days written notice to Contractor, reduce the level of the Services or the change the production of Deliverables in the manner and for the periods of time as the State may elect. The charges payable under the Contract will be equitably adjusted to reflect any equipment, services or commodities not provided by reason of the reduction.

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

competent jurisdiction, any claim for a shortfall in payment for Services performed or Deliverables finally accepted before the effective date of termination.

2.155 Termination for Criminal Conviction

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

2.156 Termination for Approvals Rescinded

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

2.157 Rights and Obligations upon Termination

(a) If the State terminates the Contract for any reason, the Contractor must (a) stop all work as specified in the notice of termination, (b) take any action that may be necessary, or that the State may direct, for preservation and protection of Deliverables or other property derived or resulting from the Contract that may be in Contractor's possession, (c) return all materials and property provided directly or indirectly to Contractor by any entity, agent or employee of the State, (d) transfer title in, and deliver to, the State, unless otherwise directed, all Deliverables intended to be transferred to the State at the termination of the Contract and which are resulting from the Contract (which must be provided to the State on an "As-Is" basis except to the extent the amounts paid by the State in respect of the items included compensation to Contractor for the provision of warranty services in respect of the materials), and (e) take any action to mitigate and limit any potential damages, or requests for Contractor adjustment or termination settlement costs, to the maximum practical extent, including terminating or limiting as otherwise applicable those subcontracts and outstanding orders for material and supplies resulting from the terminated Contract.

(b) If the State terminates the Contract before its expiration for its own convenience, the State must pay Contractor for all charges due for Services provided before the date of termination and, if applicable, as a separate item of payment under the Contract, for Work In Process, on a percentage of completion basis at the level of completion determined by the State. All completed or partially completed Deliverables prepared by Contractor under the Contract, at the option of the State, becomes the State's property, and Contractor is entitled to receive equitable fair compensation for the Deliverables. Regardless of the basis for the termination, the State is not obligated to pay, or otherwise compensate, Contractor for any lost expected future profits, costs or expenses incurred with respect to Services not actually performed for the State.

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

2.158 Reservation of Rights

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

2.160 Termination by Contractor

2.161 Termination by Contractor

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

The Contractor may terminate the Contract if the State (i) materially breaches its obligation to pay the Contractor undisputed amounts due and owing under the Contract, (ii) breaches its other obligations under the Contract to an extent that makes it impossible or commercially impractical for the Contractor to perform the Services, or (iii) does not cure the breach within the time period specified in a written notice of breach. But the Contractor must discharge its obligations under **Section 2.190** before it terminates the Contract.

2.170 Transition Responsibilities

2.171 Contractor Transition Responsibilities

If the State terminates the Contract, for convenience or cause, or if the Contract is otherwise dissolved, voided, rescinded, nullified, expires or rendered unenforceable, the Contractor agrees to comply with direction provided by the State to assist in the orderly transition of equipment, services, software, leases, etc. to the State or a third party designated by the State. If the Contract expires or terminates, the Contractor agrees to make all reasonable efforts to effect an orderly transition of services within a reasonable period of time that in no event will exceed 90 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 and Insolvency

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.

The Contractor must place 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 commercially 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

The parties acknowledge that if at any time the Contractor cannot meet the requirement of this contract in accordance with the agreed upon schedule and it is determined the Contractor cannot provide the guide it would be impracticable and extremely difficult to fix the actual damage sustained by the State as a result. Therefore, Contractor and the State agree that if the Contractor cannot meet the requirements and produce the guide and the State does not elect to exercise its rights under **Section 2.152**, the State is entitled to collect liquidated damages in the actual amount of expenditures incurred by the State to hire another contractor to perform the tasks to accomplish the deliverables as set forth in this RFP.

2.244 Excusable Failure

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

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

If any of the above-enumerated circumstances substantially prevent, hinder, or delay the Contractor's performance of the Services/provision of Deliverables for more than 10 Business Days, and the State

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

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

2.250 Approval of Deliverables

2.251 Delivery Responsibilities - Reserved

2.252 Delivery of Deliverables - Reserved

2.253 Testing

(a) Before delivering any of the above-mentioned Statement of Work Physical Deliverables or Services to the State, Contractor must first perform all required quality assurance activities to verify that the Physical Deliverable or Service is complete and conforms with its specifications listed in the applicable Statement of Work or Purchase Order. Before delivering a Physical Deliverable or Service to the State, Contractor must certify to the State that (1) it has performed the quality assurance activities, (2) it has performed any applicable testing, (3) it has corrected all material deficiencies discovered during the quality assurance activities and testing, (4) the Deliverable or Service is in a suitable state of readiness for the State's review and approval, and (5) the Deliverable/Service has all Critical Security patches/updates applied.

(b) If a Deliverable includes installation at a State Location, then Contractor must (1) perform any applicable testing, (2) correct all material deficiencies discovered during the quality assurance activities and testing, and (3) inform the State that the Deliverable is in a suitable state of readiness for the State's review and approval. To the extent that testing occurs at State Locations, the State is entitled to observe or otherwise participate in testing.

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 the Deliverables.

2.262 Vesting of Rights

With the sole exception of any preexisting licensed works identified in the SOW, 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.

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 to 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 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

The Agreement will be extended to MiDEAL members. MiDEAL members include local units of government, school districts, universities, community colleges, and nonprofit hospitals. A current list of MiDEAL members is available at www.michigan.gov/mideal. Upon mutual written agreement between the State of Michigan and the Contractor, this Agreement may be extended to (a) State of Michigan employees, or (b) other states (including governmental subdivisions and authorized entities)

If extended, the Contractor must supply all goods and services at the established Agreement prices and terms. The State reserves the right to negotiate additional discounts based on any increased volume generated by such extensions.

The Contractor must submit invoices to, and receive payment from, extended purchasing program members on a direct and individual basis."

2.290 Environmental Provision

2.291 Environmental Provision

Hazardous Materials:

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

under the Federal Insecticide Fungicide and Rodenticide Act, and (5) "hazardous wastes" as defined or listed under the Resource Conservation and Recovery Act.

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

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

(c) Once the Hazardous Material has been removed or rendered harmless by the State, the Contractor must resume Work as directed in writing by the State. Any determination by the Michigan Department of Community Health or the Michigan Department of Environmental Quality that the Hazardous Material has either been removed or rendered harmless is binding upon the State and Contractor for the purposes of resuming the Work. If any incident with Hazardous Material results in delay not reasonable anticipatable under the circumstances and which is attributable to the State, the applicable SLAs for the affected Work will not be counted in **Section 2.242** for a time as mutually agreed by the parties.

(d) If the Hazardous Material was brought to the site by the Contractor, or results in whole or in part from any violation by the Contractor of any laws covering the use, handling, storage, disposal of, processing, transport and transfer of Hazardous Material, or from any other act or omission within the control of the Contractor, the Contractor must bear its proportionate share of the delay and costs involved in cleaning up the site and removing and rendering harmless the Hazardous Material according to Applicable Laws to the condition approved by applicable regulatory agency(ies).

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

Refrigeration and Air Conditioning:

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

Environmental Performance:

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

2.300 Other Provisions

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

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

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

Attachment A, Price Proposal

2014 Fishing Guides – Quantity of 1,250,000

Guide Size	5.375" x 8.375"
Est. # of pages	72 pages
Paper for Cover	70# No. 3 Gloss, 4/4 with bleeds
Paper for Content and Advertisement	38# No. 5 Gloss, 4/4 with bleeds
Pricing Details	
Printing Cost	\$216,536.76
Design Cost	\$5,760.00
Total Cost	\$222,296.76
Advertising Sales	\$160,000.00
Cost to the State	\$134,269.76
% of Advertising Dollar used to offset Cost to State	55%

55% of advertising sales revenue will be applied to cover the total cost.

This (total) pricing is guaranteed maximum cost. If advertising revenues are OVER the projection listed above, 55 cents of every dollar will be used to further offset the costs.

2015/2016 Fishing Guides– Quantity of 1,500,000

Guide Size	5.375" x 8.375"
Est. # of pages	72 pages
Paper for Cover	70# No. 3 Gloss, 4/4 with bleeds
Paper for Content and Advertisement	38# No. 5 Gloss, 4/4 with bleeds
Pricing Details	
Printing Cost	\$257,936.79
Design Cost	\$5,760.00
Total Cost	\$263,696.79
Advertising Sales	\$185,000.00
Cost to the State	\$161,946.79
% of Advertising Dollar used to offset Cost to State	55%
Cost for Additional 100,000 Guides*	\$16,608.00
Cost for Additional 200,000 Guides*	\$33,210.46
Cost for Additional 300,000 Guides*	\$49,813.70
Cost for Additional 400,000 Guides*	\$66,390.32
Cost for Additional 500,000 Guides*	\$83,004.68

* At time of initial printing

This (total) pricing is guaranteed maximum cost. If advertising revenues are OVER the projection listed above, 55 cents of every dollar will be used to further offset the costs. This ad revenue estimate has to be seen as slightly more speculative than the others. Note: The true impact of a book that will be on the shelf unchanged for two years may have an impact on the revenues that we do not anticipate as this is different than anything we have been able to test in another state.