

STATE OF MICHIGAN
PROCUREMENT Services
Department of Natural Resources
525 W. ALLEGAN ST., LANSING, MICHIGAN 48933
P.O. BOX 30028 LANSING, MICHIGAN 48909

CONTRACT CHANGE NOTICE

Change Notice Number 011
to
Contract Number 751B1300050

| | |
|-------------------|------------------------------|
| CONTRACTOR | OCLC, Inc. |
| | 6565 Kilgour Place |
| | Dublin, OH 43017 |
| | Bruce Crocco, Vice President |
| | 615-764-6000 |
| | adamsl@oclc.org |
| 4115/014 | |

| | | | |
|--------------|----------------------|-------------------------|----------------------------|
| STATE | Program Manager | Mark Harvey | Michigan Historical Center |
| | 517-373-1415 | | |
| | harveym@michigan.gov | | |
| | Lisa VanOstrand | Procurement Services | |
| | | 517-284-5975 | |
| | | vanostranl@michigan.gov | |

| CONTRACT SUMMARY | | | | |
|---|--------------------------------|---|---|--|
| DESCRIPTION: Online library hosting, access and digital cataloging | | | | |
| INITIAL EFFECTIVE DATE | INITIAL EXPIRATION DATE | INITIAL AVAILABLE OPTIONS | EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW | |
| 09/14/2011 | 09/14/2016 | Two 1-year options | 9/30/2018 | |
| PAYMENT TERMS | | DELIVERY TIMEFRAME | | |
| Net 45 days | | N/A | | |
| ALTERNATE PAYMENT OPTIONS | | | EXTENDED PURCHASING | |
| <input type="checkbox"/> P-card <input type="checkbox"/> Direct Voucher (DV) <input type="checkbox"/> Other | | | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| MINIMUM DELIVERY REQUIREMENTS | | | | |
| N/A | | | | |
| DESCRIPTION OF CHANGE NOTICE | | | | |
| OPTION | LENGTH OF OPTION | EXTENSION | LENGTH OF EXTENSION | REVISED EXP. DATE |
| <input type="checkbox"/> | | <input checked="" type="checkbox"/> | One year | 09/30/2019 |
| CURRENT VALUE | VALUE OF CHANGE NOTICE | ESTIMATED AGGREGATE CONTRACT VALUE | | |
| \$238,040.75 | \$20,865.96 | \$258,906.71 | | |
| DESCRIPTION: Effective 4/25/2018, this contract is being increased by \$20,865.96 and is exercising a one-year extension. The revised contract expiration date is 9/30/2019. | | | | |

CHANGE NOTICE NO. 011 TO CONTRACT NO. 751B1300050

FOR THE CONTRACTOR:

OCLC, Inc.
Company Name

Bruce Crocco
Authorized Agent Signature

Bruce Crocco, Vice President
Authorized Agent (Print or Type)

2018 May 21
Date



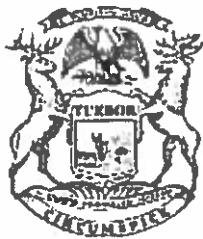
FOR THE STATE:

Laura L. Gyrekos
Signature

Laura Gyrekos, Procurement Manager
Name & Title

Department of Natural Resources
Agency

5/23/18
Date



**STATE OF MICHIGAN
PROCUREMENT Services**
Department of Natural Resources
525 W. ALLEGAN ST., LANSING, MICHIGAN 48933
P.O. BOX 30028 LANSING, MICHIGAN 48909

CONTRACT CHANGE NOTICE

Change Notice Number 010
to
Contract Number 751B1300050

| | |
|------------|--|
| CONTRACTOR | OCLC Online Computer Library Center, Inc. 6565 Kilgour Place Dublin, OH 43017 Bruce Crocco, Vice President 614-764-6000 adams1@oclc.org 4115/014 |
|------------|--|

| STATE | Program Manager | Mark Harvey | Michigan Historical Center |
|-------|------------------------|--------------------------------------|---|
| | Contract Administrator | 517-373-1415 harveym@michigan.gov | Lisa VanOstran 517-284-5975 vanostranl@michigan.gov |

| CONTRACT SUMMARY | | | | |
|---|-------------------------|-------------------------------|--|--|
| DESCRIPTION: Online library hosting, access and digital cataloging | | | | |
| INITIAL EFFECTIVE DATE | INITIAL EXPIRATION DATE | INITIAL AVAILABLE OPTIONS | EXPIRATION DATE/BEFORE CHANGE(S) NOTED BELOW | |
| 09/14/2011 | 09/14/2016 | Two 1-year options | 09/30/2018 | |
| PAYMENT TERMS | | DELIVERY TIMEFRAME | | |
| Net 45 days | | N/A | | |
| ALTERNATE PAYMENT OPTIONS | | | EXTENDED PURCHASING | |
| <input type="checkbox"/> P-card <input type="checkbox"/> Direct Voucher (DV) <input type="checkbox"/> Other | | | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| MINIMUM DELIVERY REQUIREMENTS | | | | |
| N/A | | | | |
| DESCRIPTION OF CHANGE NOTICE | | | | |
| OPTION | LENGTH OF OPTION | EXTENSION | LENGTH OF EXTENSION | REVISED EXP. DATE |
| <input type="checkbox"/> | | <input type="checkbox"/> | | |
| CURRENT VALUE | | VALUE OF CHANGE NOTICE | ESTIMATED AGGREGATE CONTRACT VALUE | |
| \$234,369.85 | | \$3,670.90 | \$238,040.75 | |
| DESCRIPTION: Effective October 1, 2017, this contract is being modified with updated pricing and is being increased by \$3,670.90 for DNR use. | | | | |

CHANGE NOTICE NO.

TO CONTRACT NO.

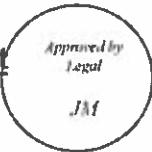
FOR THE CONTRACTOR:

OCLC, Inc.
Company Name

Bruce Crocco

Authorized Agent Signature

Bruce Crocco, Vice President
Authorized Agent (Print or Type)



2017 December 15
Date

FOR THE STATE:

Sharon M. Schaefer
Signature

Sharon M. Schaefer, Chief FOD
Name & Title

Department of Natural Resources
Agency

1/2/18
Date

OCLC Pricing Adjustments effective October 1, 2017

CONTENTdm Pricing

Archives of Michigan (E8M)

| Product Description - Annual Subscription | Units | Billed Amount | Calendar Date Billed | Invoice Number | Price |
|--|-------|---------------|----------------------|----------------|--------------------|
| CONTENTdm Base Fee - Band E - DPR0726 | 1 | \$8,338.96 | | | \$8,338.96 |
| CONTENTdm Collection Size less than 4 terabytes, DPR074B | 1 | \$14,355.23 | | | \$14,355.23 |
| Subtotal | | | | | \$22,694.19 |

Michigan Department of Natural Resources-Michigan Historical Museum

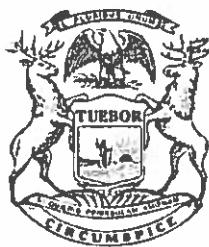
(MIDNR)

| Product Description - Annual Subscription | Units | Billed Amount | Calendar Date Billed | Invoice Number | Price |
|---|-------|---------------|----------------------|----------------|--------------------|
| CONTENTdm Base Fee - Band E - DPR0726 | 1 | \$8,338.96 | | | \$8,338.96 |
| Subtotal | | | | | \$8,338.96 |
| Total | | | | | \$31,033.15 |

Cataloging & Metadata Annual Pricing

Archives of Michigan (E8M)

| Service | FY2018 Annual Price |
|--------------------------------------|---------------------|
| Cataloging and Metadata Subscription | \$500.00 |



STATE OF MICHIGAN
PROCUREMENT Services
Department of Natural Resources
525 W. ALLEGAN ST., LANSING, MICHIGAN 48933
P.O. BOX 30028 LANSING, MICHIGAN 48909

CONTRACT CHANGE NOTICE

Change Notice Number 09
to
Contract Number 751B1300050

| | |
|-------------------|---|
| CONTRACTOR | OCLC Online Computer Library Center, Inc. 6565 Kilgour Place Dublin, OH 43017 Ron Gardner 800-848-5878 gardnerr@oclc.org 4115/014 |
|-------------------|---|

| | | |
|------------------------|--------------------------------|----------------------------|
| STATE | Program Manager Mark Harvey | Michigan Historical Center |
| | 517-373-1415 | |
| | harveym@michigan.gov | |
| Contract Administrator | Lisa VanOstrand | Procurement Services |
| | 517-284-5975 | |
| | vanostranl@michigan.gov | |

| CONTRACT SUMMARY | | | | | | |
|---|--|----------------------------------|---|--|--|--|
| DESCRIPTION: Online library hosting, access and digital cataloging | | | | | | |
| INITIAL EFFECTIVE DATE | INITIAL EXPIRATION DATE | INITIAL AVAILABLE OPTIONS | EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW | | | |
| 09/14/2011 | 09/14/2016 | Two 1-year options | 09/30/2017 | | | |
| PAYMENT TERMS | | DELIVERY TIMEFRAME | | | | |
| Net 45 days | | N/A | | | | |
| ALTERNATE PAYMENT OPTIONS | | | EXTENDED PURCHASING | | | |
| <input type="checkbox"/> P-card | <input type="checkbox"/> Direct Voucher (DV) | <input type="checkbox"/> Other | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No | | |
| MINIMUM DELIVERY REQUIREMENTS | | | | | | |
| N/A | | | | | | |
| DESCRIPTION OF CHANGE NOTICE | | | | | | |
| OPTION | LENGTH OF OPTION | EXTENSION | LENGTH OF EXTENSION | REVISED EXP. DATE | | |
| <input checked="" type="checkbox"/> | One year | <input type="checkbox"/> | | 09/30/2018 | | |
| CURRENT VALUE | VALUE OF CHANGE NOTICE | | ESTIMATED AGGREGATE CONTRACT VALUE | | | |
| \$200,846.65 | \$33,523.20 | | \$234,369.85 | | | |
| DESCRIPTION: Effective May 30, 2017, this contract is exercising the final option year and is increased by \$33,523.20. The revised contract expiration date is 9/30/2018. | | | | | | |

FOR THE CONTRACTOR:

OCLC, Inc.
Company Name



Bruce Crocco
Authorized Agent Signature

Bruce Crocco, Vice President
Authorized Agent (Print or Type)

2017 August 8
Date

FOR THE STATE:

Laura Gyorkos
Signature

Laura Gyorkos, Manager
Name & Title

Department of Natural Resources
Agency

8/10/17
Date

STATE OF MICHIGAN
DEPARTMENT OF NATURAL RESOURCES
PROCUREMENT

525 W. ALLEGAN STREET
LANSING, MI 48933

CHANGE NOTICE NO. 08
to
CONTRACT NO. 751B1300050
between
THE STATE OF MICHIGAN
and

| NAME & ADDRESS OF CONTRACTOR | PRIMARY CONTACT | EMAIL |
|---|-----------------|--|
| OCLC Online Computer Library Center, Inc. 6565 Kilgour Place Dublin, OH 43017 | Ron Gardner | gardnerr@oclc.org |
| | PHONE | CONTRACTOR'S TAX ID NO. (LAST FOUR DIGITS ONLY) |
| | 800-848-5878 | 4115/014 |

| STATE CONTACTS | AGENCY | NAME | PHONE | EMAIL |
|------------------------|----------------------------|----------------|--------------|-------------------------|
| PROGRAM MANAGER | Michigan Historical Center | Mark Harvey | 517-373-1415 | harveym@michigan.gov |
| CONTRACT ADMINISTRATOR | DNR Procurement Services | Lisa VanOstran | 517-284-5975 | vanostranl@michigan.gov |

| CONTRACT SUMMARY | | | | | | |
|---|--|--------------------------------|--|--|--|--|
| DESCRIPTION: Online library hosting, access and digital cataloging. | | | | | | |
| INITIAL EFFECTIVE DATE | INITIAL EXPIRATION DATE | INITIAL AVAILABLE OPTIONS | EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW | | | |
| 09/15/2011 | 09/14/2016 | 2 1 year options | 09/14/2016 | | | |
| PAYMENT TERMS | | DELIVERY TIMEFRAME | | | | |
| Net 45 days | | N/A | | | | |
| ALTERNATE PAYMENT OPTIONS | | | EXTENDED PURCHASING | | | |
| <input type="checkbox"/> P-card | <input type="checkbox"/> Direct Voucher (DV) | <input type="checkbox"/> Other | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No | | |
| MINIMUM DELIVERY REQUIREMENTS | | | | | | |

| DESCRIPTION OF CHANGE NOTICE | | | | |
|-------------------------------------|------------------|--------------------------|------------------------------------|-------------------|
| EXERCISE OPTION? | LENGTH OF OPTION | EXERCISE EXTENSION? | LENGTH OF EXTENSION | REVISED EXP. DATE |
| <input checked="" type="checkbox"/> | 1 year | <input type="checkbox"/> | | 09/14/2017 |
| CURRENT VALUE | | VALUE OF CHANGE NOTICE | ESTIMATED AGGREGATE CONTRACT VALUE | |
| \$200,846.65 | | \$0.00 | \$200,846.65 | |

DESCRIPTION: Exercise option year and extend contract to 9/14/2017.

FOR THE CONTRACTOR:

OCLC Online Computer Library Center, Inc.

Company Name

Bruce A. Crocco
Authorized Agent Signature

Bruce A. Crocco

Authorized Agent (Print or Type)

11/9/2016

Date

FOR THE STATE:

Laura L. Gyurkos
Signature

Laura L. Gyurkos, Manager
Name & Title

DWR
Agency

11/21/16
Date

OCLC Pricing Adjustments to August 17, 2016 pricing sent from OCLC and signed by Bruce Crocco.

November 9, 2016. Held conference call with Mark Harvey, Laura Gyorkos and Lisa VanOstran of the State of Michigan, Department of Natural Resources. OCLC staff at the conference call were Ron Gardner, Lisa Adams, Taylor Surface. The following adjustment is in relationship to Change Notice No. 08; to Contract No 751B1300050. Below are the new prices.

CONTENTdm Pricing

Archives of Michigan (E8M)

| Product Description – Annual Subscription | Units | Billed Amount | Calendar Date Billed | Invoice Number | Price |
|--|-------|---------------|----------------------|----------------|-------------|
| CONTENTdm Base Fee - Band E - DPR0726 | 1 | \$7,999.00 | 8/31/2016 | | \$7,999.00 |
| CONTENTdm Collection Size less than 3 terabytes, DPR0748 | 1 | \$11,475.00 | 8/31/2016 | | \$11,475.00 |
| Subtotal | | | | | \$19,474.00 |

Michigan Department of Natural Resources-Michigan Historical Museum (MIDNR)

| Product Description – Annual Subscription | Units | Billed Amount | Calendar Date Billed | Invoice Number | Price |
|---|-------|---------------|----------------------|----------------|-------------|
| CONTENTdm Base Fee - Band E - DPR0726 | 1 | \$7,999.00 | 8/31/2016 | | \$7,999.00 |
| Subtotal | | | | | \$7,999.00 |
| Total | | | | | \$27,473.00 |

Cataloging & Metadata Annual Pricing

Archives of Michigan (E8M)

| Service | FY2017 Annual Price |
|--------------------------------------|---------------------|
| Cataloging and Metadata Subscription | \$49.29 |

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. 07
 to
 CONTRACT NO. 751B1300050
 between
 THE STATE OF MICHIGAN
 and

| NAME & ADDRESS OF CONTRACTOR | PRIMARY CONTACT | EMAIL |
|--|-----------------|--|
| OCLC Online Computer Library Center, Inc 6565 Kilgour Place Dublin, OH 43017 | Ron Gardner | gardnerr@oclc.org |
| | PHONE | VENDOR TAX ID # (LAST FOUR DIGITS ONLY) |
| | 800-848-5878 | 4115/014 |

| STATE CONTACTS | DIVISION | NAME | PHONE | EMAIL |
|------------------------|----------------------------|---------------------|--------------|------------------------|
| PROGRAM MANAGER | Michigan Historical Center | Mark Harvey | 517-373-1415 | Harveym@michigan.gov |
| CONTRACT ADMINISTRATOR | Finance and Operations | Jana Harding-Bishop | 517-284-5938 | HardingJ3@michigan.gov |

| CONTRACT SUMMARY | | | | | | |
|--|--|--------------------------------|--|--|--|--|
| DESCRIPTION: Online library hosting, access and digital cataloging | | | | | | |
| INITIAL EFFECTIVE DATE | INITIAL EXPIRATION DATE | INITIAL AVAILABLE OPTIONS | EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW | | | |
| 9/15/2011 | 9/14/2016 | 2 – 1 year | 9/14/2016 | | | |
| PAYMENT TERMS | F.O.B. | SHIPPED TO | | | | |
| Net 45 | n/A | N/A | | | | |
| ALTERNATE PAYMENT OPTIONS | | | EXTENDED PURCHASING | | | |
| <input type="checkbox"/> P-card | <input type="checkbox"/> Direct Voucher (DV) | <input type="checkbox"/> Other | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No | | |
| MINIMUM DELIVERY REQUIREMENTS | | | | | | |
| N/A | | | | | | |

| DESCRIPTION OF CHANGE NOTICE | | | | | | |
|--|----------------------------------|--|--|------------------------------|--|--|
| EXTEND CONTRACT EXPIRATION DATE | EXERCISE CONTRACT OPTION YEAR(S) | EXTENSION BEYOND CONTRACT OPTION YEARS | LENGTH OF EXTENSION/OPTION | EXPIRATION DATE AFTER CHANGE | | |
| <input type="checkbox"/> No | <input type="checkbox"/> Yes | <input type="checkbox"/> | <input type="checkbox"/> | | | |
| CURRENT VALUE | | VALUE/COST OF CHANGE NOTICE | ESTIMATED REVISED AGGREGATE CONTRACT VALUE | | | |
| \$200,846.65 | | \$0.00 | \$200,846.65 | | | |
| DESCRIPTION: | | | | | | |
| Adjust Pricing for 2015/2016 contract year | | | | | | |

Change Notice Number: 07
Contract Number: 751B1300050

FOR THE CONTRACTOR:

OCLC Online Computer Library Center, Inc.

Firm Name

Bruce A. Crocco

Authorized Agent Signature

Bruce A. Crocco

Authorized Agent (Print or Type)

August 25, 2015

Date

FOR THE STATE:

Laura Gyorkos

Laura Gyorkos, Manager

Name & Title

**Department of Natural Resources –
Finance and Operations Division
Agency**

8/25/15

Date

2015/2016 Contract Pricing

| | 2014-2015 Costs | 2015-2016 Costs |
|---------------------------------------|-----------------|-----------------|
| Hosting fees | | |
| Level 1 – 40 GB Storage max | \$1,287.00 | \$1,287.00 |
| Level 2 – 200 GB Storage max | \$2,570.00 | \$2,679.22 |
| Level 3 – 1000 GB Storage max | \$3,855.00 | \$4,018.84 |
| Additional Storage – 250 GB | \$1,287.00 | \$1,341.70 |
| AMA Cost for unlimited objects | \$7,585.00 | \$8,673.60 |
| | | |
| Annual Cataloging Subscription | | |
| FIX 1002 – subscription online | \$261.50 | \$269.33 |
| FIX 2323 – Flat rate credit | -\$275.76 | -\$275.76 |
| FIX 6600 – Access Subscription | \$44.91 | \$46.24 |
| Annual Total | \$30.65 | \$39.81 |
| Monthly Fee | \$2.55 | \$3.32 |



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

CHANGE NOTICE NO. 06 To CONTRACT NO. 751B1300050
Between
THE STATE OF MICHIGAN
And

Required by authority of 1984 PA 431, as amended.

| | | |
|---|--------------------------------|--|
| Name of Contractor OCLC Online Computer Library Center, Inc. | Primary Contact Ron Gardner | |
| Address of Contractor 6565 Kilgour Place | Email gardnerr@oclc.org | |
| City, State, ZIP Dublin, OH 43017 | Telephone (800) 848-5878 | Contractor #, Mail Code *****4115/014 |

| STATE CONTACTS | AGENCY | NAME | TELEPHONE | EMAIL |
|-----------------|--------|---------------------|--------------|------------------------|
| Project Manager | DNR | Mark Harvey | 517-373-1415 | HarveyM@michigan.gov |
| Buyer | DNR | Jana Harding-Bishop | 517-284-5938 | Hardingj3@michigan.gov |

INITIAL CONTRACT SUMMARY

Description (Provide a basic but comprehensive description of services)
Online library hosting, access and digital cataloging

| | | | |
|---|---|--------------------------------------|---------------------------------|
| Initial Term 5 years | Effective Date 9/15/2011 | Initial Expiration Date 9/14/2016 | Available Options 2 - 1 year |
| Payment Terms Net 45 | F.O.B N/A | Shipped N/A | Shipped From N/A |
| Alternate Payment Options <input type="checkbox"/> P-card <input type="checkbox"/> Direct Voucher (DV) <input type="checkbox"/> Other: _____ | Available to MiDeal Participants <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No | | |

Minimum Delivery Requirements
N/A

DESCRIPTION OF CHANGE NOTICE

Option Exercised: Yes No If Yes, New Expiration Date: _____

PROVIDE THE DETAIL OF THE CHANGE NOTICE

Effective 1/12/15

Increase Hosting Costs as Follows:

Level 2 - 200GB - cost change \$2,465.00 \$2,570.00

| | |
|---------------------------------------|---|
| VALUE/COST OF CHANGE NOTICE \$0.00 | ESTIMATED REVISED AGGREGATE CONTRACT VALUE \$200,846.665 |
|---------------------------------------|---|

FOR THE CONTRACTOR:

OCLC Online Computer Library

Firm Name

Bruce A. Crocco

Authorized Agent Signature

Bruce A. Crocco

Authorized Agent (Print or Type)

1-16-2015

Date

FOR THE STATE:

Laurie Gyorkos

Signature

Laurie Gyorkos, Manager

Name/Title

DNR Financial Services, Procurement

DNR/Procurement

1/16/15

Date



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

CHANGE NOTICE NO. 05 To CONTRACT NO. 751B1300050
Between
THE STATE OF MICHIGAN
And

Required by authority of 1984 PA 431, as amended.

| | | |
|---|--------------------------------|--|
| Name of Contractor OCLC Online Computer Library Center, Inc. | Primary Contact Ron Gardner | |
| Address of Contractor 6565 Kilgour Place | Email gardnerr@oclc.org | |
| City, State, ZIP Dublin, OH 43017 | Telephone (800) 848-5878 | Contractor #, Mail Code *****4115/014 |

| STATE CONTACT STAFF | AGENCY | NAME | TELEPHONE | EMAIL |
|---------------------|--------|---------------------|--------------|------------------------|
| Project Manager | DNR | Mark Harvey | 517-373-1415 | HarveyM@michigan.gov |
| Buyer | DNR | Jana Harding-Bishop | 517-284-5938 | Hardingj3@michigan.gov |

INITIAL CONTRACT SUMMARY

Description (Provide a basic but comprehensive description of services)

Online library hosting, access and digital cataloging

| | | | |
|---|---|--------------------------------------|---------------------------------|
| Initial Term 5 years | Effective Date 9/15/2011 | Initial Expiration Date 9/14/2016 | Available Options 2 - 1 year |
| Payment Terms Net 45 | F.O.B N/A | Shipped N/A | Shipped From N/A |
| Alternate Payment Options <input type="checkbox"/> P-card <input type="checkbox"/> Direct Voucher (DV) <input type="checkbox"/> Other: _____ | Available to MiDeal Participants <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No | | |

Minimum Delivery Requirements
N/A

DESCRIPTION OF CHANGE NOTICE

Option Exercised: Yes No If Yes, New Expiration Date: _____

PROVIDE THE DETAIL OF THE CHANGE NOTICE

Effective 12/15/14

FIX 1002 Cataloging Subscription Online Monthly and FIX 6600 Access Subscription and FIX 2323 Flat rate Cataloging Credit will all be combined for an average monthly fee to be evaluated each year and changed in July.

Current monthly fee for July 2014-June 2015

FIX 1002 \$261.50

FIX 2323 -\$275.76

FIX 6600 \$ 44.91

Total \$ 30.65 or \$2.55 per month

Beginning in July 2015 OCLC will bill the cataloging and subscription services on an annual basis. OCLC will bill in January 2015 for 6 months January-June.

| | |
|---------------------------------------|---|
| VALUE/COST OF CHANGE NOTICE \$0.00 | ESTIMATED REVISED AGGREGATE CONTRACT VALUE \$200,846.665 |
|---------------------------------------|---|

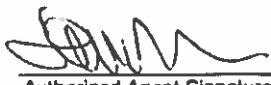
FOR THE CONTRACTOR:

OCLC Online Computer Library

Firm Name

FOR THE STATE:

Signature



Authorized Agent Signature

Julie Presas

Authorized Agent (Print or Type)

12/26/2014

Date

Laurie Gyorkos, Manager

Name/Title

DNR Financial Services, Procurement

DNR/Procurement

12-29-14

Date



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

CHANGE NOTICE NO. 04 To CONTRACT NO. 751B1300050
Between
THE STATE OF MICHIGAN
And

Required by authority of 1984 PA 431, as amended.

| | | |
|---|--------------------------------|--|
| Name of Contractor OCLC Online Computer Library Center, Inc. | Primary Contact Ron Gardner | |
| Address of Contractor 6565 Kilgour Place | Email gardnerr@oclc.org | |
| City, State, ZIP Dublin, OH 43017 | Telephone (800) 848-5878 | Contractor #, Mail Code *****4115/014 |

| STATE CONTACTS | AGENCY | NAME | TELEPHONE | EMAIL |
|-----------------|--------|---------------------|--------------|------------------------|
| Project Manager | DNR | Mark Harvey | 517-373-1415 | HarveyM@michigan.gov |
| Buyer | DNR | Jana Harding-Bishop | 517-284-5938 | Hardingj3@michigan.gov |

INITIAL CONTRACT SUMMARY

Description (Provide a basic but comprehensive description of services)

Online library hosting, access and digital cataloging

| | | | |
|---|---|--------------------------------------|---------------------------------|
| Initial Term 5 years | Effective Date 9/15/2011 | Initial Expiration Date 9/14/2016 | Available Options 2 - 1 year |
| Payment Terms Net 45 | F.O.B N/A | Shipped N/A | Shipped From N/A |
| Alternate Payment Options <input type="checkbox"/> P-card <input type="checkbox"/> Direct Voucher (DV) <input type="checkbox"/> Other: _____ | Available to MiDeal Participants <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No | | |

Minimum Delivery Requirements

N/A

DESCRIPTION OF CHANGE NOTICE

Option Exercised: Yes No If Yes, New Expiration Date: _____

PROVIDE THE DETAIL OF THE CHANGE NOTICE

Effective 7/1/14

Increase Hosting Costs as Follows:

Additional Storage - 250 GB - change cost from \$1,235.00 to \$1,287.00

| | |
|---------------------------------------|---|
| VALUE/COST OF CHANGE NOTICE \$0.00 | ESTIMATED REVISED AGGREGATE CONTRACT VALUE \$200,846.665 |
|---------------------------------------|---|

FOR THE CONTRACTOR:

OCLC Online Computer Library

Firm Name


Bruce A. Crocco
Authorized Agent Signature

Bruce A. Crocco

Authorized Agent (Print or Type)

11/24/2014
Date

FOR THE STATE:


Laurie Gyorkos
Signature

Laurie Gyorkos, Manager

Name/Title

DNR Financial Services, Procurement

DNR/Procurement

11/24/14
Date



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

CHANGE NOTICE NO. 03 TO CONTRACT NO. 751B1300050
Between
STATE OF MICHIGAN
and

Required by authority of 1984 PA 431, as amended.

| | | | |
|--|--|--|--|
| Name and Address of Contractor | | Primary Contact | |
| OCLC Online Computer Library Center, Inc 6565 Kilgour Place Dublin, OH 43017 | | Ron Gardner | |
| | | Email gardnerr@oclc.org | |
| Telephone (800) 848-5878 | | Contractor #, Mail Code *****4115 / 014 | |

| State Contact | Agency | Name | Telephone | Email |
|---|--------|---------------------|----------------|-----------------------|
| Contract Compliance Inspector/Project Manager | DNR | Mark Harvey | (517) 373-1415 | harveym@michigan.gov |
| Buyer | DNR | Jana Harding-Bishop | (517) 284-5938 | Hardingj@michigan.gov |

| Initial Contract Summary | | | | |
|---|--|---|---|---|
| Description (Provide a basic but comprehensive description of services) | | | | |
| Online library hosting, access and digital cataloging | | | | |
| Effective Date September 15, 2011 | Initial Expiration Date September 14, 2016 | Initial Available Options 2 - 1 year periods | Current Expiration Date September 14, 2016 | |
| 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 | | Available to MiDeal Participants | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No |

| Description of Change Notice | | | | | | | | |
|--|---------------------------------|--|--|--|--|--|--|--|
| Option Exercised: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No | If Yes, New Expiration Date: | | | | | | | |
| Provide the detail of the Change Notice Effective 7/1/14 | | | | | | | | |
| Increase AMA costs from \$7,985.00 per year to \$8,320.00 per year | | | | | | | | |
| Increase Hosting Costs as Follows: Level 1 - 40GB cost change from \$1,235.00 to \$1,287.00 Level 2 - 200GB - no cost change Level 3 - 1000GB cost change from \$3,700.00 to \$3,855.00 | | | | | | | | |
| At this time no funding is being added to the contract. | | | | | | | | |

| | |
|---------------------------------------|--|
| Value/Cost of Change Notice \$0.00 | Estimated Revised Aggregate Contract Value \$200,846.65 |
|---------------------------------------|--|

FOR THE CONTRACTOR:

OCLC Online Computer Library Center, Inc.



Authorized Agent Signature

Bruce A. Crocco

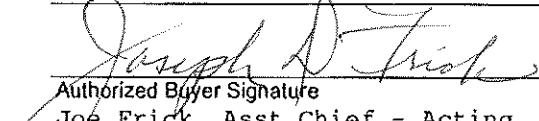
Authorized Agent (Print or Type)

8/6/2014

Date

FOR THE STATE:

Department of Natural Resources



Authorized Buyer Signature

Joe Frick, Asst Chief - Acting
Procurement Manager

Authorized Buyer (Print or Type)

8-13-14

Date



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

CHANGE NOTICE NO. 02 TO CONTRACT NO. 751B1300050
Between
STATE OF MICHIGAN
and

Required by authority of 1984 PA 431, as amended.

| | | | |
|--|--|----------------------------|--|
| Name and Address of Contractor | | Primary Contact | |
| OCNL Online Computer Library Center, Inc 6565 Kilgour Place Dublin, OH 43017 | | Ron Gardner | |
| | | Email gardnerr@ocnl.org | |
| Telephone (800) 848-5878 | Contractor #, Mail Code *****4115 / 014 | | |

| State Contact | Agency | Name | Telephone | Email |
|---|--------|---------------------|----------------|-----------------------|
| Contract Compliance Inspector/Project Manager | DNR | Mark Harvey | (517) 373-1415 | harveym@michigan.gov |
| Buyer | DNR | Jana Harding-Bishop | (517) 373-1190 | Hardingj@michigan.gov |

Initial Contract Summary

Description (Provide a basic but comprehensive description of services)

Online library hosting, access and digital cataloging

| | | | |
|--------------------------------------|---|---|---|
| Effective Date September 15, 2011 | Initial Expiration Date September 14, 2016 | Initial Available Options 2 - 1 year periods | Current Expiration Date September 14, 2016 |
| 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 type="checkbox"/> Yes <input checked="" type="checkbox"/> No |

Description of Change Notice

Option Exercised: Yes No If Yes, New
Expiration Date: _____

Provide the detail of the Change Notice

Effective 7/1/13

Increase AMA costs from \$7,775.00 per year to \$7,985.00 per year

Increase Hosting Costs as Follows:

Level 1 - from 20GB to 40GB and cost from \$1,200.00 to \$1,235.00

Level 2 - from 100GB to 200GB and cost from \$2,400.00 to \$2,465.00

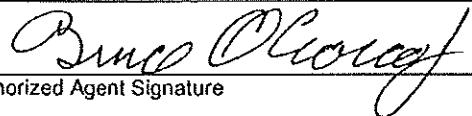
Level 3 - From 500GB to 1000GB and cost from \$3,600.00 to \$3,700.00

At this time no funding is being added to the contract.

| | |
|---------------------------------------|--|
| Value/Cost of Change Notice \$0.00 | Estimated Revised Aggregate Contract Value \$200,846.65 |
|---------------------------------------|--|

FOR THE CONTRACTOR:

OCLC Online Computer Library



Authorized Agent Signature

Bruce A. Crocco

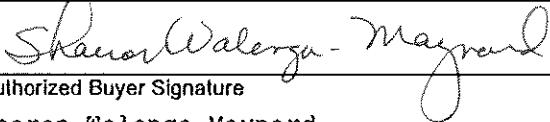
Authorized Agent (Print or Type)

7/22/2013

Date

FOR THE STATE:

Department of Natural Resources



Authorized Buyer Signature

Sharon Walenga-Maynard

Authorized Buyer (Print or Type)

7/26/13

Date

PR1181 (Rev. 09/**/2012)



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

CHANGE NOTICE NO. 01 TO CONTRACT NO. 751B1300050

Between
STATE OF MICHIGAN
and

Required by authority of 1984 PA 431, as amended.

| | |
|--|--|
| Name and Address of Contractor | Primary Contact |
| OCLC Online Computer Library Center, Inc 6565 Kilgour Place Dublin, OH 43017 | Ron Gardner |
| | Email gardnerr@oclc.org |
| | Telephone (800) 848-5878 |
| | Contractor #, Mail Code *****4115 / 014 |

| State Contact | Agency | Name | Telephone | Email |
|---|--------|---------------------|----------------|------------------------|
| Contract Compliance Inspector/Project Manager | DNR | Mark Harvey | (517) 373-1415 | harveym@michigan.gov |
| Buyer | DNR | Jana Harding-Bishop | (517) 373-1190 | Hardingj3@michigan.gov |

Initial Contract Summary

Description (Provide a basic but comprehensive description of services)
Online library hosting, access and digital cataloging

| | | | |
|---|--|---|--|
| Effective Date September 15, 2011 | Initial Expiration Date September 14, 2016 | Initial Available Options 2 - 1 year periods | Current Expiration Date September 14, 2016 |
| 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 MDeal Participants <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No |

Description of Change Notice

Option Exercised: Yes No If Yes, New Expiration Date: _____

Provide the detail of the Change Notice

See Attached

| | |
|--|---|
| Value/Cost of Change Notice \$0.00 | Estimated Revised Aggregate Contract Value \$200,846.65 |
|--|---|

FOR THE CONTRACTOR:

OCLC Online Computer Library

Authorized Agent Signature

Bruce A. Crocco

Authorized Agent (Print or Type)

1/29/2013

Date

FOR THE STATE:

Department of Natural Resources

Authorized Buyer Signature
Sharon Walenga-Maynard

Authorized Buyer (Print or Type)

2-12-13

Date

Change Notice # 1

The following items will be added to the contract effective immediately:

| | | |
|---|---------------------------------|----------|
| FLX1002 Cataloging Subscription On-line - | \$20.59 per month x 48 months = | \$988.32 |
| FIX6600 Access Subscription | \$ 3.53 per month x 48 months = | \$169.44 |

The following items will be removed from the contract effective immediately:

| | | |
|---|----------------------------------|-------------|
| MARC Cataloging Service – Original Cataloging | \$25.00 per month x 48 months= | \$ 1,200.00 |
| MARC Cataloging Services – Per Record | \$16.00 est - \$2700.00 per yr = | \$10,800.00 |
| Michigan Custom Base Package | \$1,633.33 per yr x 4 yrs | \$ 6,533.32 |

Effective immediately the year AMA cost will be increased:

| | |
|--------------------|------------|
| Old contract price | \$7,585.00 |
| New contract price | \$7,775.00 |

There will be no money added to the contract at this time. Contract amount remains \$200,846.65

Other than as stated above all other contract terms and conditions will remain the same.

September 15, 2011

STATE OF MICHIGAN
DEPARTMENT OF NATURAL RESOURCES
Office of Financial Services
Procurement Services
PO Box 30028
Lansing, Michigan 48909

NOTICE
OF
CONTRACT NO. 751B1300050
between
THE STATE OF MICHIGAN
And

| | |
|---|---|
| NAME & ADDRESS OF VENDOR | Contractor Information: Ron Gardner (800) 848-5878 ext 6165 |
| OCLC Online Computer Library Center, Inc 6565 Kilgour Place Dublin, Ohio 43017 | DNR BUYER Jana Harding-Bishop 517-373-1190 |
| Contract Administrator: Mark Harvey – Michigan Historical Center | |
| Contract Description | |
| Online library hosting, access and digital cataloging | |
| CONTRACT PERIOD: From: September 15, 2011 | To: September 14, 2016 |
| TERMS Net 45 days | SHIPMENT N/A |
| F.O.B. N/A | SHIPPED FROM N/A |
| MINIMUM DELIVERY REQUIREMENTS N/A | |

The attached represents the mutually agreed to description of services to be provided and terms and conditions.

This is not an order. A Purchase Order will be issued and sent to the contractor to request goods or services as authorized under the terms and conditions of this contract.

Est. Contract Value: **\$ 200,846.65**

September 9, 2011

STATE OF MICHIGAN
DEPARTMENT OF NATURAL RESOURCES
FINANCE AND OPERATIONS DIVISION
P.O. BOX 30028, LANSING, MI 48909
OR
530 W. ALLEGAN, LANSING, MI 48933

CONTRACT AGREEMENT NO. 751B1300050
between
THE STATE OF MICHIGAN
and

| | |
|--|--|
| NAME & ADDRESS OF VENDOR OCLC Online Computer Library Center, Inc 6565 Kilgour Place Dublin, Ohio 43017 | CONTRACTOR INFORMATION Ron Gardner (800) 848-5878 ext 6165 VENDOR NUMBER/MAIL CODE 2*****4115/014 |
| | BUYER Jana Harding-Bishop gardnerr@oclc.org (517) 373-1190 |
| Contract Administrator: Mark Harvey – Michigan Historical Center | |
| Project title: Online library hosting, access and digital cataloguing | |
| CONTRACT PERIOD: | From: September 15, 2011 To: September 14, 2016 |
| TERMS NET 45 DAYS | SHIPMENT N/A |
| F.O.B. N/A | SHIPPED FROM N/A |
| MINIMUM DELIVERY REQUIREMENTS N/A | |

The attached represents the mutually agreed to description of services to be provided and terms and conditions.

Est. Contract Value: **\$200,846.65**

| | | | |
|---|------|---|------|
| Bruce A. Crocco Vice President OCLC | Date | Jana Harding-Bishop Buyer DNR, Procurement Services | Date |
|---|------|---|------|

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Attachment A - DNR's MARC Cataloging information

Attachment B - Pricing

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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.

1.010 Project Identification

1.011 Project Request

This is an RFP for Use of an online digital object management system for the management of 2 separate sets of data: Seeking Michigan and the DNR On-Line Library. These two websites will be capable of managing and making easily accessible to the public large amounts of archival data, hosting of said data created, and creation of OCLC formatted finding tools. This is a formal request to prospective Bidders to solicit bids or price quotations. Bidders must submit written proposals according to the instructions contained within this document, discussing how they will meet the specific requirements.

1.012 Background

The Archives of Michigan, in partnership with the Library of Michigan has used Content DM software to store and make accessible to the public images of unique archival materials including state records, death records, photographs, and maps. The site, www.seekingmichigan.org, currently manages 1.2 million records. Key functionality includes the ability to create metadata using standard archival formats, robust public searches, secure and reliable storage of large numbers of images, and a commitment to constant updates that create a smooth interface with current web technology. With recent state government reorganization, the Library and Archives are no longer in the same department, which necessitates a new contractual arrangement to continue to provide the Seeking Michigan web site's services to the public.

In addition, the new home of the Archives of Michigan, the Department of Natural Resources, has seen the value of the Seeking Michigan web site and desires a similar web site, created and managed by the archives, for a DNR on-line library that will provide web access to scientific reports, white papers, data sets, photographs and other materials that are used by academic researchers, government, and the general public. The ability of the system to provide total-text searches will also greatly reduce staff research time.

The last portion of the contract continues an existing relationship (again formerly managed through the Library of Michigan) that uses OCLC cataloguing services to create catalogue records for national databases for materials held in the Archives of Michigan. By placing these records in the OCLC national database, the archives provide international access to its holdings.

Content DM was chosen for this function because it is the national-standard created specifically for archival records. Its broad use has resulted in the flexibility and constant updating essential to provide excellent public service and secure storage.

1.020 Scope of Work and Deliverables

1.021 In Scope

1. Use of an online digital object management system for the management of 2 separate sets of data: Seeking Michigan and the DNR On-Line Library. These data sets require a system that has the ability to index to the item level, be harvested by Google and be reported to WorldCat, a library standard hosted by OCLC.
2. Hosting of electronic images and metadata. Requisite system must include a web based administration module, batch upload functions and field management tied to metadata schema standards (e.g. Dublin Core or DACS).
3. Ability to create descriptive archival collection catalog records in MARC format and upload to WorldCat.

Bidder Response:

CONTENTdm is a single software system that handles the storage, management, and delivery of your digital collections to the Web.

It imports, indexes, queries, and displays individual files of any format that can be viewed with a modern Web browser, including video and audio. Each user has personal project space within the CONTENTdm Project Client on their desktop. Below is a screen shot of the CONTENTdm Project Client digital collection tool.

| Thumbnail | Title | Subject | Description | Creator | Publisher | Contrib |
|-----------|---------------------------------|-----------|---|---------------------|---|---------|
| | Spring 1994 | Sking | Utah Ski Archives | University of Utah | University of Utah | |
| | Windows Vista UX Guide | Computers | Windows Vista User Experience Guidelines. The goals for these official Windows Vista User Experience Guidelines (or "UX Guide" for short) | Microsoft | Microsoft Corporation | |
| | Frank Adams Papers | Water use | Water Resources | Clark Art Institute | Water Resources Center Archives (Calif.); Berkeley, California 94720-1718 Water Resources Center Archives | |
| | Frank Adams Papers, Upload Test | Water use | Water Resources | Clark Art Institute | Water Resources Center Archives (Calif.); Berkeley, California 94720-1718 Water Resources Center Archives | |

CONTENTdm Project Client digital collection tool

CONTENTdm supports collection-level OAI harvesting. OCLC's Digital Collection Gateway will make the State's digital collections more visible and discoverable by providing library-driven harvesting of CONTENTdm collection Dublin Core metadata to WorldCat (MARC format), the premier database of library content. A self-service, Web-based interface facilitates synchronization of CONTENTdm metadata with WorldCat. End users can search, discover and retrieve your digital items through WorldCat.org, WorldCat Local, and Web tools—like Google, Yahoo! Search—and then view them in the CONTENTdm collection.

Using the Project Client, you may add both digital items and their metadata in batch, as well as metadata-only records in batch, making it easy to add and process thousands of digital items at once.

All fields are fully customizable and may be made searchable (indexed). There are 125 fields available in each of 500 collections (schemas). Only one field is required to be mapped to the Dublin Core—Title. A record must contain a Dublin Core Title to be saved.

2. The State's digital collections will reside on an OCLC-hosted server in Dublin, Ohio.

In the hosting system, OCLC assigns one Administrator account, four staff user accounts, and one Webmaster account. The Administrator uses the Web-based CONTENTdm Administration to assign specific rights and responsibilities to the staff user accounts for collection building and administration. The Webmaster account is only allowed to access the WebDAV network-connected directory for customizing the CONTENTdm end-user interface.

CONTENTdm gives you full control over all digital resources, their descriptions, access, and display. You can fully customize metadata fields and create predefined queries. You also can customize all Web interfaces to present your digital collections the way you prefer. Following is a screen shot of the CONTENTdm Web-based administration interface.

The screenshot shows two consecutive pages of the CONTENTdm Administration interface. The top page is titled 'Item administration' and lists various administrative tasks: Approve, Index, Add, Edit, Find & replace, Lock administration, View collection, and Help. The bottom page is titled 'Edit item' and shows a form for editing item metadata. The form fields are: Title (Allen Library Arch and trees.), Subject (University of Washington, campus, building, tr.), Description (A medium shot of the south entrance of the University of Washington's Allen Library. Shows an archway with a round window as viewed through red leaves.), Creator (Jim Barnett), Publisher (University of Washington <http://www.washington.edu>), Contributors (None), Date (1994), and Type (Image). A 'view this item' link is also present.

CONTENTdm Web-based administration interface

Digital items can be added from anywhere (1) using the CONTENTdm Project Client, which can be distributed among staff and collaborating partners, (2) through the Connexion client using Connexion digital import, (3) through a Web browser using a simple Web form, (4) through CONTENTdm Flex Loader for newspapers, or (5) through the CONTENTdm Catcher Web service for batch editing metadata. Additionally, collections can be managed remotely over the Web. Your digital collections then can be made available via the Web and discovered using standard Web browsers, unless you choose to restrict access.

3. OCLC's WorldCat Digital Gateway is a no-charge service to crosswalk your CONTENTdm metadata to OCLC's WorldCat to the standard MARC format. The basic process is: The WorldCat Digital Collection Gateway offers collection and repository managers with a self-service tool for uploading the metadata of your digital content to WorldCat.

With the Gateway, you create a profile of each of your digital collections using its three main components:

- WorldCat Record Processing
- The Metadata Map
- The Sync Schedule

WorldCat Digital Gateway

1.022 Work and Deliverable

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

It is expected that the Bidder already has software and search engines in place and will transition the DNR's information into the existing system.

| Minimum Requirements | Does Not Meet | Meets | Exceeds | Additional Info |
|--|---------------|-------|---------|---|
| System must be scalable to accommodate the import of approximately 1.2 million existing digital objects by December 1, 2011. | | | X | OCLC currently provides the CONTENTdm and WorldCat services for the State Archives of Michigan and therefore no conversion is needed. |
| Local software package with updates via an AMA that allows for local editing of digital objects and batch upload to hosted account. Items should be viewable within 30 minutes of upload. Minimum batch shall be no less than 250 objects. | | | X | Batches can include up to 10,000 items in one operation. CONTENTdm users' experiences suggest uploading 2,000 or fewer digital items and related metadata in the batch process. Access is within 30 minutes or less once the System Administrator reviews the set of records, approves them, and then indexes them. |
| Support the following image formats: .jpg, .jpg2000, .tif | | | X | CONTENTdm can store and display any file format that can be viewed in browsers of any platform, either natively or via a plug-in. This includes all common formats such as .jpg, .jpg2000, .tif, .gif, .mp4, .pdf, EAD finding aids, and URLs. |
| Online system allows embedding of Google Analytics | | X | | The CONTENTdm Website Configuration Tool enables you to include a custom script that embeds Google Analytics (see CONTENTdm |

| | | | | Support FAQ). |
|---|--|---|--|--|
| Digital online objects have embedded copy URL function (shortened URL). | | X | | CONTENTdm provides an easy-to-use “reference URL” link for all items. While viewing an item, the user can record the persistent, short URL for future use. This method enables accurate, consistent citation. |
| System has Dublin core or DACS metadata schema embedded into the software or Web administration module. | | X | | Dublin Core is supported as well as custom metadata structures. |
| System has Web administration panel accessible by secure login and compatible with common Web browsers (firefox, IE, Safari, Chrome). | | X | | CONTENTdm supports both collection- and item-level security. Access to items and collections can be restricted based on operating system user names or IP addresses. Through the implementation of usernames and passwords at a high level of granularity, administrative roles and authorization to accomplish specific tasks may be controlled. |
| Ability to create user accounts and have immediate access to the online digital object management system and hosting storage account as soon as contract is signed. | | X | | The CONTENTdm System Administrator can set up whatever CONTENTdm user accounts are needed. These are interactive, live, and immediately available. |
| 1-800 call support and online support center accessed via user accounts. Call back on any requests for assistance with trouble shooting within one working day of receiving call (state staff do all of the actual work of scanning, coding and uploading materials). | | X | | Our Customer Support Division responds to all requests for call-backs on the same day the request is received (during business hours from 7 a.m. – 9 p.m. ET Monday – Friday) via our 800 number. We will provide both an initial acknowledgement of receipt for all e-mail and Web form inquiries, along with an initial Analyst response within 2 hours of receipt of electronic transmission (during business hours from 7 a.m. – 9 p.m. ET Monday – Friday). Our staff members assign a tracking number to each incident and close each promptly once the problem is resolved. |
| Advanced search feature that includes truncated, Boolean, and quoted searches or a combination of filtered alternatives. | | X | | Flexible search features include Unicode support; Boolean operators; faceted searching to help users refine their search results; and a powerful advanced search option for users to search by defined fields, across all fields, by date and across one or many collections. CONTENTdm also auto-generates search terms based on existing metadata. Additionally, CONTENTdm provides multiple sorting options for search results, including relevancy sorting or sorting by specific fields, which can be configured by both collection administrators and end users. |

Bidder Response to Task: Bidders must respond to minimum requirements in the grid above. Bidders are encouraged to list any additional features beyond the minimum requirements that are deemed beneficial.

A complete solution for digital collections

CONTENTdm meets all your digital collection needs. It is the only solution of its kind to offer all you need to share your collections on the Web. With just a couple of steps, your digital collection is on your Web site and available for searching and browsing. CONTENTdm also is powerful, using the same robust search engine used in WorldCat so users can quickly search billions of items.

With a full range of integrated tools—for organizing and managing to publishing and searching collections—CONTENTdm is one of the most flexible digital collection management systems available today.

CONTENTdm also can serve as your institutional repository. PDF documents, theses, dissertations and reports all can be easily stored and managed in CONTENTdm. Scholars, archivists, researchers, and end users can readily discover, cite and use the intellectual capital of your organization.

Whether your digital collections consist of photographs, documents, EAD Finding Aids, maps, videos or audio clips, CONTENTdm helps you to make everything available through the Web.

Easy to use

CONTENTdm is easy to install and use, and many current users have built or converted collections within a few weeks. They are assisted by templates, batch processing, customizable out-of-the-box Web interfaces, tutorials, Web training sessions and comprehensive Help files.

Organizations of all types—from small historical societies using volunteers, to research universities with dedicated staff—have found CONTENTdm easy to implement and use.

CONTENTdm is 100% Web-compatible, so servers and collections can be administered from remote desktops. Supplemental training and consulting services also are available.

Flexible and fully customizable

CONTENTdm gives you full control over all digital resources, their descriptions, access and display. You can fully customize metadata fields and create predefined queries. You also can customize all Web interfaces to present your digital collections the way you would like.

Additionally, you can store any type of file—from multiple-page documents, PDF files, EAD Finding Aids and large maps to audio and video files with their transcripts.

CONTENTdm streamlines your workflow. To assist in building collections quickly and accurately, tools such as batch processes, wizards, controlled vocabularies, templates, and spreadsheets are provided.

To support multiple workflows and collection building, CONTENTdm includes tools such as remote Project Clients, Web-based import through a simple Web form and digital import through the OCLC Connexion client.

The flexibility of CONTENTdm has fueled creative implementations among users. Many have formed partnerships so that the independent online collections of multiple organizations can be simultaneously searched and viewed through one seamless, CONTENTdm Web interface. And those users with extensive scanning expertise and hardware have partnered with other organizations that lack the resources and experience in order to maximize their investment.

Scalable

CONTENTdm seamlessly grows with your projects. You can upgrade and increase capacity without new software installations. It also eliminates the need to purchase and support multiple software packages for different digital collections. CONTENTdm provides a complete solution that seamlessly grows with projects, eliminating the need to purchase and support multiple software packages for different digital collections.

Organizations with small, unique collections to statewide groups with hundreds of collections have selected CONTENTdm for their projects.

To maintain your own collections while also collaborating with others to provide Web access to a broader range of materials, CONTENTdm offers the Multi-Site Server. End users can search collections located on multiple CONTENTdm Servers in diverse locations from a single search interface. And each collaborating partner with a CONTENTdm Server can maintain their own collections and local identity.

Open, extensible and interoperable

While most users run the CONTENTdm software “out-of-the box,” it also has an API that allows for custom development. The open architecture supports extensions and the Web interface is fully customizable.

Additionally, CONTENTdm works with other software such as federated search applications. Records in existing databases can be easily imported into CONTENTdm, while exporting metadata is simple using the XML export function. Import and export capabilities are compatible with legacy, local, regional, and national systems.

CONTENTdm runs on multiple platforms and the Windows desktop client can be installed on standard Windows versions.

Standards-based

OCLC's adherence to commonly accepted standards allows CONTENTdm to be open and extensible, as well as provide functionality that meets a wide range of needs. CONTENTdm supports numerous industry standards including Unicode, Z39.50, Qualified Dublin Core, VRA, XML, JPEG2000, OAI-PMH and METS/ALTO.

- **Unicode**—CONTENTdm fully supports Unicode, an industry standard that allows computers to represent and manipulate text in most of the world's non-Western languages, including Chinese, Japanese, Korean, Greek and Hebrew, among others.
- **Z39.50**—CONTENTdm is Z39.50 compatible through a free open-source software application called ZContent developed by the University of Utah Marriott Library. ZContent provides access to digital collections on CONTENTdm servers from library portals and local catalogs and can be downloaded for free from the CONTENTdm User Support Center.
- **Dublin Core and VRA Core**—Use of the Dublin Core and VRA (the Visual Resource Association) Core within CONTENTdm allows for a common language when describing media and searching across collections. Collection Administrators also can apply their own field descriptions and map back to the Dublin Core standard to provide flexible searching.
- **OAI-PMH**—CONTENTdm Servers support OAI-PMH (Open Archives Initiative Protocol for Metadata Harvesting) by functioning as OAI repositories for those who wish to make their metadata available for harvesting.
- **XML**—XML is used for all internal metadata and structure description. CONTENTdm also offers custom XML export of metadata that supports user-defined fields and formats for greater compatibility with local catalog systems and other applications.
- **METS/ALTO**—The import of XML data in the METS/ALTO format is supported for NDNP newspapers, CCS newspapers, and CCS monographs and ebooks.

Discovery through WorldCat

Through your efforts in building digital collections with CONTENTdm, your unique treasures are showcased on the Web for local and global information seekers. Having devoted the resources to creating these collections, broadening visibility and access is of foremost importance.

The WorldCat Digital Collection Gateway provides you with a self-service tool for uploading the metadata of your unique digital content to WorldCat—the premier database of library materials. Once your metadata is in WorldCat, your collections are more visible and discoverable by end users who search WorldCat.org, WorldCat Local and WorldCat Local "quick start", as well as Google, Yahoo! and other popular Web sites.

As you continue to upload metadata, you are creating a collective digital repository to enrich the resources available to your end users. They will be able to search WorldCat and find exactly the resources they need from your library's digital collections of rare, historic or local materials, along with the materials provided by other libraries around the world. Ultimately, users will click on items and visit your digital collections by viewing those items immediately on their screen—anytime, anywhere.

Available to all CONTENTdm users at no additional charge, the Gateway is key to offering your unique collections maximum Web visibility—all via WorldCat.

Unequaled range of options

CONTENTdm offers flexible workflow options and a variety of productivity tools. It allows for digital import using the OCLC Connexion client, plus gives you the option to add collection metadata to WorldCat for maximum visibility. Choose from license levels that match your needs and collection size. Select the cost-effective hosting services or from a variety of server options to suit your environment.

If you need to generate full-text transcripts, an optional OCR (optical character recognition) extension supporting 184 languages is available.

OCLC also offers a full range of solutions for digital projects. For the long-term preservation of digital masters, you can choose the Digital Archive, which can be easily integrated into CONTENTdm collection building workflows. If you need to harvest born-digital or Web-based content, OCLC's Web Harvester is the tool for capturing this content, and it's integrated into both cataloging and digital content management workflows.

The vendor will notify the archives of any changes in software at least two weeks before such changes take place.

The State will receive automatic e-mail notifications with relevant product announcements at least two weeks in advance of their release. CONTENTdm upgrades are available for download 24x7 from our password-protected User Support Center.

The vendor will notify the archives if it is nearing maximum storage capacity on either web site.

OCLC provides weekly email notifications about the current CONTENTdm hosting storage use, so that you will know well in advance when they reach the maximum storage capacity.

Task/Deliverable 2: Bidder will be required to provide completed MARC catalog records based on the requirements outline in Appendix A:

1. Deliverable: Completed MARC Catalogue records within 3 weeks of receiving the request and information to create them. Outline of MARC record format fields is attached.

Bidder Response to Task: Please respond that bidder can meet all requirements as outlined in appendix A and deliverable 1.

The DNR's requirements for MARC records (in Appendix A) are met through using CONTENTdm and by using OCLC WorldCat Digital Gateway Collection.

Task/Deliverable 3: Bidder will be required to provide filtered online web portal for all Archives MARC formatted records.

| Minimum Requirements | Does Not Meet | Meets | Exceeds | Additional Info |
|--|---------------|-------|---------|---|
| All MARC records must be tagged with institutional symbol "E8M" | | | X | Each MARC record will be processed to include an institutional symbol. Per project implementation, OCLC will set up the service to use "E8M"; or, if needed, we can set up a new OCLC institutional symbol. |
| System provides filtered search capabilities based on title, date, format and description of MARC records. | | | X | All fields may be made searchable (indexed), so users may limit searching by any field. |
| System allows for customized homepage as determined by user. | | | X | CONTENTdm allows for custom development. Most users make collection-wide branding changes which do not require any programming skills. For those users with sophisticated information technology skills, the open architecture and the standards-based PHP Web interface is fully customizable. Furthermore, a no-charge fully documented application programming interface (API) is available to customers upon request. |
| System shows and links to related-content based on MARC subject categories. | | | X | CONTENTdm stores metadata in XML, provides live linking using standard Web protocols such as http, mailto, and ftp stored within the metadata. Additionally, every term in a full-text search field functions as a live link to the collection(s) being searched. This enables the end-user to browse among relevant entries and hyperlink to relevant outside sources from within the collection. |

Task/Deliverable 4: Bidder will be required to convert approximately 1.2 million records currently on file with Content DM to their database by December 1, 2011.

Bidders must discuss how they will transfer existing records from Content DM to Bidder's system. Information must include the bidder's plan to ensure all records are transferred accurately to the new system.

Bidder Response to the above request:

The Archives of Michigan currently is using OCLC CONTENTdm and OCLC WorldCat, so no conversion is necessary.

Bidder must discuss their detailed time frame for the transfer of existing records to their database:

Bidder Response to the above request:

The Archives of Michigan currently is using OCLC CONTENTdm and OCLC WorldCat, so no conversion is necessary.

Bidder is to provide work history in uploading records to WorldCat and turn around times:

Bidder Response:

OCLC WorldCat Digital Gateway Collection is a no charge service to crosswalk your CONTENTdm metadata to OCLC's WorldCat to the standard MARC format. The basic process is: The WorldCat Digital Collection Gateway offers collection and repository managers with a self-service tool for uploading the metadata of your digital content to WorldCat. The Gateway is available at no charge to all libraries, archives, museums and other cultural heritage organizations.

WorldCat Record Processing: Selecting “replace all” or “add new only”

With the Gateway's WorldCat Record Processing, you choose whether to “replace all” of your metadata or to add only the new metadata using the “add new only” option.

If you choose “replace all,” each time you upload your metadata to WorldCat, all changes and additions to your local metadata are updated and added to WorldCat. If you choose “add new only,” only the new items added to your local metadata are uploaded to WorldCat. These options give you the control to fit the Gateway into a variety of metadata workflows.

The screenshot shows the WorldCat Digital Collection Gateway interface. At the top, there are navigation links for Home, Reports, and Manage Account, along with a 'Signed in as' dropdown and a 'Sign Out' button. The main content area is titled 'Collection Profile: Ohio Governors Collection'. It contains three main sections: 'Collection Details', 'Sync Details', and 'Metadata Map'. The 'Collection Details' section shows the following data:

| | |
|----------------------------|---|
| Collection Identifier | addresses |
| Collection Display Name | Ohio Governors Collection |
| Active | Yes |
| WorldCat Record Processing | <input checked="" type="radio"/> Replace All <input type="radio"/> Add New Only |

The 'Sync Details' section shows:

| | |
|--------------------------|-------------------------------------|
| Last Scheduled Sync | No scheduled sync has been executed |
| Next Scheduled Sync | 09-02-2009 |
| WorldCat Syncs Frequency | quarterly |
| Latest Sync Status | View Report |

The 'Metadata Map' section shows:

| | |
|-----------------------------|-----|
| Approved for WorldCat Sync: | Yes |
|-----------------------------|-----|

Buttons for 'Save' and 'Cancel' are located in the 'Collection Details' and 'Sync Details' sections, respectively. A 'Help' button is also present in the 'Collection Details' section. The 'Edit Sync Schedule' and 'Edit Metadata Map' buttons are located in their respective sections.

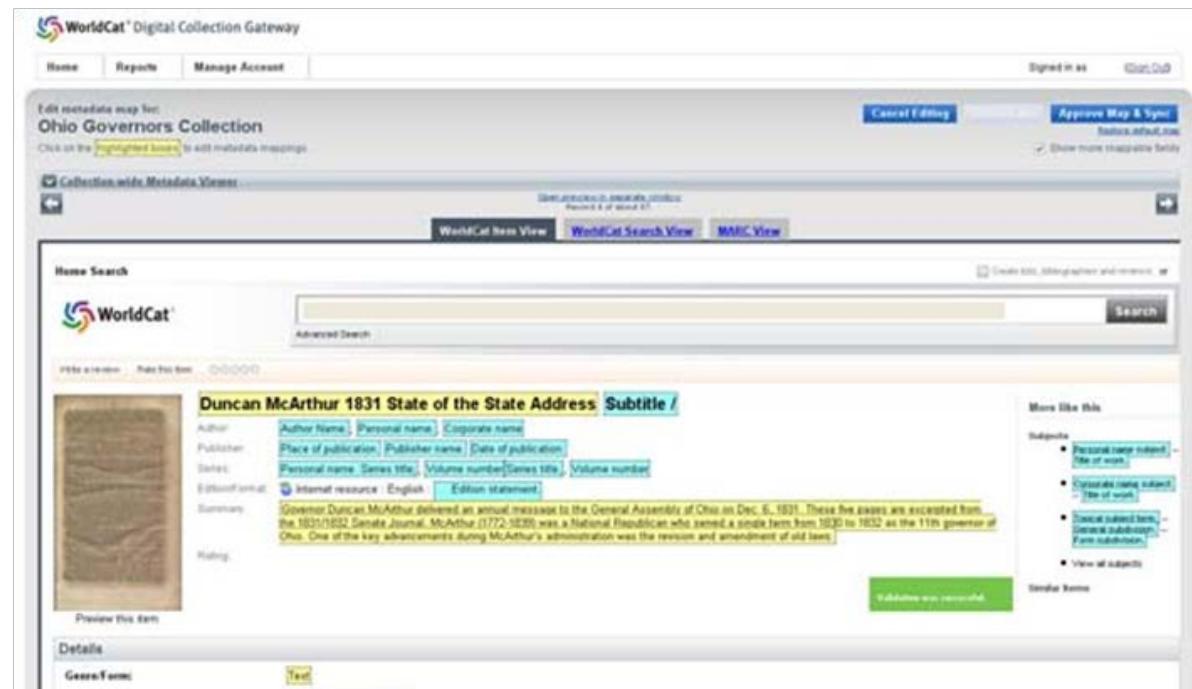
Digital Collection Gateway “replace all” and “add new only” features

The Metadata Map: A preview of your metadata in a WorldCat display

Through the Metadata Map, the Gateway gives you the control to put your collection in the best possible light in WorldCat for better visibility and discovery. The Metadata Map is a graphical user interface that enables you to adjust the display of your source metadata in a WorldCat.org display. It also enables you to change your metadata map at any time, and those changes will be picked up in your next metadata harvest.

Then you can adjust the location of each of the metadata elements from your source metadata in the WorldCat.org display. Using the Metadata Map, you can preview each item's metadata or just a sampling of the entire collection. Changes to the mapping are applied to the entire collection, so you can quickly create a map and save it with the Profile for this collection.

If you do not like the options you initially see for mapping your metadata, you can expand the view with a special overlay template to "Show more mappable fields." This feature shows you more options for where you can move your metadata in the WorldCat.org display.

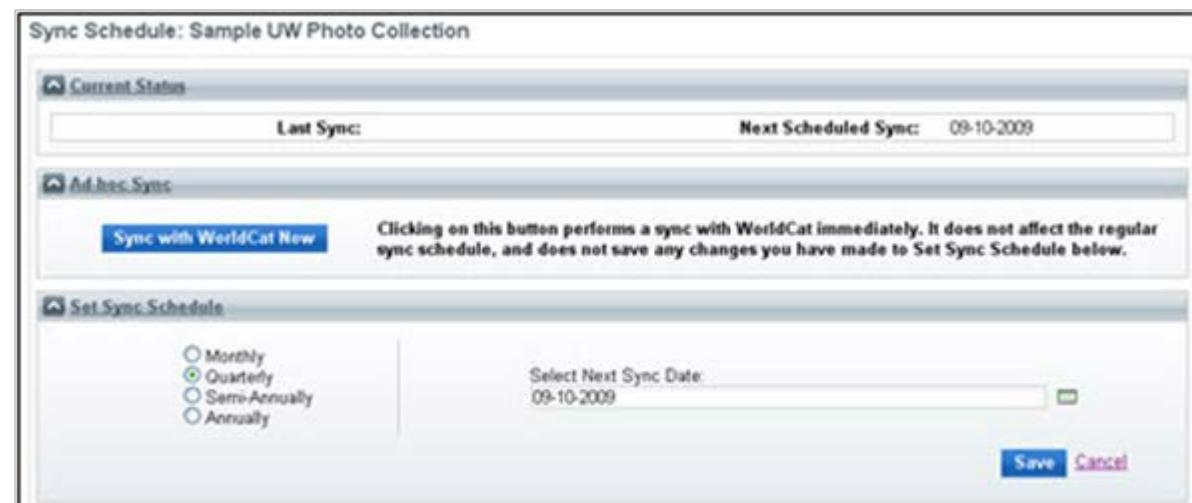


Metadata Map

The Metadata Map also includes two other views of your metadata, the Search View and the MARC View, so you can further refine your mapping. The WorldCat Search View lets you preview how your metadata will appear in a search result in WorldCat, while the MARC View lets you preview the MARC record "behind the scenes" in the discovery system.

Sync Scheduler: Fits your local workflow

With the Gateway's Sync Scheduler, you can add updates to WorldCat based on your local workflow for building and maintaining each of your digital collections. When you have approved the Metadata Map for a collection, the Sync Scheduler immediately starts the first synchronization of your collection with WorldCat.



Synch Scheduler

The Sync Scheduler also automatically sets up a regular sync of your collection each quarter. With the Sync Scheduler, you can adjust the initial settings to allow a sync to occur either monthly, quarterly, semi-annually, or annually.

Additionally, if there are new records in your collection that you would like to make visible immediately, the Sync Scheduler has a “Sync with WorldCat Now” option that enables you to upload the latest updates to WorldCat outside of the regularly scheduled sync times you have already set. It is a great way to get that special information into WorldCat for that demonstration to your Director or Board.

An optional, extended workflow is to add these newly created MARC records to your local catalog or OPAC. More specifically, each time you upload metadata to WorldCat, you receive a detailed report including the list of records created and their OCLC numbers. Using this report and the OCLC Connexion client, these MARC records then can be downloaded to your local catalog or OPAC. Additionally, CONTENTdm users can use the WorldCat Sync feature in CONTENTdm Administration to read this report and automatically embed OCLC numbers into their digital content metadata.

1.030 Roles and Responsibilities

1.031 Contractor Staff, Roles, and Responsibilities

Bidder must identify where Contractor staff will be physically located during Contract performance.

Bidder is requested to provide an overall organization chart for this project.

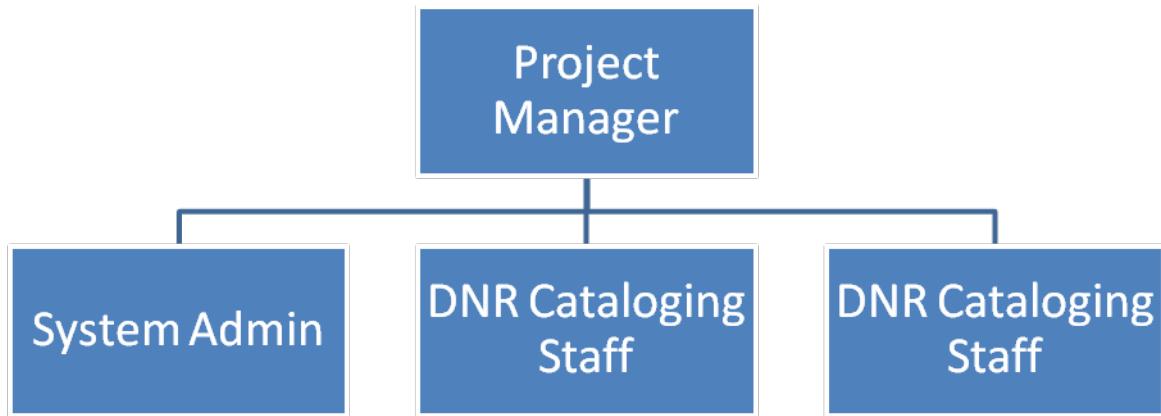
Bidder must provide the names and contact information (phone number, email address) for their Project Managers who will oversee each component of this RFP (Online management system, database analyst and cataloging as well as their roles and responsibilities.

Bidder must identify any part-time personnel who will be dedicated to this project . Descriptions of roles should be functional and not just by title.

Bidder Response: Bidder must address all components listed above.

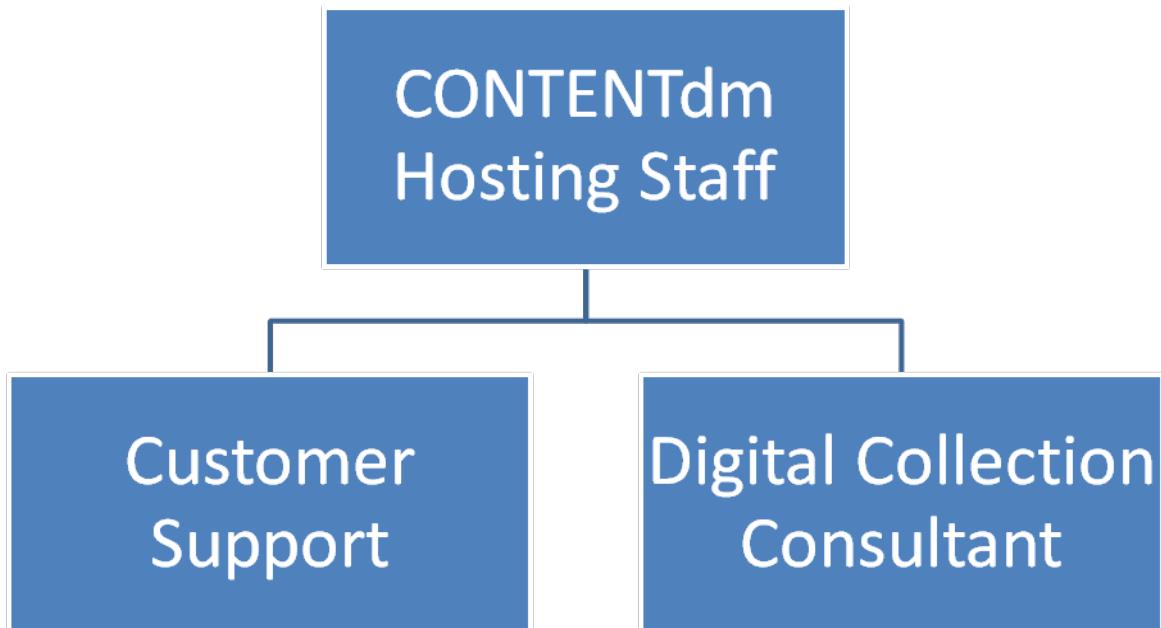
At the Michigan DNR:

- **Project Manager** – overseeing objectives, goals, and objectives to achieve the results for the Department's digital resources to be cataloged and accessible via the DNR CONTENTdm Web site and OCLC's WorldCat.
- **CONTENTdm and OCLC WorldCat System Administrator** – do the processing to set up collections, set up users' names and their passwords, Web interface CONTENTdm set up, DNR's Web administration, perform CONTENTdm crosswalk to OCLC WorldCat using OCLC Digital Gateway, etc.
- **DNR cataloging staff** – based on DNR-specified Dublin Core fields, catalog those resources to be added to CONTENTdm.
- **DNR data entry staff** – staff who may be doing data entry and not actually the cataloging per se.



At OCLC:

- **CONTENTdm hosting staff** – to do initial set up and start up of a second CONTENTdm license and hosting
- **OCLC Customer Support Staff** – standard staffing for supporting CONTENTdm and OCLC Digital Gateway and WorldCat services
- **OCLC Digital Collections Consultant** – contact to assist with discussion and assistance as needed with initial start-up and potential ongoing review and dialog to ensure help is there once project is started (Ron Gardner)



Contact information for key personnel is listed below:

Ron Gardner, overall account management: 800-848-5878, x6165; garderr@oclc.org.

No part-time personnel will be utilized.

1.040 Project Plan

Bidder must propose a project plan for successful implementation and on-going progress of the project being requested in this RFP. Bidder must identify methods, tools and processes proposed to oversee the project on a day to day basis as well as how they will address any issues/changes as that may arise, and how they intend to keep the DNR Project manager apprised of progress.

Bidder Response: Bidder must provide a plan for managing the contract..

Upon assignment of contract, the CONTENTdm server software will be allocated to your designated technical contact by the OCLC Hosting Services manager.

Bidders must discuss how they handle determining if/when upgrades are needed to their system and how they are implemented:

Bidder Response: Bidder must provide a plan determining and implementing upgrades:

OCLC conducts periodic usability testing and analyzes the results to evaluate the need for system enhancements. In this Lab, OCLC staff can observe patrons and library staff interacting with OCLC products and services and help determine the needs for new or improved functionality.

Moreover, OCLC meets regularly with user groups and advisory committees to seek input on current and future products. Likewise, the structure of OCLC supports and encourages ongoing feedback and participation among the libraries we serve.

Typically, a software version is released every 6-12 months, each bringing new functionality and enhanced interface design as well as application patches.

The OCLC Hosting Service handles all patches and upgrades to the server on behalf of the Hosting Service CONTENTdm user. An auto-update service makes optional patching of the client automatic. Announcements about software patches, Service Packs, and new versions are posted on the User Support Center.

Bidder should use project management web service such as Basecamp.com (or something similar) to track conversion progress including weekly milestones and any associated tasks for conversion.

Bidder Response: Bidder must provide information regarding a plan for conversion of records.

The Archives of Michigan is currently using OCLC CONTENTdm and OCLC WorldCat, so no conversion is necessary.

Bidders must maintain appropriate duplicate back up system and security at all times:

Bidder Response: Bidder must provide information regarding back up system/plan.

With OCLC Hosting Services, professional CONTENTdm technologists will install your software and configure your initial CONTENTdm Web site on the OCLC server at our headquarters in Dublin, Ohio. This facility was purpose-built for security and computer systems hosting, incorporating physical controls such as restricted access via pre-defined badge readers and strict visitor control.

OCLC employs a permanent team dedicated to all aspects of Information Security, with reviews of applications, systems, and procedures part of an ongoing process. Continuous evaluation of our program rather than semi-annual or annual audits significantly enhance our ability to prevent or detect security events.

The Operations Center environment employs systems to ensure CONTENTdm remains highly available, including redundant power supplies and UPS modules (Uninterruptible Power Source) made up of two parallel redundant systems, and two diesel generators, should both systems go down. State-of-the-art fire suppressant systems are employed, consisting of Halon under the floor and water sprinkler heads in the ceiling; all of which are monitored 24x7 and intelligent smoke detectors.

In our Server Operating Environment, the CONTENTdm servers are under patch management from the Microsoft Windows systems administration support group. OCLC has an extensive hardening policy that is integral with the rollout of systems. Periodic security audits are conducted by the InfoSec team to review and ensure compliance with these standards, and all hardware purchases are backed by three-year service plans. Software licensing is kept current with the manufacturer.

The InfoSec team at OCLC, as well as the Microsoft Windows systems administration group, monitor security advisories and patch notifications from Microsoft, as well as other notification lists like www.secunia.com. Before

patches are applied to a production system, they are rolled out to a test environment to determine if there are any negative changes to system functionality.

OCLC makes use of an agent-based monitoring system to ensure CONTENTdm hosts are up and running within SLA parameters. All CONTENTdm servers are protected by automated virus alert systems. The Web server root and the configuration directory are backed up nightly, with backups taken offsite weekly. All Web server backups are on a six-week rotation. Backup restoration tests are performed during disaster recovery exercises that are held several times throughout the year.

OCLC also employs a second data center approximately 15 miles from our headquarters data center.

1.42 Reports

Bidder will be required to produce monthly hosting reports that detail current storage usage compared to maximum allowable storage.

Bidder Response: Provide report format and how reports will be transmitted.

The CONTENTdm Hosting service provides a monthly management update e-mail that includes item counts and storage use. If the item count for the CONTENTdm license or storage use for the CONTENTdm Hosting subscription exceeds 80% of the maximum allowed, the user will receive an immediate e-mail update indicating they are nearing their limits. This reminder will be updated each week to keep the user apprised of their approaching usage limits.

An open-source report tool using MySQL and based on operating system logs is available and can be extended or customized.

Bidder will be required to provide weekly conversion status reports that detail the number of objects successfully converted and available to the public online vs. the objects remaining to be converted. This report applies only to Bidders who may need to convert records from Content DM to their system.

Bidder Response:

The Archives of Michigan is currently using OCLC CONTENTdm and OCLC WorldCat, so no conversion is necessary and thus no weekly status reports required.

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:

Successful vendor will provide uninterrupted online service. If technical issues arise, they need to be resolved within 1 business day or fees will be prorated to reflect the stoppage in service.

OCLC will use commercially reasonable efforts to ensure OCLC's Systems are available 99% of the time (the "Uptime Commitment"). All Uptime Commitment will be measured within OCLC's System on a monthly basis calculated to include 24 hours per day over each month, but excluding from the numerator and denominator in the calculation the duration in time of any temporary shutdowns due to scheduled maintenance (which will not exceed in the aggregate sixteen (16) hours per month), telecommunications or power disruptions caused by third parties, and any other causes beyond OCLC's reasonable control.

OCLC will notify you promptly of anything we find that may affect OCLC's ability to meet the Uptime Commitment, or that is likely to cause any material interruption in the Services.

OCLC will use commercially reasonable efforts to correct any material problems in the Services, including any failure to satisfy the Uptime Commitment. In the event that OCLC fails to satisfy the Uptime Commitment for a given month and you provide written notice within thirty (30) days of the end of such month, your sole and exclusive remedy will be to receive a service credit equal to the following percentage of the monthly fees for the Services for the stated uptime:

- **97% to 99% 15%**
- **94% to 96.9% 25%**
- **92% to 93.9% 50%**
- **90% to 91.9 75%**

- Below 90% 100%

In no event will the service credit exceed the monthly fees paid by you for the Services. See the CONTENTdm Terms and Conditions in Attachment 4 for more details.

Between 65–75% of CONTENTdm Support issues reported to OCLC are resolved within 24–48 hours and involve targeted functionality that would not render the entire application unusable.

Successful vendor will provide technical support with ongoing upgrades. Vendor must provide evidence that ongoing maintenance and upgrades have and will occur with the awarded system.

Our Customer Support Division will provide technical support for ongoing upgrades of CONTENTdm. The State will receive automatic e-mail notifications with relevant product announcements at least two weeks in advance of their release. CONTENTdm upgrades are available for download 24x7 from our password-protected User Support Center.

Vendor must demonstrate the accurate creation and timely upload of MARC records to the online catalog system (WorldCat). Vendor needs to provide a workflow process for completing cataloging work.

1. Catalog digital assets via CONTENTdm, individually or via batch processing. These will be added to DNR CONTENTdm Collections as determined by DNR staff.
2. Once the DNR Project Manager (with others) determines a CONTENTdm Collection is ready to be uploaded to OCLC WorldCat, they would use the CONTENTdm System Administration tools.
 - a. Select one or more CONTENTdm Collections to upload, i.e. using the WorldCat Digital Gateway Collection process.
 - b. Review, modify, edit as needed to set up the crosswalk from Dublin Core to OCLC WorldCat MARC.
 - c. Once the crosswalk decisions are made and tasks completed, would then give system instructions to start the upload from CONTENTdm to OCLC WorldCat.
 - d. The receipt of the CONTENTdm records by the WorldCat database, and processing is completed, OCLC numbers would be generated.
 - e. Those related OCLC numbers with the digital objects would be synchronized with the CONTENTdm metadata records.
 - f. Options may be set to regularly ‘harvest’ CONTENTdm Collection metadata records (e.g. monthly....)
3. Once the MARC records have been created in WorldCat, DNR may use current OCLC WorldCat cataloging practices and workflow to achieve those DNR cataloging needs.

You can catalog in Connexion client and ingest digital files to CONTENTdm simultaneously using OCLC’s Connexion digital import. Connexion is a robust suite of tools and services that lets you create and edit high-quality bibliographic and authority records, then share them with the entire OCLC cooperative. This service is available at no additional charge to users who have a CONTENTdm license, use the CONTENTdm Hosting Service, and have an active OCLC cataloging subscription.

In addition, OCLC’s Digital Collection Gateway will make the Library’s digital collections more visible and discoverable by providing library-driven harvesting of CONTENTdm collection metadata to WorldCat. A self-service, Web-based interface facilitates synchronization of CONTENTdm metadata with WorldCat.

1.052 Final Acceptance - Reserved

1.060 *Proposal Pricing*

1.061 **Proposal Pricing – See Attachment B**

Bidders are encouraged to offer quick payment terms (i.e. _____% discount off invoice if paid within _____ days). This may be a factor considered in our award decision.

Note: A discount of .08% (.0008), which is equivalent to 2.00% APR is credited for payments received on or before the last day of the month following the invoice date.

Contractor’s out-of-pocket expenses are not separately reimbursable by the State unless, on a case-by-case basis for unusual expenses, the State has agreed in advance and in writing to reimburse Contractor for the expense at the State’s current travel reimbursement rates. See www.michigan.gov/dtmb for current rates.

1.062 Price Term

Prices quoted are good thru June 30, 2012.

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

1.063 Tax Excluded from Price

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

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

1.064 Holdback - Reserved

1.070 Additional Requirements

1.071 Additional Terms and Conditions specific to this RFP - Reserved

Article 2. Terms and Conditions

2.000 Contract Structure and Term

2.001 Contract Term

The Contract is for a period of 5 years beginning September 15, 2011 through September 14, 2016. All outstanding Purchase Orders must also expire upon the termination (cancellation for any of the reasons listed in **Section 2.150**) of the Contract, unless otherwise extended under the Contract. Absent an early termination for any reason, Purchase Orders issued but not expired, by the end of the Contract's stated term, will remain in effect for the balance of the fiscal year for which they were issued.

2.002 Options to Renew

The Contract may be renewed in writing by mutual agreement of the parties not less than 30 days before its expiration. The Contract may be renewed for up to 2 additional 1-year periods.

2.003 Legal Effect

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

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

2.004 Attachments & Exhibits

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

2.005 Ordering

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

2.006 Order of Precedence

(a) The Contract, including any Statements of Work and Exhibits, to the extent not contrary to the Contract, each of which is incorporated for all purposes, constitutes the entire agreement between the parties with respect to the subject matter and supersedes all prior agreements, whether written or oral, with respect to the subject matter and as additional terms and conditions on the purchase order must apply as limited by **Section 2.005**.

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

2.007 Headings

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

2.008 Form, Function & Utility

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

2.009 Reformation and Severability

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

2.010 Consents and Approvals

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

2.011 No Waiver of Default

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

2.012 Survival

Any provisions of the Contract that impose continuing obligations on the parties, including without limitation the parties' respective warranty, indemnity and confidentiality obligations, survive the expiration or termination of the Contract for any reason. Specific references to survival in the Contract are solely for identification purposes and not meant to limit or prevent the survival of any other section.

2.020 Contract Administration

2.021 Issuing Office

The Contract is issued by the Department of Natural Resources, Finance and Operation Division – Procurement Services on behalf of the Michigan Historical Center. Finance and Operations – Procurement Services is the sole point of contact in the State with regard to all procurement and contractual matters relating to the Contract. Finance and Operations – Procurement Services **is the only State office authorized to change, modify, amend, alter or clarify the prices, specifications, terms and conditions of the Contract.** The Contractor Administrator within Procurement Services for the Contract is:

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

2.022 Contract Compliance Inspector - Reserved

2.023 Project Manager

The following individual will oversee the project:

Mark Harvey, Archivist of Michigan
Michigan Historical Center, Department of Natural Resources
(702 W. Kalamazoo
PO Box 30740
Lansing, MI 48909-8240)
Email: harveym@michigan.gov
Phone: 517-373-1415

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 Services.
- (c) If the State requests or directs the Contractor to perform any activities that Contractor believes constitute a Change, the Contractor must notify the State that it believes the requested activities are a Change before beginning to work on the requested activities. If the Contractor fails to notify the State before beginning to work on the requested activities, then the Contractor waives any right to assert any claim for additional compensation or time for performing the requested activities. If the Contractor commences performing work outside the scope of the Contract and then ceases performing that work, the Contractor must, at the request of the State, retract any out-of-scope work that would adversely affect the Contract.

2.025 Notices

Any notice given to a party under the Contract must be deemed effective, if addressed to the State contact as noted in Section 2.021 and the Contractor's contact as noted on the cover page of the contract, upon: (i) delivery, if hand delivered; (ii) receipt of a confirmed transmission by facsimile if a copy of the notice is sent by another means specified in this Section; (iii) the third Business Day after being sent by U.S. mail, postage pre-paid, return receipt requested; or (iv) the next Business Day after being sent by a nationally recognized overnight express courier with a reliable tracking system.

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

2.026 Binding Commitments

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

2.027 Relationship of the Parties

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

2.028 Covenant of Good Faith

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

2.029 Assignments

(a) Neither party may assign the Contract, or assign or delegate any of its duties or obligations under the Contract, to any other party (whether by operation of law or otherwise), without the prior written consent of the other party; provided, however, that the State may assign the Contract to any other State agency, department, division or department without the prior consent of Contractor and Contractor may assign the Contract to an affiliate so long as the affiliate is adequately capitalized and can provide adequate assurances that the affiliate can perform the requirements of the Contract. The State may withhold consent from proposed assignments, subcontracts, or novations when the transfer of responsibility would operate to decrease the State's likelihood of receiving performance on the Contract or the State's ability to recover damages.

(b) Contractor may not, without the prior written approval of the State, assign its right to receive payments due under the Contract. If the State permits an assignment, the Contractor is not relieved of its responsibility to perform any of its contractual duties, and the requirement under the Contract that all payments must be made to one (1) entity continues.

(c) If the Contractor intends to assign the Contract or any of the Contractor's rights or duties under the Contract, the Contractor must notify the State in writing at least 90 days before the assignment. The Contractor also must provide the State with adequate information about the assignee within a reasonable amount of time before the assignment for the State to determine whether to approve the assignment.

2.030 General Provisions

2.031 Media Releases

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

2.032 Contract Distribution

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

2.033 Permits

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

2.034 Website Incorporation

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

2.035 Future Bidding Preclusion

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

2.036 Freedom of Information

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

2.037 Disaster Recovery

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

2.040 Financial Provisions

2.041 Fixed Prices for Services/Deliverables

Each Statement of Work or Purchase Order issued under the Contract must specify (or indicate by reference to the appropriate Contract Exhibit) the firm, fixed prices for all Services/Deliverables, and the associated payment milestones and payment amounts. The State may make progress payments to the Contractor when requested as work progresses, but not more frequently than monthly, in amounts approved by the Contract Administrator, after negotiation. Contractor must show verification of measurable progress at the time of requesting progress payments.

2.042 Adjustments for Reductions in Scope of Services/Deliverables

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

2.043 Services/Deliverables Covered

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

2.044 Invoicing and Payment – In General

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

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

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

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.cexpress.state.mi.us>. As stated in 1984 PA 431, all contracts that the State enters into for the purchase of goods and services must provide that payment will be made by Electronic Fund Transfer (EFT).

2.050 Taxes

2.051 Employment Taxes

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

2.052 Sales and Use Taxes

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

2.060 Contract Management

2.061 Contractor Personnel Qualifications

All persons assigned by Contractor to the performance of Services under the Contract must be employees of Contractor or its majority-owned (directly or indirectly, at any tier) subsidiaries (or a State-approved Subcontractor) and must be fully qualified to perform the work assigned to them. Contractor must include a similar provision in any subcontract entered into with a Subcontractor. For the purposes of the Contract, independent contractors engaged by Contractor solely in a

staff augmentation role must be treated by the State as if they were employees of Contractor for the Contract only; however, the State understands that the relationship between Contractor and Subcontractor is an independent contractor relationship.

2.062 Contractor Key Personnel

- (a) The Contractor must provide the CCI with the names of the Key Personnel.
- (b) Key Personnel must be dedicated as defined in the Statement of Work to the Project for its duration in the applicable Statement of Work with respect to other individuals designated as Key Personnel for that Statement of Work.
- (c) The State reserves the right to recommend and approve in writing the initial assignment, as well as any proposed reassignment or replacement, of any Key Personnel. Before assigning an individual to any Key Personnel position, Contractor must notify the State of the proposed assignment, must introduce the individual to the appropriate State representatives, and must provide the State with a resume and any other information about the individual reasonably requested by the State. The State reserves the right to interview the individual before granting written approval. In the event the State finds a proposed individual unacceptable, the State must provide a written explanation including reasonable detail outlining the reasons for the rejection.
- (d) Contractor must not remove any Key Personnel from their assigned roles on the Contract without the prior written consent of the State. The Contractor's removal of Key Personnel without the prior written consent of the State is an unauthorized removal ("Unauthorized Removal"). Unauthorized Removals does not include replacing Key Personnel for reasons beyond the reasonable control of Contractor, including illness, disability, leave of absence, personal emergency circumstances, resignation or for cause termination of the Key Personnel's employment. Unauthorized Removals does not include replacing Key Personnel because of promotions or other job movements allowed by Contractor personnel policies or Collective Bargaining Agreement(s) as long as the State receives prior written notice before shadowing occurs and Contractor provides 30 days of shadowing unless parties agree to a different time period. The Contractor with the State must review any Key Personnel replacements and appropriate transition planning must be established. Any Unauthorized Removal may be considered by the State to be a material breach of the Contract, in respect of which the State may elect to exercise its termination and cancellation rights.
- (e) The Contractor must notify the Contract Compliance Inspector and the Contract Administrator at least 10 business days before redeploying non-Key Personnel, who are dedicated to primarily to the Project, to other projects. If the State does not object to the redeployment by its scheduled date, the Contractor may then redeploy the non-Key Personnel.

2.063 Re-assignment of Personnel at the State's Request

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

2.064 Contractor Personnel Location

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

2.065 Contractor Identification

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

2.066 Cooperation with Third Parties

Contractor must cause its personnel and the personnel of any Subcontractors to cooperate with the State and its agents and other contractors including the State's Quality Assurance personnel. As reasonably requested by the State in writing, the Contractor must provide to the State's agents and other contractors reasonable access to Contractor's Project personnel, systems and facilities to the extent the access relates to activities specifically associated with the Contract and will not interfere or jeopardize the safety or operation of the systems or facilities. The State acknowledges that

Contractor's time schedule for the Contract is very specific and must not unnecessarily or unreasonably interfere with, delay, or otherwise impede Contractor's performance under the Contract with the requests for access.

2.067 Contractor Return of State Equipment/Resources

The Contractor must return to the State any State-furnished equipment, facilities, and other resources when no longer required for the Contract in the same condition as when provided by the State, reasonable wear and tear excepted.

2.068 Contract Management Responsibilities

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

2.070 Subcontracting by Contractor

2.071 Contractor Full Responsibility

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

2.072 State Consent to Delegation

Contractor must not delegate any duties under the Contract to a Subcontractor unless the DNR-Procurement Services has given written consent to such delegation. The State reserves the right of prior written approval of all Subcontractors and to require Contractor to replace any Subcontractors found, in the reasonable judgment of the State, to be unacceptable. The State's request must be written with reasonable detail outlining the reasons for the removal request. Additionally, the State's request must be based on legitimate, good-faith reasons. Replacement Subcontractor(s) for the removed Subcontractor must be fully qualified for the position. If the State exercises this right, and the Contractor cannot immediately replace the removed Subcontractor, the State will agree to an equitable adjustment in schedule or other terms that may be affected by the State's required removal. If any such incident with a removed Subcontractor results in delay not reasonable anticipatable under the circumstances and which is attributable to the State, the applicable SLA for the affected Work will not be counted for a time agreed upon by the parties.

2.073 Subcontractor Bound to Contract

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

2.074 Flow Down

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

2.075 Competitive Selection

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

2.080 State Responsibilities

2.081 Equipment

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

2.082 Facilities

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

2.090 Security

2.091 Background Checks

On a case-by-case basis, the State may investigate the Contractor's personnel before they may have access to State facilities and systems. The scope of the background check is at the discretion of the State and the results will be used to determine Contractor personnel eligibility for working within State facilities and systems. The investigations will include Michigan State Police Background checks (ICHA) 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.

2.100 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 Services.

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 - Reserved

2.128 Consequences For Breach

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

2.130 Insurance

2.131 Liability Insurance

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

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

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

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

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

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

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

 1. Commercial General Liability with the following minimum coverage:

\$2,000,000 General Aggregate Limit other than Products/Completed Operations
\$2,000,000 Products/Completed Operations Aggregate Limit
\$1,000,000 Personal & Advertising Injury Limit
\$1,000,000 Each Occurrence Limit

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

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

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

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

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

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

4. Employers liability insurance with the following minimum limits:

\$100,000 each accident
\$100,000 each employee by disease
\$500,000 aggregate disease

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

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

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

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

2.132 Subcontractor Insurance Coverage

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

2.133 Certificates of Insurance and Other Requirements

Contractor must furnish to DNR-Procurement Services, 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 DNR-Procurement Services. 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 (60) days. These efforts must include, but are not limited to, those listed in **Sections 2.171, 2.172, 2.173, 2.174, and 2.175**.

2.172 Contractor Personnel Transition

The Contractor must work with the State, or a specified third party, to develop a transition plan setting forth the specific tasks and schedule to be accomplished by the parties to effect an orderly transition. The Contractor must allow as many personnel as practicable to remain on the job to help the State, or a specified third party, maintain the continuity and

consistency of the services required by the Contract. In addition, during or following the transition period, in the event the State requires the Services of the Contractor's Subcontractors or vendors, as necessary to meet its needs, Contractor agrees to reasonably, and with good-faith, work with the State to use the Services of Contractor's Subcontractors or vendors. Contractor must notify all of Contractor's subcontractors of procedures to be followed during transition.

2.173 Contractor Information Transition

The Contractor agrees to provide reasonable detailed specifications for all Services/Deliverables needed by the State, or specified third party, to properly provide the Services/Deliverables required under the Contract. The Contractor must provide the State with asset management data generated from the inception of the Contract through the date on which the Contractor is terminated in a comma-delimited 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**.

2.191 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 DNR-Procurement Services, 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 DNR-Procurement Services, 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 such 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.

2.201 Nondiscrimination

In the performance of the Contract, Contractor agrees not to discriminate against any employee or applicant for employment, with respect to his or her hire, tenure, terms, conditions or privileges of employment, or any matter directly or indirectly related to employment, because of race, color, religion, national origin, ancestry, age, sex, height, weight, marital status, or physical or mental disability. Contractor further agrees that every subcontract entered into for the performance of the Contract or any purchase order resulting from the Contract must contain a provision requiring non-discrimination in employment, as specified here, binding upon each Subcontractor. This covenant is required under the

Elliot Larsen Civil Rights Act, 1976 PA 453, MCL 37.2101, et seq., and the Persons with Disabilities Civil Rights Act, 1976 PA 220, MCL 37.1101, et seq., and any breach of this provision may be regarded as a material breach of the Contract.

2.202 Unfair Labor Practices

Under 1980 PA 278, MCL 423.321, et seq., the State must not award a Contract or subcontract to an employer whose name appears in the current register of employers failing to correct an unfair labor practice compiled under Section 2 of the Act. This information is compiled by the United States National Labor Relations Board. A Contractor of the State, in relation to the Contract, must not enter into a contract with a Subcontractor, manufacturer, or supplier whose name appears in this register. Under Section 4 of 1980 PA 278, MCL 423.324, the State may void any Contract if, after award of the Contract, the name of Contractor as an employer or the name of the Subcontractor, manufacturer or supplier of Contractor appears in the register.

2.203 Workplace Safety and Discriminatory Harassment

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

2.204 Prevailing Wage

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

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

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

2.210 Governing Law

2.211 Governing Law

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

2.212 Compliance with Laws

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

2.213 Jurisdiction

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

2.220 Limitation of Liability

2.221 Limitation of Liability

Neither the Contractor nor the State is liable to each other, regardless of the form of action, for consequential, incidental, indirect, or special damages. This limitation of liability does not apply to claims for infringement of United States patent, copyright, trademark or trade secrets; to claims for personal injury or damage to property caused by the gross negligence or willful misconduct of the Contractor; to claims covered by other specific provisions of the Contract calling for liquidated damages; or to court costs or attorney's fees awarded by a court in addition to damages after litigation based on the Contract.

The State's liability for damages to the Contractor is limited to the value of 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 Services.
- (2) Contractor must also notify DNR Procurement Services 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 Services within 30 days whenever changes to company affiliations occur.

2.232 Call Center Disclosure

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

2.233 Bankruptcy

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

- (a) the Contractor files for protection under the bankruptcy laws;
- (b) an involuntary petition is filed against the Contractor and not removed within 30 days;
- (c) the Contractor becomes insolvent or if a receiver is appointed due to the Contractor's insolvency;

- (d) the Contractor makes a general assignment for the benefit of creditors; or
- (e) the Contractor or its affiliates are unable to provide reasonable assurances that the Contractor or its affiliates can deliver the services under the Contract.

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

2.240 Performance

2.241 Time of Performance

(a) Contractor must use 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 - Reserved

2.244 Excusable Failure

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

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

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

The Contractor will not have the right to any additional payments from the State as a result of any Excusable Failure occurrence or to payments for Services not rendered/Deliverables not provided as a result of the Excusable Failure

condition. Defaults or delays in performance by Contractor which are caused by acts or omissions of its Subcontractors will not relieve Contractor of its obligations under the Contract except to the extent that a Subcontractor is itself subject to an Excusable Failure condition described above and Contractor cannot reasonably circumvent the effect of the Subcontractor's default or delay in performance through the use of alternate sources, workaround plans or other means.

2.250 Approval of Deliverables

2.251 Delivery Responsibilities

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

- (a) Shipment responsibilities - Services performed/Deliverables provided under the Contract must be delivered "F.O.B. Destination, within Government Premises." The Contractor must have complete responsibility for providing all Services/Deliverables to all site(s) unless otherwise stated. Actual delivery dates must be specified on the individual purchase order.
- (b) Delivery locations - Services must be performed/Deliverables must be provided at every State of Michigan location within Michigan unless otherwise stated in the SOW. Specific locations will be provided by the State or upon issuance of individual purchase orders.
- (c) Damage Disputes - At the time of delivery to State Locations, the State must examine all packages. The quantity of packages delivered must be recorded and any obvious visible or suspected damage must be noted at time of delivery using the shipper's delivery document(s) and appropriate procedures to record the damage. Where there is no obvious or suspected damage, all deliveries to a State Location must be opened by the State and the contents inspected for possible internal damage not visible externally within 14 days of receipt. Any damage must be reported to the Contractor within five days of inspection

2.252 Delivery of Deliverables

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

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 - Reserved

2.281 MIDEAL - RESERVED

2.282 State Employee Purchases - Reserved

2.290 Environmental Provision

2.291 Environmental Provision

Hazardous Materials:

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

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

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

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

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

Michigan has a Consumer Products Rule pertaining to labeling of certain products containing volatile organic compounds.

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

1. Key contact for all catalog work is Mary Zimmeth, Archives of Michigan, 702 West Kalamazoo Street, Lansing, MI 48915.
2. The Archives of Michigan will provide paper or electronic guides to its government records or private collections. Contractor will be cataloging from these paper or electronic guides. These will be mailed/mailed on a monthly basis.
3. Require full level original bibliographic Machine Readable Cataloging (MARC) record/records.
4. Must use American Cataloging Rules (AACR2)
5. Must use *Catalog using Archives, Personal Papers, and Manuscripts: A Catalog Manual for Archival Repositories, Historical Societies, and Manuscript Libraries* published by the Society of American Archivists. This manual is the archivist/manuscript curator version of Chapter 4 of AACR2.
6. Must use the Library of Congress subject headings. Include subfields. All authority work done by Contractor. Contractor must provide at least 3 topical terms.
7. Require item level record code in order to generate item level record in Archives' local system. The 949 MARC code must be inputted by Contractor. Type: ins=mzimmeth;bn=7arch;
8. Require that a downloadable MARC bibliographic record with item level code be sent to Archives of Michigan via e-mail. E-mail address: zimmethm@michigan.gov. This record will be loaded into the Archives' local cataloging system. If any of the fixed or variable fields are marked invalid, the contractor must advise or assist Ms. Zimmeth in making the necessary changes, at no cost to the Archives of Michigan, until all fields check as valid.
9. Require that the MARC record will be loaded into WorldCat, the national cataloging system maintained by the Online Computer Library Center (OCLC), which is located in Dublin Ohio. Mary Zimmeth will be responsible for this activity. If any of the fixed or variable fields are marked invalid, the contractor must advise or assist Ms. Zimmeth in making the necessary changes, at no cost to the Archives of Michigan, until all fields check as valid.
10. Paper copies of guides should be returned to,

Mary Zimmeth
Senior Archivist
Archives of Michigan
702 West Kalamazoo Street
P.O Box 30740
Lansing, Michigan 48909-8240

11. E-mail guides should be returned to zimmethm@michigan.gov

Field Requirements:

Fixed Fields:

Type of Record (e.g. manuscript, audio-visual, cartographic, mixed)

Bibliographic Level (Code for Collection. Material that is grouped together under Archival practice of Provenance)

Encoding Level (Code for Full-Level catalog record)

Cataloging source (Code "D" An organization other than a national bibliographic agency or a participant in a cooperative cataloging program.)

Descriptive Cataloging Form (AACR2)

Type of Date (Inclusive, single, or questionable)

Date 1/ Date 2 (Notation of actual date, e.g. 2011 or 2009-2011)

Country/State of Publication (Michigan)

Language (99 percent English, but must be able to code for other languages if applicable)

Variable Fields:

1. Cataloging Source/Archives OCLC symbol
2. Local Free Text Call Number (Examples, RG 2011-1; MS 2011-2)
2. Author/Corporate/Meeting Name
3. Title of record or collection and inclusive dates. (Bulk dates if applicable)
4. Varying Form of Title (if Applicable)
5. Physical description, (usually quantity) (Number of linear feet, number of volumes, items etc.)
6. Note Fields that will list the following:
 - a. Archives Control Number
 - b. Archives Stack Location
 - c. Donor of Record or Collection. Also date of donation.
 - d. Restriction Note (if applicable)
 - e. Record/Collection description
 - f. Historical Note (if applicable)
 - g. Finding Aids/Guide location (e.g., in reading room; electronic etc.)
7. Subjects. Library of Congress Authority including subfields.
 - a. Personal name
 - b. Corporate name
 - c. Meeting name
 - d. Geographic name
 - e. Topical terms (at least 3)
9. Added Entries:
 - a. Personal name (if applicable)
 - b. Corporate name (if applicable)
 - c. Meeting name (if applicable)
10. Notation of URL for Electronic Copy of Guide. (if applicable)
12. Local Processing Information Code.

Attachment B
Pricing Proposal from OCLC

| | Yearly Fee ¹ | Number of years | Total Cost ¹ |
|---|-------------------------|-----------------|--------------------------|
| One time license fee for 2 nd license (includes 1 year AMA) | | | \$16,830.00 |
| One time license upgrade fee for 2 nd license for unlimited objects (includes 1 yr AMA) ² | | | \$25,470.00 ² |
| One time set up fee for OCLC CONTENTdm hosting service for 2 nd license | | | \$1,500.00 ¹ |
| Hosting fees | | | Not to exceed |
| Level 1 – 20 GB Storage max | \$1,200 | | |
| Level 2 – 100 GB Storage max | \$2,400 | 5 | \$73,200.00 |
| Level 3 – 500 GB Storage max | \$3,600 | | |
| Additional Storage – 250 GB | \$1,200 | | |
| AMA Cost for unlimited objects | | | |
| 1 st license | \$7,585 | 5 | \$37,925.00 |
| 2 nd license | \$7,585 | 3 | \$22,755.00 |
| Per Record fee for MARC Cataloging services | | 5 | Not to exceed |
| • Original Cataloging (monthly fee) | \$25.00 ³ | | \$1,500.00 |
| • Contract Cataloging | \$16.00 per record | | \$13,500.00 |
| Michigan Custom Base Package (includes WorldCat subscription) | \$1,633.33 | 5 | \$8,166.65 |
| Total Contract Value | | | \$200,846.65 |

1. The Yearly Fees are based on FY12 (July 1, 2011 – June 30, 2012) prices.
2. The upgrade price is good through June 30, 2012. Prices may be subject to change after July 1, 2012.
3. Based on FY11 fees charged to the OCLC symbol (account) E8M for Cataloging and Access Subscription. The \$25.00 is the monthly fee.
4. Below is the information and pricing beginning October 1, 2011 for future use of this service or a similar service. – per letter from Carol Schlatter 8/30/11
 - i. Michigan Custom Base Package \$1,633.33 per year (includes WorldCat subscription)

CONTENTdm HOSTING SERVICE TERMS AND CONDITIONS

IMPORTANT: PLEASE READ THESE TERMS AND CONDITIONS CAREFULLY. YOUR USE OF THIS SERVICE IS CONDITIONED UPON YOUR ACCEPTANCE OF THESE TERMS AND CONDITIONS. BY USING THIS SERVICE, YOU ARE AGREEING TO BE LEGALLY BOUND BY ALL THE TERMS AND CONDITIONS BELOW. IF YOU DO NOT AGREE TO THESE TERMS AND CONDITIONS, DO NOT USE THIS SERVICE.

THESE TERMS AND CONDITIONS AS AGREED UPON BY THE STATE OF MICHIGAN AND OCLC, ALONG WITH THE STATE OF MICHIGAN'S STANDARD TERMS AND CONDITIONS SET FORTH THE ENTIRE AGREEMENT AND SUPERSEDES ANY AND ALL PRIOR PURCHASE ORDERS, ACKNOWLEDGMENTS, AGREEMENTS, AND ORAL OR WRITTEN COMMUNICATIONS OR UNDERSTANDINGS OF THE PARTIES REGARDING THE USE OF CONTENTdm HOSTING SERVICE.

OCLC reserves the right to determine whether a party is eligible to make use of the CONTENTdm Hosting Service and to refuse access to the Hosting Service to any party for any reason in OCLC's sole discretion.

1. Services.

1.1 General. OCLC will provide the hosting services set forth in the Service Plan attached as Exhibit A (as the same may be changed or modified in accordance with Agreement from time to time, the "Service Plan") and other services specified in this Agreement (the "Services"). As part of the Services, OCLC will (a) configure, install, house, maintain, monitor and operate the facilities, servers, equipment, operating software and network (collectively, "OCLC's Systems"), (b) provide access to OCLC's CONTENTdm and other application software specified in the Service Plan (the "OCLC Applications") and (c) secure and maintain connectivity with third-party telecommunication providers, all as necessary to host the Institution's Content (as defined below) via the Internet in accordance with the Service Plan. Institution is responsible for securing and maintaining its own Internet connectivity to access OCLC's Systems and the OCLC Applications.

1.2 Host Names and IP Addresses. OCLC will assign Host Names and IP addresses to Institution as part of the Services. Any Host Name, IP addresses or other network numbers assigned to Institution by OCLC are and will remain the property of OCLC. Upon any termination of this Agreement, OCLC may, in its sole discretion, reassign or reuse the Host Names and IP addresses. OCLC has sole discretion as to the Internet routing of any OCLC network numbers.

1.3 Service Level. OCLC will use commercially reasonable efforts to provide the Services and operate OCLC's Systems in accordance with OCLC's standard **Service Level Agreement**, a current version of which is available at www.oclc.org. OCLC's obligations under the Service Level Agreement are subject to materials and services provided by equipment, telecommunications and/or other suppliers and to delays by or actions of Institution or third parties. Institution acknowledges that OCLC's Systems may be subject to temporary shutdowns due to causes beyond OCLC reasonable control, and such temporary shutdowns will not be deemed to be a breach of any obligations under this Agreement or the Service Level Agreement. INSTITUTION FURTHER ACKNOWLEDGES AND AGREES THAT ITS SOLE AND EXCLUSIVE REMEDY FOR ANY FAILURE OF OCLC TO PROVIDE THE SERVICES IN ACCORDANCE WITH THE SERVICE LEVEL AGREEMENT IS TO TERMINATE THIS AGREEMENT PURSUANT TO SECTION 4.1.

1.4 Bandwidth, Storage and Other Limits Usage. OCLC is not obligated to provide any bandwidth, storage or other Services in excess of the limits set forth in the Service Plan. If Institution uses any bandwidth, storage or other services in excess of the limits set forth in the Service Plan, OCLC may, in its sole discretion, assess Institution with additional charges, suspend the performance of the Services, or terminate this Agreement. In the event that OCLC elects to take any such

action, Institution will not be entitled to a refund of any unused pre-paid fees.

1.5 Modifications to Services. OCLC reserves the right to change or modify the Services, any Service Plan, the terms and conditions of this Agreement, or any policy or guideline applicable to the Services, at any time in its sole discretion. OCLC will send a notice to Institution of any such changes. Changes to this Agreement or a Service Plan will be effective thirty (30) days after the date of such notice or such later date as may be specified in the notice; provided, however, that any price changes will be subject to the notice and other requirements of Section 3.2. Changes to any policy or guidelines governing the Services, including the Acceptable Use Policy, will be effective upon Institution's receipt of notice or posting to the OCLC website. If Institution does not agree to any change or modification to this Agreement, the Service Plan, or any governing policy or guideline, Institution's sole remedy is to immediately terminate this Agreement pursuant to Section 4.1 (notwithstanding any notice period). Institution's continued use of the Services following the effective date of any changes or modifications to this Agreement, the Service Plan, or any policy or guideline will constitute Institution's acceptance of such changes or modifications.

2. Institution Content; Acceptable Use.

2.1 Institution Content. Institution hereby grants OCLC a non-exclusive, royalty-free, non-sublicensable license to host, reproduce, transmit, cache, store, display, publish, distribute, perform, edit, adapt, modify, create derivative works from, and otherwise use the Institution Content, all as reasonably necessary to provide the Services for Institution. **"Institution Content"** means all materials, code, data, text (whether or not perceptible by users), audio, video, graphics, photographs, artwork, bulletin board postings, or any other items or information of Institution or any third party that are provided or permitted by Institution to reside on OCLC's Systems.

2.2 Institution's Sole Responsibility. Institution will be solely responsible for all Institution Content. Institution will (a) be solely responsible for the creation, posting, updating and maintenance of the Institution Content (including all content provided by third parties) and (b) manage, renew, create, delete, edit and otherwise control the editorial content of the Institution Content. OCLC will not be responsible for reviewing the Institution Content prior to its posting by Institution.

2.3 Compatibility. Institution is responsible for ensuring that the Institution Content will be "server ready" and otherwise remain fully compatible with OCLC's Systems (including all software and operating systems). Institution acknowledges that it is responsible for having the necessary knowledge and expertise to maintain the Institution Content on OCLC's Systems. OCLC reserves the right to remove any Institution Content that is not compatible with OCLC's Systems. Upon request from Institution, and at Institution's sole expense, OCLC may assist Institution in

resolving any compatibility problems on a time and materials basis.

2.4 Acceptable Use Policy. Institution will at all times adhere to all applicable laws, rules, regulations and other requirements of any governmental authority having jurisdiction and to OCLC's standard policies including, without limitation, OCLC's Acceptable Use Policy, a current version of which is attached as Exhibit C. OCLC may inspect the Institution Content or investigate any alleged violation of this Agreement, OCLC's policies or any third-party complaints. OCLC will not access or review the contents of any e-mail or other stored electronic communications, except as required or permitted by applicable law or legal process. In the event that OCLC determines in its sole and reasonable discretion that any Institution Content or conduct or actions of Institution (including its employees and users) are objectionable, unlawful, potentially infringing or otherwise violate this Agreement, the Acceptable Use Policy or any other applicable policy, OCLC may take any action that it deems appropriate and reasonable under the circumstance to protect its systems, facilities, subscribers and/or third parties. Such corrective action includes, but is not limited to: (a) issuing a warning; (b) immediately suspending or terminating the Services; (c) restricting or prohibiting access to any Institution Content that is objectionable or otherwise violates this Agreement or applicable policy; and/or (d) disabling or removing hypertext links, Institution Content or the content of any third party from OCLC's Systems. Institution will not be entitled to a refund of any fees paid or reimbursed on account of any such action by OCLC.

2.5 Disclosure Rights. If and to the extent reasonably required to comply with applicable laws and lawful governmental requests, to protect OCLC's Systems and OCLC's customers, or to ensure the integrity and operation of OCLC's business and systems, OCLC may access and disclose any information it considers necessary or appropriate, including, without limitation, user profile information (i.e., name, e-mail address, etc.), IP addressing and traffic information, usage history, and Institution Content residing on OCLC's Systems. Institution agrees to reimburse OCLC for all costs associated with OCLC's compliance with all lawful governmental requests relating to Institution or Institution Content, including, but not limited to, warrants, subpoenas and judicial orders.

2.6 Warranties. Institution represents, warrants and covenants to OCLC that: (a) the Institution Content and its use will not violate, misappropriate or infringe any Proprietary Rights or any other personal, privacy or moral right arising under the laws of any jurisdiction of any person or entity, nor will same constitute a libel or defamation of any person or entity; (b) the Institution Content will not contain any harmful components, including, but not limited to, viruses, trap doors, hidden sequences, hot keys, or time bombs; (c) Institution has all the right, power and authority necessary to use the Institution Content as described in this Agreement, as well as in the CONTENTdm End User License Agreement; and (d) the Institution will comply with all applicable laws, rules and regulations (including, but not limited to, export control, decency, privacy and intellectual property laws).

3. Fees and Payment Terms.

3.1 General. Institution will pay OCLC the fees, charges and other amounts as mutually agreed upon by the parties. Unless otherwise specified, the Institution will pay OCLC any setup, installation and other one-time fees upon acceptance of this Agreement. 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. All fees will be billed by OCLC in advance of providing the Services. Institution will pay all federal, state, and local sales, use, value added, excise, duty and any other taxes assessed with respect to the Services provided to

Institution, other than taxes based on OCLC's net income. Institution's failure to fully pay any fees and taxes within forty-five (45) days after the applicable due date will be deemed a breach of this Agreement, justifying OCLC's suspension of its performance of the Services and, in OCLC's sole discretion, termination of this Agreement. Accounts in default are subject to an interest charge on the outstanding balance equal to the lesser of 1.5% per month or the maximum rate permitted by applicable usury law. Any termination by OCLC for Institution's failure to pay will not relieve Institution from paying past due fees plus interest. In the event of collection enforcement, Institution will be liable for any costs associated with such collection, including, but not limited to, reasonable attorneys' fees, court costs and collection agency fees. This Section 3.1 does not apply to Institutions that have obtained the Quick Start License provided in conjunction with a FirstSearch® Base Package Subscription.

3.2 Price Changes. OCLC reserves the right to change any hourly, monthly, annual or other periodic fees, provided that: (a) OCLC will give Institution written notice of the change at least thirty (30) days in advance of the first period for which the change is to become effective; and (b) no such change will be effective for any period within one year after the date of this Agreement. If Institution does not agree to pay the new fees, Institution may terminate this Agreement by providing written notice to OCLC prior to the effective date of the change. This Section 3.2 does not apply to Institutions that have obtained the Quick Start License provided in conjunction with a FirstSearch Base Package Subscription.

4. Term of Service.

4.1 Term and Cancellation Policy. The Agreement will remain in full force and effect until terminated by either party. Either party may terminate this Agreement for any reason by providing the other party thirty (30) days prior written notice; provided that, OCLC may immediately terminate this Agreement for Institution's or its users' violation of the Acceptable Use Policy. Upon any termination of this Agreement, Institution will not be entitled to a refund of any fees paid or reimbursed under this Agreement; provided that, if OCLC terminates this Agreement for any reason other than breach, default or violation by Institution or its users, then OCLC will promptly refund that portion of any periodic fees pre-paid by Institution for any period after the effective date of the termination.

4.2 Effect of Termination. Should this Agreement be terminated for any reason, OCLC will not be liable to Institution because of such termination for compensation, reimbursement or damages on account of the loss of prospective profits, anticipated sales, goodwill or on account of expenditures, investments, leases or commitments in connection with Institution's business, or for any other reason whatsoever flowing from such termination. Institution is solely responsible for procuring any new or replacement service upon termination. Any termination of this Agreement will not relieve Institution of any obligations to pay any fees and costs accrued prior to the termination date and any other amounts owed by Institution to OCLC as provided in this Agreement. Upon termination of this Agreement, the following sections will survive and remain in effect in accordance with their terms: Sections 4.2 and 5 through 9.

5. Reservation of Rights.

5.1 By OCLC. OCLC is the exclusive owner of and retains all right, title and interest (including, without limitation to, all copyrights, trademarks, patents, trade secrets, and any other proprietary rights to all materials, including but not limited to any computer software (in object code and source code form), data or information developed or provided by OCLC or its suppliers pursuant to this Agreement (including, without limitation, the OCLC Applications), and any know-how, methodologies, equipment, or processes used by OCLC to provide the Services to Institution (including, without limitation, the OCLC's Systems)).

5.2 By Institution. Institution is the exclusive owner of and retains all right, title and interest (including, without limitation, all proprietary rights) to the Institution Content.

6. Disclaimers and Limitations

6.1 Disclaimer. OCLC exercises no control over, and accepts no responsibility for, third-party content of the information passing through OCLC's System, network hubs and points of presence, or the Internet. INSTITUTION ACKNOWLEDGES THAT OCLC'S SYSTEMS (INCLUDING ANY SOFTWARE AND ANY OTHER ITEMS USED OR PROVIDED BY OCLC IN CONNECTION WITH ANY SERVICES HEREUNDER) ARE PROVIDED "AS IS." OCLC DOES NOT MAKE ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, WITH RESPECT TO THE PERFORMANCE OF THE SERVICES OR OCLC'S SYSTEMS, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT OR ANY IMPLIED WARRANTY ARISING BY USAGE OF TRADE, COURSE OF DEALING OR COURSE OF PERFORMANCE. OCLC MAKES NO REPRESENTATIONS OR WARRANTIES WHATSOEVER THAT THE SERVICES AND OCLC'S SYSTEMS WILL BE UNINTERRUPTED, ALWAYS ACCESSIBLE, FREE OF HARMFUL COMPONENTS, ACCURATE OR ERROR-FREE.

6.2 Limitation of Liability. OCLC WILL HAVE NO LIABILITY FOR ANY CONSEQUENTIAL, EXEMPLARY, SPECIAL, INCIDENTAL, OR PUNITIVE DAMAGES EVEN IF OCLC HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT WILL OCLC HAVE ANY LIABILITY FOR UNAUTHORIZED ACCESS TO, OR ALTERATION, THEFT OR DESTRUCTION OF INFORMATION DISTRIBUTED OR MADE AVAILABLE FOR DISTRIBUTION VIA THE SERVICES THROUGH ACCIDENT, FRAUDULENT MEANS OR DEVICES. IN ANY EVENT, THE LIABILITY OF OCLC TO INSTITUTION FOR ANY REASON AND UPON ANY CAUSE OF ACTION WILL BE LIMITED TO THE AMOUNT ACTUALLY PAID TO OCLC BY INSTITUTION UNDER THIS AGREEMENT DURING THE THREE (3) MONTHS IMMEDIATELY PRECEDING THE DATE ON WHICH SUCH CLAIM AROSE. THIS LIMITATION APPLIES TO ALL CAUSES OF ACTION IN THE AGGREGATE, INCLUDING, BUT NOT LIMITED TO, BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, STRICT LIABILITY, MISREPRESENTATIONS, AND OTHER TORTS. THE FEES FOR THE SERVICES SET BY OCLC HEREUNDER HAVE BEEN AND WILL CONTINUE TO BE BASED UPON THIS ALLOCATION OF RISK.

6.3 Force Majeure. OCLC will be excused from performance hereunder to the extent that performance is prevented, delayed or obstructed by causes beyond its reasonable control, including but not limited to, acts of God (fire, storm, floods, earthquakes, etc.), civil disturbances, disruption of telecommunications, power or other essential services, or interruption or termination of service by the service provider being

used by OCLC to link its servers to the Internet, or any malicious or unlawful acts of any third party.

7. Provisions

7.1 Identification. OCLC may, free of any obligation to pay compensation, use Institution's name to identify Institution as an OCLC client, in advertising, publicity, or similar materials distributed or displayed to prospective clients, upon prior written consent of the State of Michigan, which shall not be unreasonably withheld.

7.2 Independent Contractors. OCLC and its personnel, in performance of the Services, are acting as independent contractors and not as employees or agents of Institution.

7.3 Waiver; Amendment. The failure of either party to enforce its rights under this Agreement at any time for any period will not be construed as a waiver of such rights.

7.4 No Assignment. Institution may not assign, without the prior written consent of OCLC, any rights, duties or obligations under this Agreement to any person or entity, in whole or in part, whether by assignment, merger, transfer of assets, sale of stock, operation of law or otherwise, and any attempt to do so will be void.

7.5 Governing Law; Attorneys' Fees; Venue. This Agreement will be governed by and construed in accordance with the laws of the State of Ohio, except where the state law of Institution requires the law of the state of Institution to govern. In such instance, the law of the state of the Institution shall govern this Agreement. In any action or proceeding to enforce rights under this Agreement, the prevailing party will be entitled to recover costs and attorneys' fees, as allowable by law.

7.6 Headings. Headings herein are for convenience of reference only and will in no way affect interpretation of this Agreement.

7.7 Notice. All notices and other communications required or permitted hereunder will be in writing and delivered in person, by courier, prepaid certified or registered U.S. mail, facsimile with confirmation, or e-mail with return receipt to the parties at the addresses set forth in this Agreement. Notice will be effective when received.

7.8 Counterparts. This Agreement may be executed in counterparts and/or via facsimile transmission, any one or form of which will be deemed an original, but all of which will constitute one and the same instrument.

7.9 Entire Agreement; Severability. This Agreement constitutes the complete and exclusive statement of agreement between the parties, and supersedes and merges all prior proposals and all other agreements, oral and written, between the parties relating to the subject matter of this Agreement. In the event that any provision of this Agreement will be determined to be illegal or unenforceable, that provision will be eliminated to the minimum extent necessary so that this Agreement will otherwise remain in full force and effect and enforceable.

Michigan Department of Natural Resources

By: _____

Title: _____

Date: _____

OCLC Online Computer Library Center, Inc.

By: _____

Title: _____

Date: _____

Exhibit A

Service Plan

CONTENTdm Hosting Services

CONTENTdm direct license purchase required.

Separate fees incurred for each of the services described below.

Initial setup of CONTENTdm instance – OCLC staff will set up your licensed copy of CONTENTdm in OCLC's hosting operations center including disk allocation according to the CONTENTdm hosting level you've chosen.

CONTENTdm Hosting Service – OCLC staff will maintain the operations of your server, actively monitor your server for availability, provide regular back-ups of content, metadata, and user interface changes.

Additional collection storage (optional) – Should you fill up the storage initially allocated according to your CONTENTdm hosting level you can add additional storage at then-current pricing.

Application support (optional) – OCLC can provide consulting on Web site development.

EXHIBIT B

SERVICE LEVEL AGREEMENT

This Service Level Agreement ("SLA") sets forth the service level and performance objectives of OCLC Online Computer Library Center, Inc. ("OCLC") in providing hosting services (the "Services") to you. OCLC will use commercially reasonable efforts to meet the following service level and performance objectives to support the operation of the facilities, server(s), computer equipment, operating software and connectivity used to provide the Services to you (collectively, "OCLC's Systems").

1. Uptime Commitment

OCLC will use commercially reasonable efforts to ensure OCLC's Systems are available 99% of the time (the "Uptime Commitment"). All Uptime Commitment will be measured within OCLC's System on a monthly basis calculated to include twenty-four (24) hours per day over each month, but excluding from the numerator and denominator in the calculation the duration in time of any temporary shutdowns due to scheduled maintenance (which will not exceed in the aggregate sixteen (16) hours per month), telecommunications or power disruptions caused by third parties, and any other causes beyond OCLC's reasonable control. OCLC agrees to notify you promptly of any factor, occurrence, or event coming to its attention that may affect OCLC's ability to meet the Uptime Commitment, or that is likely to cause any material interruption in the Services.

2. Exclusive Remedy.

OCLC will use commercially reasonable efforts to correct any material problems in the Services, including any failure to satisfy the Uptime Commitment. In the event that OCLC fails to satisfy the Uptime Commitment for a given month and you provide written notice within thirty (30) days of the end of such month, your sole and exclusive remedy will be to receive a service credit equal to the following percentage of the monthly fees for the Services for the stated uptime:

| | |
|--------------|------|
| 97% to 99% | 15% |
| 94% to 96.9% | 25% |
| 92% to 93.9% | 50% |
| 90% to 91.9 | 75% |
| Below 90% | 100% |

In no event will the service credit exceed the monthly fees paid by you for the Services. You acknowledge and

agree that if the remedies set forth in this section are applied, any failure of OCLC to meet the requirements in this SLA will not constitute a breach of the Hosting Agreement.

3. Systems Management

3.1 Monitoring. OCLC will monitor and maintain OCLC's Systems in working order each day (24 x 7). OCLC will proactively manage and monitor all application server hardware devices and software to ensure optimal performance and reliability as well as to detect abnormal events or exceeded utilization or performance thresholds. OCLC will proactively monitor the status of the operating systems (e.g., CPU, disk I/O, memory, processes, etc.), critical application layer daemons and processes and trigger appropriate event notification alarms caused by errors, exceeded thresholds, etc.

3.2 Maintenance. OCLC will operate, monitor and administer all servers, applications and networks supporting the Services. In order to provide such coverage, OCLC may utilize a mixture of on-site and on-call support staff, automated server monitoring and automated paging technology. OCLC's on-site coverage is during OCLC's normal business hours, Monday through Friday, excluding holidays recognized by OCLC.

3.3 Scheduled Outages. Maintenance outages, if necessary, will be conducted at a time and in a manner to minimize adverse impacts on the Services. Maintenance outages will include, but are not limited to the installation of upgrades, service packs and routine server or application configuration changes. Other maintenance outages may be necessary from time to time.

3.4 Change Control. OCLC will install new equipment, software, releases, upgrades, fixes, patches and other items necessary to maintain OCLC's Systems to industry standards. OCLC will proactively gather information from appropriate server, peripheral, operating system or database vendors regarding upgrades, defect patches or fixes.

3.5 Notice. OCLC will use commercially reasonable efforts to give you three (3) days notice prior for all non-routine management, maintenance, change control or other actions by OCLC that may materially impact the Service adversely.

EXHIBIT C ACCEPTABLE USE POLICY

This Acceptable Use Policy ("AUP") describes the proper kinds of conduct and prohibited uses of the hosting and other services (the "Services") provided by OCLC Online Computer Library Center, Inc. ("OCLC"). This AUP is not exhaustive and OCLC reserves the right to modify it at any time, effective upon posting of the modified version to <www.oclc.org or such other location designated by OCLC. By using OCLC's Services, you agree to abide by the then current version of this AUP.

ANY VIOLATION OF THIS AUP MAY RESULT IN THE SUSPENSION OR TERMINATION OF THE SERVICES AND SUCH ACTION AS OCLC DEEMS APPROPRIATE AS FURTHER DESCRIBED IN THE HOSTING AGREEMENT. ANY REPEATED VIOLATION OF THIS AUP WILL RESULT IN THE TERMINATION OF THE HOSTING AGREEMENT. INDIRECT OR ATTEMPTED VIOLATIONS OF THIS AUP, AND ACTUAL OR ATTEMPTED VIOLATIONS BY A THIRD PARTY ON YOUR BEHALF, WILL BE CONSIDERED VIOLATIONS OF THE AUP BY YOU.

General

OCLC's Services enable you to host and serve your Web site and all related content, including, but not limited to, programs, program scripts, e-mail, text, bulletin board postings, hypertext links, meta tags, domain names, pictures, graphics, forums, interactive media, and audio/visual materials that you or a third party posts on your Web site (collectively, "Subscriber Content") using OCLC's facilities, services, equipment, operating software and network (collectively, "OCLC's Systems"). Generally, OCLC does not actively monitor, censor, or directly control any information that is stored on or transmitted over OCLC's Systems. OCLC cannot and does not warrant, verify or guarantee the quality, accuracy, safety or integrity of your Subscriber Content or other materials or information that you or a third party may post or access through the Services. You are solely responsible for all of the Subscriber Content and your and your users' use of OCLC's Services and your Web site.

No Illegal or Harmful Uses

OCLC's Services and Systems may be used only for lawful purposes. Transmission, distribution or storage of any material in violation of any applicable law or regulation is strictly prohibited. The following non-exhaustive list describes the kinds of illegal or harmful conduct are prohibited. OCLC reserves the right to restrict or prohibit any and all uses or content that it determines in its sole discretion is harmful to its systems, network, reputation, good will, other OCLC customers, or any third party.

- **Infringement.** Infringement of intellectual property rights or other proprietary rights including, without limitation, material protected by copyright, trademark, patent, trade secret or other intellectual property right used without proper authorization. Infringement may result from the unauthorized copying and posting of pictures,

logos, software, articles, musical works, and videos.

- **Offensive Materials.** Disseminating or hosting material that is unlawful, libelous, defamatory, obscene, pornographic, indecent, lewd, harassing, threatening, harmful, invasive of privacy or publicity rights, abusive, inflammatory or otherwise objectionable.
- **Harmful Content.** Disseminating or hosting harmful content including, without limitation, viruses, Trojan horses, worms, time bombs, cancelbots or any other computer programming routines that may damage, interfere with, surreptitiously intercept or expropriate any system, program, data or personal information.
- **Fraudulent Conduct.** Offering or disseminating fraudulent goods, services, schemes, or promotions (i.e., make money fast schemes, chain letters, and pyramid schemes); fraudulent submission or use of personal or financial information; or engaging in any practice that constitutes an unfair or deceptive trade practice.
- **Export Violations.** Posting or sending of software or technical information in violation of U.S. export laws, including, without limitation, the Export Administration Regulations maintained by the Department of Commerce.
- **Privacy.** Collecting, using and disclosing any personally identifiable user information in violation of any applicable law and/or stated privacy policy.

Maintenance of Security and Integrity

Violations of system or network security are prohibited, and may result in criminal and civil liability. OCLC will investigate incidents involving such violations and may involve and will cooperate with law enforcement if a criminal violation is suspected. Examples of system or network security violations include, without limitation, the following:

- **Hacking.** Unauthorized access to or use of data, systems or networks, including any attempt to probe, scan or test the vulnerability of a system or network or to breach security or authentication measures without express authorization of the owner of the system or network.
- **Interception.** Unauthorized monitoring of data or traffic on any network or system of OCLC or any third party.
- **Intentional Interference.** Interference with service to any user, host or network

including, but not limited to, denial of service attacks, mail bombing, news bombing, other flooding techniques, deliberate attempts to overload a system and broadcast attacks.

- **Falsification of Origin.** Forging of any TCP-IP packet header, e-mail header or any part of a message header. This prohibition does not include the use of aliases or anonymous remailers.
- **Avoiding System Restrictions.** Using manual or electronic means to avoid any use limitations placed on the Services such as access and storage restrictions.

No E-Mail Abuses

You may not distribute, publish, send or incite unsolicited mass e-mailings, promotions, advertising, or solicitations (such as "spam"), including, without limitation, commercial advertising, informational announcements, and mail bombing. You may not use OCLC's mail server or a third party mail server to relay mail without the express permission of the account holder or the third party site. Posting the same or similar message to one or more newsgroups (including, but not limited to, the use of

chain letters, excessive cross-postings or multiple-postings) is explicitly prohibited.

Enforcement by OCLC

OCLC reserves the right, but does not assume the obligation, to investigate any violation of this AUP or misuse of OCLC's Systems. As described in the Hosting Agreement, OCLC reserves the right and has absolute discretion to (a) enforce this AUP and the terms of the Hosting Agreement and (b) remove or disable access, screen or edit any Subscriber Content that violates these provisions or is otherwise objectionable. Without limitation, OCLC also reserves the right to report any activity (including the disclosure of appropriate subscriber information) that it suspects violates any law or regulation to appropriate law enforcement officials, regulators, or other appropriate third parties. OCLC also may cooperate with appropriate law enforcement agencies to assist in the investigation and prosecution of any illegal conduct by providing network and systems information related to allegedly illegal, harmful or objectionable content.

If you want to report any violations of this AUP, please contact contentdmsupport@oclc.org.

CONTENTdm® END USER LICENSE AGREEMENT

IMPORTANT: PLEASE READ THIS AGREEMENT CAREFULLY. YOUR USE OF THE SOFTWARE IS CONDITIONED UPON YOUR ACCEPTANCE OF THE TERMS AND CONDITIONS OF THIS AGREEMENT. BY USING THIS SOFTWARE, YOU ARE AGREEING TO BE LEGALLY BOUND BY ALL THE TERMS AND CONDITIONS OF THIS AGREEMENT. IF YOU DO NOT AGREE TO THESE TERMS AND CONDITIONS, DO NOT INSTALL OR USE THE SOFTWARE.

THIS AGREEMENT SETS FORTH THE ENTIRE AGREEMENT AND SUPERSEDES ANY AND ALL PRIOR PURCHASE ORDERS, ACKNOWLEDGMENTS, AGREEMENTS, AND ORAL OR WRITTEN COMMUNICATIONS OR UNDERSTANDINGS OF THE PARTIES REGARDING THE USE OF CONTENTdm SOFTWARE. OCLC RESERVES THE RIGHT TO MAKE CHANGES OR ADDITIONS TO THESE TERMS AT ANY TIME, AND SHALL NOTIFY LICENSEE BY POSTING THE CHANGES ON THE CONTENTdm USER SUPPORT CENTER (WWW.CONTENTdm.ORG). ANY SUCH CHANGES OR ADDITIONS SHALL GOVERN OVER THE TERMS AND CONDITIONS OF THIS EULA.

1. DEFINITIONS.

A. "Software" means the suite of computer programs known as CONTENTdm made by OCLC, together with embedded user documentation, related documentation or other materials delivered by OCLC to Licensee, and all error corrections, enhancements, upgrades, and new or major releases to or of such computer programs made available to Licensee by OCLC. The term Software also includes Adobe products and related documentation, and any upgrades, modified versions, updates, additions, and copies thereof.

B. "CONTENTdm Server" means the server that provides the administrative interface and back-end data management of CONTENTdm digital collections.

C. "CONTENTdm Website" means the server that provides the public interface into CONTENTdm digital collections.

D. "Single Server" means one CONTENTdm server (as defined above) and one or more CONTENTdm Websites (as defined above).

E. "Multi-Site Server" means the computer program known as the CONTENTdm Multi-Site Server made available by OCLC, together with embedded user documentation, related documentation or other materials, and all error corrections, enhancements, upgrades and new or major releases to or of such computer program made available to Licensee by OCLC.

F. "Licensee" refers to the individual or entity that obtains the Software from OCLC. Licensee can install the Software on a server owned or controlled by Licensee and can access the Software from such server for purposes authorized by these Terms. Licensee's Collections reside on the server owned or controlled by Licensee and may be accessed from such server by End Users to the extent authorized by Licensee. Licensee may alternatively choose to obtain a hosted license, and in such case the Software will reside on a server owned and controlled by OCLC.

G. "Collections" means digital collections of Items.

H. "Item" means a single file in formats specified as acceptable by OCLC which is described by one Collection Record.

I. "Collection Metadata" means descriptive, administrative, and technical information relating to an Item.

J. "Collection Record" means a set of Collection Metadata elements presented in a format prescribed by OCLC that provides information about an Item and a link to the relevant Item.

K. "Authorized User" means an employee of Licensee who is responsible for undertaking activities related to Licensee's Collections or an independent contractor retained by Licensee for such purpose and is bound by these Terms.

L. "Third-Party" means an organization which has authorized Licensee to use the Software to access and display the Third-Party's Collection(s) to End-Users.

M. "End-User" means any individual authorized by Licensee to access, view and/or use Licensee's Collections and/or, if applicable, Third-Party Collections.

N. "Tools" means the CONTENTdm tools, widgets, APIs, web services, Flex Loader, interfaces and data streams made available to Institution by OCLC from time. Such Tools may be used pursuant to the terms of this Agreement, as well as additional terms that may be included upon Institution's acceptance and use of the individual Tools.

O. Licensee's use of the software it has licensed from OCLC is subject to the following terms and conditions (the "Terms"). OCLC reserves the right to determine whether a prospective Licensee is eligible to make use of the Software and to refuse to license such software to any party for any reason in OCLC's sole discretion.

2. LICENSE TO USE THE SOFTWARE.

A. Subject to these Terms, OCLC grants Licensee a nonexclusive, nontransferable license to install and/or use the Software, in object code form only, solely for the following noncommercial purposes: (i) preparing, creating, developing, archiving, enabling access to, displaying, publishing, and managing Collections and Collection Metadata; (ii) creating Collection Records (or other acceptable metadata) for the Items in Licensee's Collections; and (iii) providing End-Users with access to Licensee's Collections and Collection Metadata for searching, viewing, and use to the extent authorized by Licensee. Use of the Software on behalf of Licensee is restricted to Authorized Users.

B. OCLC grants Licensee the following rights to the Software licensed by Licensee as indicated on the Order Form:

- (i) **Software (Primary Server).** Subject to these Terms and except as provided in Sections 2.B(ii) and 2.B(iii) and 2.B (v) below, OCLC grants Licensee a nonexclusive, nontransferable license to install the Software (Primary Server) on a Single Server owned or controlled by Licensee or maintained by OCLC, or an independent ISP and use the Software (Primary Server), solely for the noncommercial purposes permitted under this Agreement. Use of the Software (Primary Server) on behalf of Licensee is restricted to its Authorized Users.
- (ii) **Software (Development Server).** Applies to licenses of the Software designated on the Order Form as Development Server licenses. Subject to these Terms, OCLC grants Licensee a nonexclusive, nontransferable license to install the Software (Development Server) on a Single Server owned or controlled by Licensee or maintained by OCLC, or an independent ISP and use the Software (Development Server), in object code form only, solely for the internal, noncommercial purposes of creating and testing new Collections, interfaces and web site functionality in preparation for making such Collections, interfaces and functionality available to End-Users. Use of the Software (Development Server) on behalf of Licensee is restricted to its Authorized Users. The Software (Development Server) may not be accessible to End-Users. The Software (Development Server) does not provide Licensee with additional Project Clients.
- (iii) **Software (Cold Server).** Applies to licenses of the Software designated on the Order Form as Cold Server licenses. Subject to these Terms, Licensee may install the Software (Cold Server) on a single server owned or controlled by Licensee or maintained by OCLC, or an independent ISP but not available to any user on the network unless there is a failure of the primary server on which Licensee is running the Software. In the event of such primary server failure, OCLC grants Licensee a nonexclusive, nontransferable license to use the Software (Cold Server) solely for the noncommercial purposes specified in Section 2.A (i), (ii) and (iii) above. The Software (Cold Server) may be used for such purpose only for the duration of the failure of the primary server on which Licensee was running the Software. The Software (Cold Server) license does not authorize use of the Software on the cold server when the Software is capable of being run on Licensee's primary server. Use of the Software (Cold Server) on behalf of Licensee is restricted to its Authorized Users. The Software (Cold Server) does not provide Licensee with additional Project Clients.
- (iv) **Multi-Site Server.** Subject to these Terms, OCLC grants Licensee a nonexclusive, nontransferable license to install the Multi-Site Server on a single server owned or controlled by Licensee or maintained by OCLC, or an independent ISP. Once installed, the Multi-Site Server may be used by Licensee, in object code form only, solely for the following non-commercial purposes: (i) harvesting Licensee and Third-Party Collections and associated Collection Records; and (ii) providing End-Users with access to Licensee and Third-Party Collections and associated Collection Records. Use of the Multi-Site Server on behalf of Licensee is restricted to its Authorized Users.
- (v) **Quick Start (Subscription License):** Applies to licenses as designated on the Order Form as Quick Start Subscription Licenses, including the license provided via the OCLC FirstSearch® Base Package Subscription. Subject to these Terms, OCLC grants Licensee a nonexclusive, nontransferable right to subscribe to a hosted version of CONTENTdm. Quick Start subscriptions will be hosted on a server owned and maintained by OCLC. Under the Quick Start Subscription license, Licensee is supported for up to 3,000 collection items hosted by OCLC, and permitted to use up to three (3) Project Clients. Licensees selecting the Quick Start Subscription Model must renew the License annually or will have the option to upgrade to another license level to accommodate its needs. Quick Start Licensees do not acquire ownership rights in the CONTENTdm Software.

C. Licensee acknowledges that use of certain future Software functionality which is currently planned for development may be conditioned upon its payment of additional fees, submission of additional ordering information and/or agreement to additional terms and conditions prescribed by OCLC.

D. Licensee's license to use the Software may be a Hosted License or a Non-Hosted License. Hosting Services provided by OCLC (and additional terms and conditions applicable thereto) are as set forth in a separate hosting agreement.

E. Licensee acknowledges that Adobe is the owner of certain proprietary information and intellectual property rights included in the Adobe Products and the Documentation. Adobe is a third party beneficiary entitled to enforce OCLC's rights and Licensee's obligations hereunder and to seek appropriate legal and equitable remedies, including but not limited to, damages and injunctive relief, for Licensee's breach of such obligations.

3. USAGE RESTRICTIONS.

A. The Software (Primary Server) consists of the applications listed below. As noted in Section 2 above, Software (Development Server) licenses and Software (Cold Server) licenses do not provide additional Project Clients.

- (i) **Server Software.** The Server Software consists of the CONTENTdm Server and Tools. Server Software is used for preparing, creating, and developing Licensee's Collections and for testing completed Collections prior to making them available for access by End-Users via the CONTENTdm Website. Licensee will make the Server Software accessible only to Authorized Users. Licensees may install the Server Software on only one (1) server.

- (ii) **Project Client Software.**

- (a) The Project Client Software includes the JPEG2000 Extension and may be installed and used on the number of workstations as permitted under the level of CONTENTdm license purchased by Licensee (currently 3 for Quick Start, 50 for Level 1, 52 for Level 2, and 54 for Level 3 Licenses) and connected to the server on which the Server Software has been installed.

- (b) The Project Client Software with the OCR Extension (if ordered by Licensee) may be installed and used on one (1) workstation connected to the server on which the Server Software has been installed per license purchased.

- (iii) **Collection Web Site.** There is no limit as to the number of concurrent users who may view Licensee's collections via the Web interface.

B. OCLC and its licensors reserve all rights in and to the Software not expressly granted to Licensee by these Terms. No title to or ownership of the Software or any proprietary rights related to the Software is transferred to Licensee by these Terms. CONTENTdm is a registered trademark of OCLC Online Computer Library Center, Inc. Adobe and Adobe PDF Library are either registered trademarks or trademarks of Adobe Systems Incorporated in the United States and/or other countries. Licensee agrees not to (a) use the Software for any purpose or in any manner other than authorized by these Terms; (b) host the Software for a fee for any third-party without explicit permission from OCLC; (c) distribute, lend, license, rent, or otherwise transfer the Software; (d) reverse engineer, disassemble, or decompile the Software or otherwise attempt to discover or recreate the source code to the Software; (e) make any modification, adaptation, improvement, enhancement, translation, or derivative work of or to the Software (other than those permitted under this Agreement or via Tools provided by OCLC); (g) remove, alter, or obscure any proprietary notices (including copyright notices) of OCLC or its licensors contained in the Software; (h) use the Software for purposes for which it is not designed; and (i) exceed the maximum number of Items in its Collections for which it has paid the applicable license fee. Licensee shall comply with all applicable laws, rules, regulations, orders, and other requirements, including U.S. export control laws, in its use of the Software.

4. ITEMS IN COLLECTIONS.

A. Licensee recognizes that Items may be subject to third-party copyright and/or other proprietary rights, and will manage End-User Access to such Items accordingly. Licensee agrees to be responsible for complying with the requirements of all applicable copyright laws and other laws applicable to any proprietary material contained in Items in Licensee's Collections to the extent necessary for Licensee's lawful use of the Software. By including an Item in its Collections, Licensee represents and warrants to OCLC and its licensor that it has complied with the foregoing sentence with respect to such Item. In the event of a claim that any Item in Licensee's Collections violates any third-party copyright or other proprietary right, Licensee agrees to immediately suspend End-User Access to such Item pending resolution of such claim. OCLC will promptly inform Licensee of any claim of infringement related to an Item in Licensee's Collections of which OCLC becomes aware.

B. Notwithstanding any terms in this Section to the contrary, Licensee and Third-Parties retain all respective ownership and all other rights in and to the Items in their respective Collections.

5. DELIVERY OF OR ACCESS TO THE SOFTWARE.

A. The Software will be delivered to Licensee in CD-ROM format, or by direct network download.

B. Licensee is responsible for arranging for and providing, at its expense, the Internet and telecommunications connections, computer hardware and other equipment necessary to access and make use of the Software.

6. MAINTENANCE AND SUPPORT SERVICES.

All commercial users of the Software shall pay the current maintenance and support fees for the first one (1) year of service. All non-profit users shall be provided with one (1) year of maintenance and support services at no additional charge for initial license of the Software beginning on the date OCLC delivers the Software to the non-profit user. Thereafter, for both commercial and non-profit users, maintenance and support services will automatically renew annually for additional successive one (1) year terms at OCLC's then-current maintenance and support fees, and Licensee will be invoiced accordingly, unless either OCLC or Licensee terminates maintenance and support services effective at the end of the then-current one-year (1-year) term upon notice given not less than thirty (30) days prior thereto or terminates this Agreement as permitted by its terms. Maintenance and support services are further described in the Annual Maintenance Agreement, which is hereby made a part of these Terms. This Section 6 does not apply to Licensees who use a Quick Start License provided in conjunction with a FirstSearch Base Package Subscription. Base Package Subscribers will receive standard maintenance and support services so long as the Subscriber maintains a current FirstSearch Base Package Subscription.

7. FEES.

Within forty-five (45) days after invoice, Licensee shall pay the applicable license fees, maintenance and support fees and Hosting Services fees for the Software. 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. Such fees shall be paid in U.S. dollars (or such other currency as OCLC may agree in writing is acceptable) at the address stated on the invoice. Fees specified under these Terms are exclusive of any taxes. If OCLC, or the entity through which OCLC invoices Licensee, is required to collect a tax payable by Licensee, Licensee shall pay such tax to OCLC or such entity, as appropriate, on demand. Licensees claiming exemption from taxation shall supply a valid exemption certificate upon request. Licensee's failure to fully pay any fees and taxes within forty-five (45) days after the applicable due date will be deemed a breach of this Agreement, justifying OCLC's suspension of services for which payment is overdue. Accounts in default are subject to an interest charge on the outstanding balance equal to the lesser of 1.5% per month or the maximum rate permitted by applicable law. This Section 7 does not apply to a Licensee that obtains and uses a Quick Start License in conjunction with its FirstSearch Base Package Subscription.

8. WARRANTIES AND LIMITATION OF LIABILITY.

A. OCLC warrants to Licensee that it possesses all rights necessary to grant Licensee a license to use the Software in accordance with these Terms and applicable documentation. In the event of any claim that such use violates any third-party copyright or other intellectual property right, OCLC's liabilities and Licensee's remedies shall be as provided in Section 9 below.

B. OCLC warrants that, when operated in accordance with the documentation accompanying the Software and other instructions provided by OCLC, the Software will be capable of performing substantially in accordance with the functional specifications set forth in such documentation.

C. OCLC warrants that maintenance and support services will be performed in a competent, workman-like manner.

D. If the Software fails to comply with the warranty set forth in Section 8.B, OCLC will make reasonable efforts to correct the noncompliance (e.g., by furnishing a correction, modification or update); provided that: (a) OCLC is notified of the noncompliance within thirty (30) days after the date OCLC delivers the noncompliant Software to Licensee; and (b) OCLC is able to reproduce the noncompliance. If, after the expenditure of reasonable efforts, OCLC is unable to correct any such noncompliance, OCLC will refund to Licensee all or an equitable portion (based on the Licensee's actual use of the relevant Software and other pertinent factors) of the license fees paid to OCLC for the noncompliant Software in full satisfaction of claims relating to such noncompliance. OCLC's sole liability and Licensee's sole and exclusive remedies for breach of the warranty in Section 8.B above are as forth in this Section 8.D. Except for the foregoing limited warranty, Adobe and its Suppliers make no warranty, express or implied, as to merchantability, fitness for a particular purpose, or non-infringement. In no event will Adobe or its Suppliers be liable to Licensee for any consequential, incidental or special damages, including any lost profits or savings, even if an Adobe representative has been advised of the possibility of such damages, or for any claim by any third party. Some state or jurisdictions do not allow the exclusion or limitation of incidental, consequential or special damages, or the exclusion of implied warranties, or limitations on how long an implied warranty may last, so the above limitations may not apply to Licensee. To the extent permissible, any implied warranties are limited to thirty (30) days. This warranty gives Licensee specific legal rights. Licensee may have other rights which vary from state to state or jurisdiction to jurisdiction.

E. EXCEPT AS EXPRESSLY PROVIDED IN THESE TERMS, OCLC DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, OR STATUTORY, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR ANY PARTICULAR PURPOSE AND ANY IMPLIED WARRANTY ARISING FROM COURSE OF PERFORMANCE, COURSE OF DEALING, OR USAGE OF TRADE, AS TO: (A) THE SOFTWARE; (B) THE SECURITY, CONTENT OR NONINFRINGEMENT OF ITEMS CONTAINED IN COLLECTIONS; (C) THE RESULTS OF ANY PROJECT UNDERTAKEN USING THE SOFTWARE; (D) PERFORMANCE OF MAINTENANCE AND SUPPORT SERVICES; AND (E) OCLC'S SYSTEMS AND PERFORMANCE OF HOSTING SERVICES.

F. OCLC WILL HAVE NO LIABILITY (WHETHER IN CONTRACT, WARRANTY, TORT, NEGLIGENCE, OR OTHERWISE) FOR ANY DAMAGES ARISING FROM LICENSEE'S USE OF THE SOFTWARE OTHER THAN AS AUTHORIZED BY THESE TERMS, USE OF COLLECTIONS BY END-USERS OR LICENSEE'S INABILITY TO ACCESS AND USE THE SOFTWARE DUE TO CIRCUMSTANCES BEYOND OCLC'S REASONABLE CONTROL. IN NO EVENT SHALL OCLC BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES HEREUNDER, INCLUDING, BUT NOT LIMITED TO, LOSS OF DATA OR INFORMATION OF ANY KIND; LOST PROFITS, SAVINGS OR BUSINESS; OR ANY COST OF PROCURING SUBSTITUTE GOODS, HOWEVER CAUSED, WHETHER CLAIMED UNDER CONTRACT, TORT OR ANY OTHER LEGAL THEORY AND WHETHER OR NOT OCLC WAS AWARE OF THE POSSIBILITY THEREOF. EXCEPT IN CONNECTION WITH THEIR INDEMNITY OBLIGATIONS UNDER THESE TERMS, IN NO EVENT WILL OCLC'S TOTAL AGGREGATE LIABILITY ARISING OUT OF OR IN CONNECTION WITH THE SOFTWARE OR THIS AGREEMENT EXCEED THE LICENSE FEES OR MAINTENANCE AND SUPPORT FEES FOR THE RELEVANT SOFTWARE (WHICHEVER CORRESPONDS TO THE SOURCE OF THE CLAIM) PAID BY LICENSEE UNDER THIS AGREEMENT. THE FEES SET BY OCLC HEREUNDER HAVE BEEN AND WILL CONTINUE TO BE BASED UPON THE ALLOCATION OF RISK REFLECTED IN THIS AGREEMENT.

G. Any disclaimers, releases, indemnities and other provisions for the exclusion or limitation of OCLC's warranty and other potential liabilities will likewise exclude or limit the potential liabilities of its licensor, OCLC.

9. THIRD-PARTY CLAIMS.

A. OCLC, at its own expense, shall defend any action brought against Licensee, to the extent that it is based on a claim that use of the Software in accordance with these Terms and applicable documentation infringes a United States copyright or other United States intellectual property right and shall hold Licensee harmless from any liability for damages, reasonable attorneys' fees and other payments ordered by a court as a result of such a claim or resulting from the settlement thereof, provided Licensee notifies OCLC promptly in writing of the claim and OCLC has sole control of the defense of the claim and all negotiations for its settlement or compromise. Licensee shall have the right to appoint an attorney to participate in such defense on behalf of Licensee, at Licensee's expense, provided that such participation shall not derogate from OCLC'S sole control of the defense and negotiations for settlement or compromise of the claim. In the event that the Software becomes, or OCLC is advised by counsel that it is likely to become, the subject of an infringement claim, OCLC may, at OCLC's option, either secure for Licensee the right to continue using the Software, replace or modify the Software to make it noninfringing, or if none of the foregoing alternatives is reasonably available, discontinue provision of the potentially infringing Software. In the event of such discontinuation, Licensee shall be entitled to a prorata refund of the license fees and maintenance and support fees paid, if any, for the discontinued Software. OCLC shall not have any liability for any claim of infringement to the extent based on the Items in Collections or the unauthorized alteration of Software by Licensee, a Third-Party or their respective agents or contractors. THE FOREGOING STATES THE ENTIRE LIABILITY OF OCLC, AND LICENSEE'S SOLE REMEDY WITH RESPECT TO INFRINGEMENT OF RIGHTS BY THE SOFTWARE.

B. To the extent permitted by the laws of the State in which Licensee is located, Licensee agrees to be responsible for all claims, damages, liabilities, costs and expenses (including reasonable attorneys' fees) and other payments arising or resulting from: (i) Licensee's breach of its warranties made in these Terms; (ii) Licensee's failure to comply with or fulfill its obligations under these Terms; or (iii) Items in Licensee's or a Third-Party's Collections, or their access or use by End-Users.

C. Notwithstanding anything in this Agreement to the contrary, OCLC's obligation to indemnify Licensee shall not extend to claims, damages, liabilities, costs and expenses (including reasonable attorneys' fees) or other payments arising or resulting from: (i) Licensee's breach of the warranties it has made in these Terms; (ii) any failure of Licensee to fulfill its obligations under these Terms; or (iii) Items in Licensee's or Third-Party Collections, or their access or use by End-Users.

10. TERM AND TERMINATION.

A. Licenses will commence upon delivery of the Software to Licensee and will continue indefinitely unless and until terminated by Licensee or OCLC in accordance with this Section 10.

B. Licensee may terminate its license rights under these Terms, without cause, at any time by notice to OCLC, provided that in the event of such termination, any license fees previously unpaid or then owed shall become immediately due and payable and Licensee shall not be entitled to a refund of any license fees.

C. In the event of material breach of these Terms, the nonbreaching party may, in addition to any other remedies that it may have, at any time terminate this Agreement by at least thirty (30) days prior notice to the breaching party specifying any such breach, unless within the period of such notice all breaches specified therein have been remedied.

D. In the event of a termination pursuant to this Section 10, Licensee shall discontinue use of the Software and destroy all originals and copies of the Software in its possession.

E. The following Sections of these Terms shall survive expiration or termination for any reason: 4, 8, 9, 10.D, 10.E and 11.

11. MISCELLANEOUS PROVISIONS.

A. U.S. Government Rights. If acquired by an agency of the United States government, the Software is provided with Restricted Rights, and use is subject to restrictions as set forth in 48 CFR 52.227-14, DFARS 252.227-7014, and other applicable clauses. The contractor/manufacturer is OCLC Online Computer Library Center, Inc., 6565 Kilgour Place, Dublin, OH 43017

B. Neither these Terms nor any rights hereunder, in whole or in part, shall be assignable, sublicenseable or otherwise transferable by Licensee by operation of law or otherwise, without the prior written consent of OCLC. OCLC may transfer or assign this Agreement or any rights or obligations under this Agreement upon thirty (30) days' written notice to Licensee. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

C. These Terms, including all Attachments hereto, are the complete and exclusive statement of the agreement between the parties concerning the subject matter hereof and may not be amended except by the written agreement of the parties. Any terms set forth on any Licensee purchase order or ordering document will not apply and are superseded by these Terms.

D. No waiver of any right or consent to any breach hereunder shall be effective unless in writing and signed by the party claimed to have waived or consented. No waiver of any right or consent to any breach shall constitute a waiver of any other right or consent to any other breach.

E. This Agreement shall be governed by and construed in accordance with the laws of the State of Michigan and the United States of America without regard to principles of conflicts of law. The United Nations Convention on Contracts for the International Sale of Goods or any successor thereto does not apply to this Agreement. In any dispute in which Adobe is a properly named party, this Agreement will be governed by and construed in accordance with the substantive laws in force in the state of California and the courts of Santa Clara County, California shall have non-exclusive jurisdiction over any such dispute.

F. Any notice of breach or termination under this Agreement shall be in writing, signed by the party giving notice, and shall be deemed properly given upon delivery into the mail of the country of the party giving notice, postage prepaid, registered or certified return-receipt-requested, or upon delivery to an established international courier (i.e., Federal Express, DHL, UPS), with a signature acknowledging receipt required, to the parties at the addresses set forth on the accompanying order form.

G. Neither party shall be liable for any failure or delay in performance under this Agreement (other than a delay in the payment of money due and payable hereunder) to the extent said failures or delays are proximately caused (a) by causes beyond that party's reasonable control and occurring without its fault or negligence, or (b) by the failure of the other party to substantially meet its performance obligations under this Agreement, provided that, as a condition to the claim of nonliability, the party experiencing the difficulty shall give the other party prompt written notice, specifying the cause of the delay, following the occurrence of the cause relied upon.

H. The provisions of this Agreement are to be deemed severable, and the invalidity or unenforceability of any provision shall not affect or impair the validity of the remaining provisions. In substitution for any provision held unlawful, there shall be substituted a provision of similar import reflecting the original intent of the parties hereto to the extent permissible under law. This Agreement shall not prejudice the statutory rights of any party dealing as a consumer.

I. All use of the Software shall be in full compliance with U.S. export regulations. Licensee shall serve as the importer and exporter of record for Software delivered to it by OCLC or accessed by it from outside the U.S., by electronic means or otherwise, and shall pay and/or comply with all applicable export and import laws, customs, regulations, tariffs, duties, and fees, and procurement, data and technology transfer laws. Licensee shall be responsible to OCLC for all costs and damages arising from any failure to meet its obligations hereunder. OCLC's obligations hereunder are contingent upon necessary export licenses being obtained from federal agencies of the U.S. If the Software is identified as export controlled items, Licensee represents and warrants that it is not a citizen, or otherwise located within, an embargoed nation, and that Licensee is not otherwise prohibited by Export Laws from receiving the Software. All rights to use the Software are granted on the condition that such rights are forfeited if Licensee fails to comply with the Terms of this Agreement.

Michigan Department of Natural Resources

OCLC Online Computer Library Center, Inc.

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____

ANNUAL MAINTENANCE AGREEMENT
TO
CONTENTdm® END USER LICENSE AGREEMENT

Licensees possessing CONTENTdm Licenses who have paid applicable maintenance and support fees, or are entitled to maintenance and support as included under a FirstSearch Base Package Subscription, shall be entitled to receive the maintenance and support services described in Section 1 below, subject to the provisions of this Agreement and the maintenance and support-related provisions of the OCLC CONTENTdm® End User License Agreement.

1. Maintenance and Support Services

- A. **E-Mail & Telephone Support.** OCLC will provide basic e-mail and telephone support between the hours 7am to 9pm Eastern Time, exclusive of weekends and OCLC-recognized holidays, to permit the System Administrator to report Errors and seek assistance in the installation and use of the Software. OCLC may (but is under no obligation to) provide additional e-mail and telephone support above the basic e-mail and telephone support described in the foregoing sentence.
- B. **Error Corrections.** OCLC will use reasonable efforts to make Error Corrections in response to Errors reported to OCLC by Licensee's System Administrator in accordance with this Agreement.
- C. **Updates.** OCLC may from time to time issue Updates. OCLC will provide Licensee with one copy of each such Update free of charge for each copy of the Software covered under this Agreement. OCLC will provide reasonable assistance via basic e-mail and telephone support to help Licensee install and use each Update.
- D. **Extensions.** OCLC may from time to time offer Extensions. To the extent OCLC offers such Extensions, Licensee may obtain one (1) copy of each Extension for each copy of the Software covered under this Agreement at the then-current list price.
- E. **Additional Services.** OCLC will provide Licensee with such additional services in connection with the Software as may be agreed upon in writing by the parties, subject to payment of OCLC's then-current fees for the relevant services and reimbursement of OCLC's reasonable and necessary expenses incurred during performance thereof. Additional services may include design, development, training, support, and consulting.

2. Licensee's Responsibilities

- A. Licensee shall read and follow the instructions set forth in the documentation for the Software.
- B. Except for maintenance and support services to which it is entitled hereunder, Licensee will provide all hardware, software, services, and other items necessary to use the Software.
- C. Licensee shall designate an Authorized User to oversee and coordinate its use of the Software who is knowledgeable about the Software and the hardware on which it is installed and running. The designated Authorized User (the "Primary Contact") shall act as Licensee's contact person for all communications with OCLC. All information, Error Corrections, Updates, Upgrades, documentation and materials provided to Licensee by OCLC during the performance of maintenance and support services under this Agreement shall be sent to the Primary Contact. Licensee is responsible for supporting other Authorized Users (besides the Primary Contact) and its End Users.
- D. Licensee will promptly report to OCLC all Software problems or Errors, by telephone or e-mail (as permitted by OCLC) and, at Licensee's option, by written report.
- E. Licensee shall provide OCLC with access to and use of all system facilities OCLC reasonably determines are necessary to provide timely maintenance and support services pursuant to this Agreement and will provide such information and data as OCLC reasonably requests in order to provide such services. OCLC agrees to use commercially reasonable efforts, and Licensee agrees to take necessary precautionary steps, to ensure the integrity of Licensee's systems.
- F. Licensee shall take remedial corrective action, if necessary, under the direction of OCLC personnel. Accordingly, Licensee shall promptly install Error Corrections, Updates and Upgrades delivered to Licensee.
- G. Licensee shall promptly destroy, all prior versions of the Software after new versions have been installed or downloaded.

3. Limitations

Unless otherwise agreed upon in writing by OCLC, maintenance and support services will not include the following:

- Installation, relocation or removal of the Software at or from Licensee's site;
- On-site services;
- E-mail or telephone support outside of normal business hours;
- Electrical, mechanical, or other work involving Licensee's hardware, accessories, or other devices associated with the use of the Software;
- Any maintenance or support involving Licensee's hardware or telecommunications network, or third-party software; or
- Maintenance and support services to parties other than Licensee.

In addition, OCLC shall not be obligated to provide maintenance and support services in the event of:

- Misuse of the Software;

- Alterations or modifications to the Software which are not made or authorized by OCLC;
- Use of the Software with items other than the hardware and operating system software with which the Software is designed to be used as indicated in Software documentation;
- Use of the Software other than as permitted by Licensee's license agreement with OCLC;
- Errors or other problems whose primary cause is a malfunction or failure of any hardware or software not furnished by OCLC or not currently covered by this Agreement;
- Errors, defects, deficiencies or malfunctions caused by programs, products or data of Licensee used in conjunction with the Software; or
- Licensee's failure to follow the instructions and procedures for installing, using or maintaining the Software set forth in Software documentation.

OCLC is not responsible for correcting Errors if Licensee fails to implement any Error Corrections, Updates or Upgrades within ninety (90) days after the same are delivered to Licensee.

4. On-Site Maintenance and Support

OCLC shall dispatch personnel to Licensee's facilities for on-site support only in situations in which Licensee requests on-site service and OCLC agrees to provide on-site support. On-site support shall be subject to availability of OCLC personnel. Licensee shall pay for all reasonable expenses incurred by OCLC personnel in connection with on-site support, including travel expenses, travel time to and from OCLC, and board and lodging. On-site support shall be billed at OCLC's then-current hourly rates.

5. Fees

As compensation for maintenance and support services provided under this Agreement, Licensees shall pay the annual maintenance and support fee in advance as invoiced, unless Licensee is entitled to included support and maintenance under a FirstSearch Base Package Subscription. The Support Fee shall begin one (1) year following the date OCLC delivers the Software to Licensee for all non-profit users. All commercial users of the Software shall pay the current maintenance and support fees, including for the first one (1) year of service. The Support Fee may be increased by OCLC no more often than once per annum, and each such increase shall not exceed the greater of: (a) ten percent (10%) of the previous year's Support Fee, or (b) the percentage increase in the U.S. Consumer Price Index for the prior twelve-month (12-month) period. Increases in Support Fees shall be effective for the following annual period. Other adjustments to Support Fees necessitated by additional Software licenses ordered shall be given effect on the first day of the month following the date the parties agree to such addition, typically on the primary license anniversary date. OCLC may also invoice Licensees monthly for hourly charges and expense reimbursements due for the preceding month.

6. Reinstatement of Maintenance and Support Services

In the event that OCLC elects, at its option, to honor Licensee's request for reinstatement of maintenance and support services allowed to lapse by Licensee or terminated by OCLC as permitted by this Agreement, OCLC shall be entitled to a reinstatement fee to be determined by OCLC, covering the entire period of lapsed or terminated services, in order for the level of maintenance and support services to be reinstated for Licensee. OCLC shall have no obligation to reinstate lapsed maintenance and support services.

7. Renewal and Termination

- A. Maintenance and support services for Licensees shall automatically renew annually unless renewal is declined by Licensee in accordance with Section 7.B below or by OCLC upon at least thirty (30) days prior written notice to Licensee.
- B. No less than sixty (60) days prior to the end of the applicable annual maintenance and support period, OCLC will notify each Licensee by electronic mail message or regular mail that its maintenance and support services will automatically renew at the end of the current annual maintenance and support period. If such a Licensee notifies OCLC, in writing, at least thirty (30) days prior to the renewal date that it does not wish to renew its maintenance and support services, the Licensee's maintenance and support services will terminate at the end of the current annual maintenance and support period. If a Licensee does not provide OCLC with such notice, the Licensee's maintenance and support services will be renewed for a new annual license period and the Licensee will be invoiced for then-current applicable fees.
- C. Should Licensee discontinue its support services within thirty (30) days after its renewal date, OCLC will issue a refund for the cancelled services. OCLC will not issue a refund or credit for support services that are cancelled more than thirty (30) days after Licensee's renewal date.

8. If either party fails to fulfill one or more of its obligations under this Agreement, the nonbreaching party may, upon its election and in addition to any other remedies that it may have, at any time, terminate maintenance and support services hereunder with at least thirty (30) days notice to the breaching party. The notice must specify the nature of the breach, unless within the period of such notice all breaches specified therein shall have been remedied. In the event of termination of maintenance and support services by Licensee for breach of this Agreement by OCLC, Licensee shall be entitled to a pro rata refund of any prepaid Support Fees.

Definitions

- A. "**Error**" means any failure of the Software to conform in any material respect to its documentation, which failure is verifiable and reproducible by OCLC.
- B. "**Error Correction**" means either a modification or addition that, when made or added to the Software, brings the Software into material conformity with its documentation, or a procedure or routine that, when observed in the regular operation of the Software, avoids the practical adverse effect of such nonconformity.
- C. "**Update**" means any modification, enhancement or improvement to the Software that does not constitute solely an Error Correction and is made generally available by OCLC, without charge, under this Agreement.
- D. "**Extensions**" means any modification, enhancement or improvement to the Software that does not constitute solely an Error Correction and is made generally available by OCLC, for an additional charge, under this Agreement.