



STATE OF MICHIGAN
Department of Natural Resources
Forest Resources

Terms and Conditions for the
Prequalified Program for Timber Sale Preparation

Buyer Name: Patrick Avendt
Telephone Number: (517) 373-9902
E-Mail Address: avendtp@michigan.gov

Table of Contents

DEFINITIONS..... *1*

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

1.010 Project Identification.....7

 1.011 Project Request7

 1.012 Background.....7

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

 1.021 In Scope.....7

 1.022 Work and Deliverable.....7

1.030 Roles and Responsibilities.....20

 1.031 Vendor Staff, Roles, and Responsibilities20

 1.032 State Staff, Roles and Responsibilities22

1.040 Project Plan23

 1.041 Project Plan Management.....23

 1.042 Reports/Project Control.....23

1.050 Acceptance23

 1.051 Criteria24

 1.052 Final Acceptance24

1.060 Proposal Pricing.....24

 1.061 Proposal Pricing.....24

 1.062 Price Term24

 1.063 Tax Excluded from Price24

 1.064 Holdback24

1.070 Additional Requirements.....24

 1.071 Additional Terms and Conditions specific to this Statement of Work24

Article 2, Terms and Conditions..... 26

2.000 Contract Structure and Term.....26

 2.001 Contract Term26

 2.002 Options to Renew26

 2.003 Legal Effect.....26

 2.004 Attachments & Exhibits26

 2.005 Ordering.....26

 2.006 Order of Precedence.....26

 2.007 Headings.....26

 2.008 Form, Function & Utility.....27

 2.009 Reformation and Severability27

 2.010 Consents and Approvals27

 2.011 No Waiver of Default27

 2.012 Survival27

2.020 Contract Administration27

 2.021 Issuing Office27

 2.022 Contract Compliance Inspector.....27

 2.023 Project Manager.....28

 2.024 Change Requests28

 2.025 Notices29

 2.026 Binding Commitments30

 2.027 Relationship of the Parties30

 2.028 Covenant of Good Faith30

 2.029 Assignments30

2.030 General Provisions.....30

 2.031 Media Releases30

 2.032 Contract Distribution30

 2.033 Permits.....31

 2.034 Website Incorporation31

 2.035 Future Bidding Preclusion31

 2.036 Freedom of Information.....31

 2.037 Disaster Recovery.....31

2.040 Financial Provisions31

 2.041 Fixed Prices for Services/Deliverables.....31

 2.042 Adjustments for Reductions in Scope of Services/Deliverables31

 2.043 Services/Deliverables Covered31

 2.044 Invoicing and Payment – In General31

 2.045 Pro-ration31

 2.046 Antitrust Assignment32

 2.047 Final Payment32

 2.048 Electronic Payment Requirement.....32

2.050	Taxes	32
	2.051 Employment Taxes	32
	2.052 Sales and Use Taxes	32
2.060	Contract Management	32
	2.061 Vendor Personnel Qualifications	32
	2.062 Vendor Key Personnel	33
	2.063 Re-assignment of Personnel at the State's Request	33
	2.064 Vendor Personnel Location	33
	2.065 Vendor Identification	33
	2.066 Cooperation with Third Parties	34
	2.067 Vendor Return of State Equipment/Resources	34
	2.068 Contract Management Responsibilities	34
2.070	Subcontracting by vendor	34
	2.071 Vendor Full Responsibility	34
	2.072 State Consent to Delegation	34
	2.073 Subvendor Bound to Contract	34
	2.074 Flow Down	35
	2.075 Competitive Selection	35
2.080	State Responsibilities	35
	2.081 Equipment	35
	2.082 Facilities	35
2.090	Security	35
	2.091 Background Checks	35
	2.092 Security Breach Notification	35
	2.093 PCI Data Security Standard	35
2.100	Confidentiality	36
	2.101 Confidentiality	36
	2.102 Protection and Destruction of Confidential Information	36
	2.103 Exclusions	36
	2.104 No Implied Rights	37
	2.105 Respective Obligations	37
2.110	Records and Inspections	37
	2.111 Inspection of Work Performed	37
	2.112 Examination of Records	37
	2.113 Retention of Records	37
	2.114 Audit Resolution	37
	2.115 Errors	37
2.120	Warranties	38
	2.121 Warranties and Representations	38
	2.122 Warranty of Merchantability	38
	2.123 Warranty of Fitness for a Particular Purpose	38
	2.124 Warranty of Title	38
	2.125 Equipment Warranty	38
	2.126 Equipment to be New	38
	2.127 Prohibited Products	38
	2.128 Consequences For Breach	38
2.130	Insurance	38
	2.131 Liability Insurance	38
	2.132 Subvendor Insurance Coverage	39
	2.133 Certificates of Insurance and Other Requirements	40
2.140	Indemnification	40
	2.141 General Indemnification	40
	2.142 Code Indemnification	40
	2.143 Employee Indemnification	40
	2.144 Patent/Copyright Infringement Indemnification	40
	2.145 Continuation of Indemnification Obligations	41
	2.146 Indemnification Procedures	41
2.150	Termination/Cancellation	42
	2.151 Notice and Right to Cure	42
	2.152 Termination for Cause	42
	2.153 Termination for Convenience	42
	2.154 Termination for Non-Appropriation	43
	2.155 Termination for Criminal Conviction	43
	2.156 Termination for Approvals Rescinded	43
	2.157 Rights and Obligations upon Termination	43
	2.158 Reservation of Rights	44
2.160	Termination by Vendor	44
	2.161 Termination by Vendor	44
2.170	Transition Responsibilities	44

	2.171..... Vendor Transition Responsibilities.....	44
	2.172..... Vendor Personnel Transition.....	44
	2.173..... Vendor Information Transition.....	44
	2.174..... Vendor Software Transition.....	44
	2.175..... Transition Payments.....	44
	2.176..... State Transition Responsibilities.....	44
2.180	Stop Work	44
	2.181..... Stop Work Orders.....	44
	2.182..... Cancellation or Expiration of Stop Work Order.....	45
	2.183..... Allowance of Vendor Costs.....	45
2.190	Dispute Resolution	45
	2.191..... In General.....	45
	2.192..... Informal Dispute Resolution.....	45
	2.193..... Injunctive Relief.....	46
	2.194..... Continued Performance.....	46
2.200	Federal and State Contract Requirements	46
	2.201..... Nondiscrimination.....	46
	2.202..... Unfair Labor Practices.....	46
	2.203..... Workplace Safety and Discriminatory Harassment.....	46
	2.204..... E-Verify.....	46
	2.205..... Prevailing Wage.....	46
2.210	Governing Law	46
	2.211..... Governing Law.....	46
	2.212..... Compliance with Laws.....	46
	2.213..... Jurisdiction.....	46
2.220	Limitation of Liability	47
	2.221..... Limitation of Liability.....	47
2.230	Disclosure Responsibilities	47
	2.231..... Disclosure of Litigation.....	47
	2.232..... Call Center Disclosure.....	48
	2.233..... Bankruptcy.....	48
2.240	Performance	48
	2.241..... Time of Performance.....	Error! Bookmark not defined.
	2.242..... Service Level Agreements (SLAs).....	48
	2.243..... Liquidated Damages.....	48
	2.244..... Excusable Failure.....	49
2.250	Approval of Deliverables	50
	2.251..... Delivery Responsibilities.....	50
	2.252..... Delivery of Deliverables.....	50
	2.253..... Testing.....	50
	2.254..... Approval of Deliverables, In General.....	50
	2.255..... Process For Approval of Written Deliverables.....	50
	2.256..... Process for Approval of Services.....	50
	2.257..... Process for Approval of Physical Deliverables.....	50
	2.258..... Final Acceptance.....	50
2.260	Ownership	50
	2.261..... Ownership of Work Product by State.....	50
	2.262..... Vesting of Rights.....	50
	2.263..... Rights in Data.....	50
	2.264..... Ownership of Materials.....	50
2.270	State Standards	51
	2.271..... Existing Technology Standards.....	51
	2.272..... Acceptable Use Policy.....	51
	2.273..... Systems Changes.....	51
2.280	Extended Purchasing	51
	2.281..... MIDEAL.....	51
	2.282..... State Employee Purchases.....	51
2.290	Environmental Provision	51
	2.291..... Environmental Provision.....	51
2.300	Other Provisions	52
	2.311..... Forced Labor, Convict Labor, Forced or Indentured Child Labor, or Indentured Servitude Made Materials.....	52



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 Vendor's provision of any work under the Contract.

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

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

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

CCI means Contract Compliance Inspector.

Days means calendar days unless otherwise specified.

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

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

DTMB means the Michigan Department of Technology Management and Budget.

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

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

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

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

New Work means any Services/Deliverables outside the scope of the Contract and not specifically provided under any Statement of Work, such that once added will result in the need to provide the Vendor 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.

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

Unauthorized Removal means the Vendor'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 Vendor as a result of an in furtherance of performing the services required by the Contract.



DEFINITION OF TERMS

Terms	Definitions
Contract	A BINDING AGREEMENT ENTERED INTO BY THE STATE OF MICHIGAN CONSISTING OF THE TERMS AND CONDITIONS ATTACHED AND THE VENDOR’S STATEMENT OF QUALIFICATIONS (SOQ). A CONTRACT DOES NOT GUARANTEE WORK. DNR WILL ISSUE A PURCHASE ORDER AGAINST THE CONTRACT FOR ALL BID ITEMS AWARDED. THE VENDOR IS ALSO BOUND TO THE SPECIFIC TERMS AND CONDITIONS IDENTIFIED ON THAT PURCHASE ORDER.
VENDOR	THE SUCCESSFUL VENDOR WHO IS AWARDED A CONTRACT.
SUCCESSFUL VENDOR	THE VENDOR(S) AWARDED A CONTRACT AS A RESULT OF A SOLICITATION.
STATE	THE STATE OF MICHIGAN. FOR PURPOSES OF INDEMNIFICATION AS SET FORTH IN SECTION I-J, STATE MEANS THE STATE OF MICHIGAN, ITS DEPARTMENTS, DIVISIONS, AGENCIES, OFFICES, COMMISSIONS, OFFICERS, EMPLOYEES AND AGENTS.
Blanket Purchase Order	ALTERNATE TERM FOR “CONTRACT” USED IN THE STATE’S COMPUTER SYSTEM (MICHIGAN AUTOMATED INFORMATION NETWORK [MAIN])
EXPIRATION	EXCEPT WHERE SPECIFICALLY PROVIDED FOR IN THE CONTRACT, THE ENDING AND TERMINATION OF THE CONTRACTUAL DUTIES AND OBLIGATIONS OF THE PARTIES TO THE CONTRACT PURSUANT TO A MUTUALLY AGREED UPON DATE.
CANCELLATION	ENDING ALL RIGHTS AND OBLIGATIONS OF THE STATE AND VENDOR, EXCEPT FOR ANY RIGHTS AND OBLIGATIONS THAT ARE DUE AND OWING.
WORK PRODUCT	WORK PRODUCT MEANS ANY DATA COMPILATIONS, REPORTS, AND ANY OTHER MEDIA, MATERIALS, OR OTHER OBJECTS OR WORKS OF AUTHORSHIP CREATED OR



Terms	Definitions
	PRODUCED BY THE VENDOR AS A RESULT OF AND IN FURTHERANCE OF PERFORMING THE SERVICES REQUIRED BY THIS CONTRACT.
CONTRACT COMPLIANCE INSPECTOR	DNR – PROCUREMENT SERVICES BUYER AUTHORIZED TO CHANGE, MODIFY, CLARIFY, AMEND OR OTHERWISE ALTER THE PRICING, TERMS, CONDITIONS AND SPECIFICATIONS OF THE CONTRACT.
CONTRACT ADMINISTRATOR	EMPLOYEE WITHIN THE DNR – FOREST RESOURCES RESPONSIBLE FOR DAY-TO-DAY FISCAL ADMINISTRATION OF THE CONTRACT.
PROGRAM CONTACT	EMPLOYEE WITHIN THE DNR – FOREST RESOURCES RESPONSIBLE FOR DAY-TO-DAY TECHNICAL OVERSIGHT OF THE CONTRACT.
TIMBER MANAGEMENT SPECIALIST (TMS)	THERE ARE FOUR (4) TIMBER MANAGEMENT SPECIALISTS WITHIN THE DNR – FOREST RESOURCES, EACH RESPONSIBLE FOR A GEOGRAPHIC AREA OF THE STATE (APPENDIX 2 & 13). THE TMS’S ARE RESPONSIBLE FOR TRAINING AND QUALITY CONTROL WITHIN THEIR GEOGRAPHIC AREA, INCLUDING CERTIFICATION AND DE-CERTIFICATION.
UNIT MANAGER	THERE ARE FIFTEEN (15) UNIT MANAGERS WITHIN DNR – FOREST RESOURCES, EACH RESPONSIBLE FOR A MANAGEMENT UNIT (APPENDIX 1 & 13). THE UNIT MANAGER IS RESPONSIBLE FOR ALL BID ITEMS FROM THEIR MANAGEMENT UNIT. THE UNIT MANAGER MAY APPOINT INSPECTORS AND OTHER LOCAL CONTACTS TO WORK WITH THE VENDOR ON DAY TO DAY TECHNICAL ISSUES AND TO INSURE CONTRACT QUALITY. THE UNIT MANAGER IS THE FINAL FIELD APPROVAL ON INVOICES.
INSPECTORS/LOCAL CONTACTS	DNR – FOREST RESOURCES EMPLOYEES APPOINTED BY THE UNIT MANAGER TO WORK WITH THE VENDOR ON ALL DAY-TO-DAY TECHNICAL ASPECTS OF THE CONTRACT. THE INSPECTORS WILL BE INVOLVED WITH THE PRE-WORK MEETING (I-E, 4) AND WILL BE RESPONSIBLE FOR EVALUATING THE VENDORS WORK PERFORMANCE USING THE TIMBER SALE PREPARATION CHECKLIST (APPENDIX 9) AND THE COMPLIANCE AND INSPECTION PROCEDURES (I-



Terms	Definitions
	B).
PRE-QUALIFIED	A PRE-QUALIFIED VENDOR AGREES TO ALL THE CONDITIONS AND REQUIREMENTS OF THE CONTRACT. TO BE PRE-QUALIFIED, A VENDOR MUST SUBMIT A STATEMENT OF QUALIFICATIONS (SOQ). THE VENDOR'S SOQ WILL BE EVALUATED AND SUCCESSFUL APPLICANTS WILL BE PRE-QUALIFIED TO BID ON TIMBER SALE PREPARATION WORK FOR THE DNR – FOREST RESOURCES. TO BE PRE-QUALIFIED, A VENDOR OR HIS/HER REPRESENTATIVE MUST BE CERTIFIED OR HAVE COMPLETED ITEMS 1 TO 4 IN THE TIMBER MARKER AND CRUISER TASK BOOK (APPENDIX 10).
VENDOR'S REPRESENTATIVE	THE VENDOR MAY APPOINT A REPRESENTATIVE TO BE RESPONSIBLE FOR THE TECHNICAL ASPECTS OF THE VENDOR'S WORK.
CERTIFICATION	THE VENDOR OR THE VENDOR'S REPRESENTATIVE MUST BE CERTIFIED BEFORE FIELD WORK CAN BEGIN. A VENDOR MAY BECOME PRE-QUALIFIED WITH ONLY ITEMS 1 TO 4 OF THE TIMBER MARKER AND CRUISER TASK BOOK COMPLETE, BUT FIELD WORK CANNOT BEGIN UNTIL THE VENDOR OR HIS/HER REPRESENTATIVE IS FULLY CERTIFIED. ALL FIELD WORKERS FOR THE VENDOR MUST ALSO BE CERTIFIED. A DETAILED EXPLANATION OF CERTIFICATION IS INCLUDED IN THE TIMBER MARKER AND CRUISER TASK BOOK (APPENDIX 10).
COMPLETION	COMPLETION OF A BID ITEM OCCURS WHEN ALL INFORMATION, E.G. CRUISE DATA, GPS FILES, SUMMARY SHEETS, SKETCH MAPS, ETC., HAS BEEN SUBMITTED AND A FINAL INSPECTION HAS BEEN COMPLETED. IN OTHER WORDS, THE UNIT MANAGER OR HIS/HER REPRESENTATIVE HAS RECEIVED, INSPECTED AND APPROVED ALL WORK. IF AN ITEM DOES NOT PASS INSPECTION, THERE WILL BE NO EXTENSION OF TIME. IT IS THE VENDOR'S RESPONSIBILITY TO ASSURE ADEQUATE TIME FOR INSPECTION BY THE STATE AFTER FIELD WORK IS COMPLETE. LIQUIDATED DAMAGES FOR LATE COMPLETION ARE DEFINED AS ½% OF THE ITEM PRICE PER DAY.





Article 1 – Statement of Work (SOW)

1.010 Project Identification

1.011 Project Request

The Contract is for timber sale preparation work on State forest land. Exact quantities to be purchased are unknown, however, the Vendor will be required to furnish all such materials and services as BID AND AWARDED during the Contract period. The DNR-FOREST RESOURCES will periodically release bids to pre-qualified vendors. Upon award of work, DNR-FOREST RESOURCES will issue Purchase Orders against the Contract.

1.012 Background – Deleted N/A

1.020 Scope of Work and Deliverables

1.021 In Scope

General Tasks

The vendor agrees to perform work within the following treatment categories according to DNR specifications, and to supply all necessary equipment and supplies except as noted herein to be supplied by DNR.

- a. Cruise timber prescribed for harvest
- b. Mark and tally trees prescribed for harvest or leave
- c. Establish and mark interior payment unit boundaries
- d. Establish and mark cutting unit boundaries
- e. Establish and mark property boundaries
- f. Determine acreage contained within specified established boundaries
- g. Conduct ongoing quality assurance/quality control
- h. Maintain records of work and report as specified below

1.022 Work and Deliverable

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

Specific Tasks:

The Vendor agrees to adhere to the following specifications, and as may be further detailed in prescriptions for the specific treatment areas involved:

- a. In treatment areas where the prescription calls for timber cruising:
 - 1) Sample the treatment area to determine volumes, species, and products in accordance with the DNR Product Standards (Appendix 8), and as taught in the standard DNR certification course and/or specified in individual stand prescription sheets. Also include the following elements, as appropriate:



- a)
 - a) Marking or Otherwise Designating Plot Center Locations—Plot centers used in the cruise will be marked with clearly visible ribbons (in addition, GPS coordinates are encouraged). Unless otherwise agreed to by the Unit Manager or her/his representative and the vendor, a plot stake or a stick firmly inserted in the ground (not snow), will mark centers with a ribbon attached to it at a height of not less than two feet above the ground. One free end of the ribbon shall be at least 18 inches in length. Write the plot number on the ribbon with black permanent marker.
 - b) Plot Location—Locations of all plots taken from which volume determination was made shall be shown on a map of the treatment area. Show GPS coordinates if available.
 - c) Stand Stratification (if appropriate)—Strata should be clearly shown on map of the treatment area. Plot locations should clearly show their relationship to the strata boundaries.
- 2) Submit original tally sheets and enter cruise data on DNR forms (appendix 14) provided suitable for entry into the Timber Sale PC Program.
- 3) Note that cruising as used herein may include individual tree marking of up to 5 trees per acre.
- 4) Cruising may also include a tally of residual basal area by species, if so called for in Stand Prescription sheets.
- b. In treatment areas where the prescription calls for tree marking:
 - 1) Select crop trees, leave trees, harvest trees, den trees, and snags according to the stand prescription (Appendices 3 & 4) provided for each parcel. In addition, mark according to training received in the DNR certification course and outlined in *The Complete Marker: A Guide to Managing Northern Hardwoods on Michigan State Forests* (Appendix 5 & 6).
 - 2) Vendor must notify the Unit Manager or his/her representative one week prior to beginning to mark a particular treatment area. The unit manager will arrange for DNR staff to be present at the beginning of the marking of a treatment area and during a portion of the work performed on that treatment area to provide quality assurance support. If the Unit Manager, or other appointed DNR staff member, fail to appear at the appointed time and place, marking by the vendor and his staff may proceed.
 - 3) Marking must be done in dry weather and when tree surfaces are not wet. Paint must adhere well to the trees. Marks shall be placed at 6 feet above the base of the tree (two sides), and at the base of the stump (one side), between the roots and must intersect with the ground. Paint shall not be applied on moss.



- 4) Marking trees on two opposite sites will be required. This specification will be followed unless specifically overridden by prescription language requiring another type of mark for a particular stand. Upper paint marks on sawlog trees shall consist of a horizontal or diagonal slash and an additional dot on one side for each 8-foot log tallied, and a double slash on the other side. Pulpwood trees shall be marked with a horizontal or diagonal slash.
 - 5) Unless otherwise stated in the Stand Prescription furnished for that stand, marking tally shall be 100% tally of sawlog sized trees including sawlog sized pulpwood trees and a sample ratio for pulpwood trees, OR a point sample cruise of all pulpwood trees.
 - 6) Determine products, diameter, species, and merchantable height of trees designated for cutting according to the Product Standards (Appendix 8).
 - 7) Submit original tally sheets and enter marking tally on DNR forms (appendix 14) provided that are suitable for entry into the Timber Sale PC Program.
- c. In treatment area where the prescription calls for interior payment unit boundary marking:
- 1) Larger timber sales may sometimes be divided into smaller sub-units called “payment units.” These allow for smaller progressive payments to be made by the timber sale purchaser. Boundaries between payment units may be somewhat flexible in location, as long as the desired number of roughly equal units is created.
 - 2) When payment unit boundary designation requires painting a line, locate and paint in the boundaries according to the direction provided by DNR for each site. Hand compasses are adequate and GPS information is usually not required.
 - 3) Unless otherwise instructed, paint the line in such a way that it can be seen from either side and while walking along the line from either direction. Place marks approximately six feet above the base of the tree.
- d. In treatment areas where the prescription calls for establishing and marking cutting boundaries.
- 1) Cutting boundaries are used to differentiate between cut and no-cut areas, or differing adjacent treatments. They may be based on cover type differences, environmental factors, specific objectives, or other factors.
 - 2) Locate and paint the cutting boundary according to guidance and instruction provided by the DNR for each site.
 - 3) Unless otherwise instructed, paint the line in such a way that it can be seen from the inside of the sale area and when walking along the line from either direction. Place marks approximately six feet above the base of the tree.



- e. In treatment areas where the prescription calls for establishing and marking property boundaries:
- 1) Using best available information on existing property lines and survey corners, locate and paint in boundaries of legal descriptions provided by DNR.
 - 2) Document in writing the data and information used as a basis, and describe any unusual adaptations.
 - 3) If adequate information is lacking or questionable, check with DNR for assistance before proceeding. Don't locate a line if you are unsure.
 - 4) Work will not be requested which requires equipment beyond a hand held compass and chains, or other distance measuring devices.
 - 5) Unless otherwise instructed, paint the line in such a way that it can be seen from the State side of the sale area and when walking along the line from either direction. Place marks approximately six feet above the base of the tree.
- f. In treatment areas where the prescription calls for area determination, unless changed by the Stand Prescription:
- 1) Using GPS as the basis, run boundaries to determine acreage to the nearest one-tenth (0.1) acre.
 - 2) Position Mode must be set so that GPS receiver collects data from a minimum of four satellites, and positions deliver 3-dimensional data. 2D positions will not be acceptable.
 - 3) The following information must be collected: the number of satellites, satellites identification, 2-D vs. 3-D, DOP, SNR. All this information is recordable on any modern GPS unit.
 - 4) The GPS unit should be set with an HDOP less than 5. Note that PDOP was used to proof that the data was 3-dimensional and this is covered under 2). PDOP is a measure of 3 dimensional error (anywhere within a sphere), HDOP is a measure of horizontal error (anywhere on a plane). Since we map and calculate area in 2-D, HDOP is the preferred error measurement. Anything over 4 is not going to give us the accuracy needed to be confident in acreage to the tenth of an acre.
 - 5) Provide a .shp file with no extra periods in the name.
- g. In all areas, conduct ongoing quality assurance/quality control. Quality assurance/quality control (QA/QC) is the process used by the field forester to assure that the work under his or her direction is done to standards. QA/QC will be conducted by the vendor under the specific method described in the vendor's Statement of Qualifications. The vendor's QA/QC notes will be available to the DNR inspector upon



request. It is the DNR inspector's job to insure that the State of Michigan receives the correct product. It is not the DNR inspector's job to check the contract work for the benefit of the vendor or his or her employees. It is the vendor's job to assure that his or her work or that of his or her employees is of the quality required by the contract.

Compliance and Inspection Procedures

In General:

- Prescriptions are not "black and white" and variations from the prescription may occur.
- When differences occur it should be obvious to the inspector why a change was made to the prescription. For example, a change may be necessary due to the need to remove trees of poor health or to retain adequate seed sources or maintain a species mix.
- If the marking decision is not obvious to the inspector, the vendor or their representative may provide an acceptable explanation to the inspector.
- Rounding of all calculations used in the inspection procedure will be done to the nearest whole percent, e.g. 0.5 would be rounded to 1.0.
- The inspector's check forms will be made available to the vendor upon the request of the vendor.
- The inspector's check locations should be GPS'ed, located on a map, flagged or otherwise made available to the vendor.

Specifically, the following types of inspections, based on individual stand prescription sheets and DNR standards will determine contract compliance.

1. Inspection for accuracy of volume estimation in marked stands:

- a) For sawlog trees, where the number of sawlog sticks are shown by the number of paint dots on the bole, the DNR will check the accuracy of the sawlog cruise by use of check-points. The number of check-points to be established in any area will be equal to at least 10% of the check area, e.g. a 40 acre check area will require at least four check-points. These points will be randomly distributed across the check area. These points may also be used to inspect for adherence to the marking prescription as described in section 2.

On each check-point, all sawlog trees that are "in" will be measured and tallied. The DNR sawlog tally of each tree will be compared to the vendors paint dot tally. Trees will be compared on a one-to-one basis (DNR to vendor) and points will be assigned to each tree based on how they compare to the DNR tally of the same tree. One point will be subtracted for each stick difference between the vendor and the DNR. For example, a perfect score would occur when the vendor dot tally equals the DNR dot tally (in this case, no points would be missed). A DNR tally of 5 and a vendor paint dot tally of 3 would produce a score of 2.

Each check-point will have a score for total points missed and total sticks. The check-points will then be summed for total points missed and total sticks. The final score will be determined by the percent of total points missed to total sticks. If the vendor score falls between 0-20%, then the



vendor dot tally will be considered accurate. If the vendor's score is greater than 20%, the dot tally will be considered inaccurate and the vendor will have to re-mark the area, adding dots and eliminating dots as required.

After re-marking, the DNR will again establish check-points (different than the original) equal to at least 10% of the check area. If the vendor score falls between 0%-20%, then the vendor dot tally will be considered accurate. If the vendor's score is greater than 20%, the dot tally will be considered inaccurate and the vendor will have to re-mark the area, adding dots and eliminating dots as required.

After the second re-marking, the DNR will again establish check-points equal to at least 10% of the check area. If the vendor score falls between 0%-20%, then the vendor dot tally will be considered accurate and there will be no damages assessed. If the vendor's score is greater than 20%, the dot tally will be considered inaccurate. At the end of the third re-tally, if the vendor's score is greater than 20%, liquidated damages will be assessed. Liquidated damages are defined as 40% of the total payment for the area checked and, at the option of the DNR, the individual may be decertified.

EXAMPLE

Marked Sawlog Check Cruise¹

Point	Vendor's Logs	Check Logs	Difference
1	2	2	0
1	3	3	0
1	1	1	0
2	0	1	1
2	2	1	1
2	3	4	1
3	1	2	1
3	2	2	0
3	3	3	0
TOTAL	--	19	4

¹ From form R4039-3 Marking Prescription & Sawlog Check, appendix 15.

SCORE: $4/19 * 100 = 21\%$ **Note: $\leq 20\%$ to pass.**

- b) For pulpwood trees, where the trees were sampled by point cruising with cumulative tally, the DNR will check the accuracy of the cruise by inspecting at least 10% of the cruise points. The number of check-points to be established in any one check area will be equal to at least 10% of the check area acreage, e.g. a 40 acre check area will require at least four check points.

On the check-point, all pulpwood trees that are "in" will be measured and tallied by species. The vendor's tally card will be compared to the inspectors tally and points will be assigned to the vendor-tally based on a comparison with the DNR tally. One point will be assigned for each stick



count difference and for each tree count difference by species between the vendor and the DNR. If a species is miss-identified, but the tree was cruised, points off for that tree will only be recorded once (see example). A perfect score for a check-point would occur when the vendor's sticks and trees by species equal the DNR tally (in this case, no points would be assessed). A DNR tally of 10 sticks and 3 trees for sugar maple and 3 sticks and 1 tree for red maple compared to a vendor tally of 8 sticks and 2 trees for sugar maple and 2 sticks and 1 tree for red maple would produce a score of 4.

The final score will be determined by taking the sum of all the vendor's points and comparing them to the DNR total (all sticks plus all trees by all species). If the vendor score falls between 0%-20%, then the vendor tally will be considered accurate. If the vendor's score is greater than 20%, the tally will be considered inaccurate. If the tally is considered inaccurate, then the vendor will have to re-cruise all other points in the check area. The DNR check points will not require re-cruising. The DNR cruise will be used for volume calculations on these points.

After re-cruising, the DNR will again establish check-points (different than the original) equal to at least 10% of the check area. If the vendor score falls between 0%-20%, then the vendor tally will be considered accurate. If the vendor's score is greater than 20%, the tally will be considered inaccurate. If the tally is considered inaccurate, then the vendor will have to re-cruise all other points in the check area. The DNR check points will not require re-cruising. The DNR cruise will be used for volume calculations on these points.

After the second re-cruising, the DNR will again establish new check-points equal to at least 10% of the check area. If the vendor score falls between 0%-20%, then the vendor's tally will be considered accurate and there will be no damages assessed. If the vendor's score is greater than 20%, the tally will be considered inaccurate. At the end of the third re-cruise, if the vendor's score is greater than 20%, liquidated damages will be assessed. Liquidated damages are defined as 40% of the total payment for the area checked and, at the option of the DNR, the individual may be decertified.

EXAMPLE

Cumulative Tally Check Cruise for Marked Pulp (form R4039-5, appendix 15)

Point	Species	Vendor		Check Cruiser		Difference	
		Total Trees	Total Sticks	Total Trees	Total Sticks	Total Trees	Total Sticks
6	01	1	2	1	2	0	0
6	03	2	4	2	4	0	0
6	04	1	1	1	1	0	0
6	05	1	3	1	3	0	0
13	01	1	4	1	3	0	1
13	03	2	7	1	4	1	3
13	04	1	2	1	2	0	0
16	03	1	3	1	2	0	1



16	05	2	7	1	3	1	4
16	06	0	0	1	4	0 ¹	0 ¹
TOTAL	--	--	--	11	28	2	9
				39		11	

¹ On point 16, the vendor called a white ash a basswood. Note that she had 2 basswood trees with 7 sticks, when she should have cruised 1 basswood with 3 sticks and 1 white ash with 4 sticks. Since the points off for calling a white ash a basswood were taken on the basswood line of the tally sheet, there are no additional points taken on the white ash line of the cruise sheet. This is done to prevent 'double jeopardy' for missing a species.

SCORE: Total Trees & Sticks Score: $11/39 * 100 = 28\%$ **Note: $\leq 20\%$ to pass.**

- c) For pulpwood trees, where the trees were sampled on a ratio basis, e.g. 1:50, and the number of sticks in any particular tally tree are shown by the number of slash marks on the bole, the DNR will check for accuracy by sampling at least 25% of the pulpwood tally trees, e.g. 10 tally trees will be checked in an area where 40 were sampled.

Trees will be compared on a one-to-one basis (DNR to vendor) and points will be assigned to the vendor-tallied tree based on how they compare to the DNR tally of the same tree. One point will be assigned for each stick difference between the vendor and the DNR. For example, a perfect score would be when the vendor dot tally equals the DNR dot tally (in this case, no points would be assessed). A DNR tally of 5 and a vendor tally of 3 would produce a score of 2.

The final score will be determined by taking the sum of all points and comparing these to the DNR total tally. If the vendor score falls between 0%-20%, then the vendor tally will be considered accurate. If the vendor's score is greater than 20%, the tally will be considered inaccurate and the vendor will have to re-mark the sample trees, adding slashes and eliminating slashes as required.

After the sample trees have been re-marked, the DNR will again check at least 25% of the pulpwood tally trees. If the vendor score falls between 0%-20%, then the vendor tally will be considered accurate. If the vendor score is greater than 20%, the tally will be considered inaccurate and the vendor will have to re-mark the sample trees, adding slashes and eliminating slashes as required.

After the second re-marking, the DNR will again check at least 25% of the pulpwood tally trees. If the vendor score falls between 0%-20%, then the vendor tally will be considered accurate and there will be no damages assessed. If the vendor's score is greater than 20%, the tally will be considered inaccurate. At the end of the third re-tally, if the vendor's score is greater than 20%, liquidated damages will be assessed. Liquidated damages are defined as 40% of the total payment for the area checked and, at the option of the DNR, the individual may be decertified.

EXAMPLE

Marked and Sampled Pulp Check Cruise (form R4039-4, appendix 15)



Tree #	Vendor's Sticks	DNR Sticks	Points Off
1	3	3	0
2	2	1	1
3	4	3	1
4	6	6	0
5	3	3	0
TOTAL	N/A	16	2

SCORE: $2/16 * 100 = 12\%$

Note: $\leq 20\%$ to pass.

2. Inspection for adherence to the marking prescription:
 - a) Evaluation factors. For marked stands, the DNR will randomly locate points within the marked area to check for adherence to the marking prescription. These points may be the same points as used for item I-B 1 above. The following factors will be considered in determining whether or not a stand has been satisfactorily marked:
 - 1) Residual basal area. The cumulative cross sectional area in square feet of trees measured at DBH remaining after a harvest.
 - 2) Crop trees. A crop tree is a tree of any species that contains a straight, single stem capable of producing at least sixteen feet of clear lumber. It also is a tree that has a large, full-bodied crown that occupies a dominant or co-dominant position in the overstory and contains no apparent major defects. If no tree can be found to meet the criteria, then the best tree available in any one place will be designated as the crop tree (called "best tree in place").
 - 3) Must-cut trees. A must-cut tree is defined as a tree that is adjoining a crop tree with a crown that is found to interfere and impact the crown of the crop tree.
 - b) Evaluation criteria. The check points described in I-B, 2.a) will be placed randomly by the DNR throughout the marked area to check for residual basal area, crop trees and must-cut trees. A 10 BAF prism will be used on these "point sample" check plots. The number of check-plots to be established in any one check area will be equal to at least 10% of the check area acreage, e.g. 40 acres will require at least four check plots.
 - 1) Acceptable residual basal area will be defined as within plus or minus 10 square foot of the basal area goal for the check area. In addition, at least 70% of the plots sampled must come within this 10 square foot target.

There are exceptions to the "plus or minus 10 square foot" rule. An inspector can accept plots that fall outside this limit if the inspector feels there is an acceptable silvicultural justification. For example, if the prescription calls for marking to 80 sq. ft. and the initial BA of the point is 60 sq. ft. and one tree with Eutypella canker was marked so that the residual BA is 50 sq. ft., this point could be considered acceptable.



- 2) The inspector, on each individual check plot, should be able to identify at least one crop tree. At least 70% of all plots sampled should contain at least one crop tree.
- 3) In hardwood stands where marking for crop tree release, the inspector, on each individual check plot, should be able to identify at least two must-cut trees adjoining a crop tree in situations where crop trees are greater than 9" DBH. In situations where crop trees are less than 9" DBH, the inspector should be able to identify a seven foot wide "release zone" around the crown of a crop tree. All the trees that make up this release zone will be considered must-cut trees and should be marked. Overall, at least 70% of plots sampled should contain at least two must-cut trees or one seven foot release zone.

If any of these three check items (residual BA, crop trees, must-cut trees) fall outside of the tolerance levels as outlined, the area will be considered improperly marked. The vendor will then have to remark the area by adding or eliminating paint marks as required. The DNR will then establish another set of check-points (different than the original) equal to at least 10% of the check area. The area will then be rechecked for residual basal area, crop trees and must cut trees. If the remarking falls within the established tolerances, the area will be considered properly marked. If not, the marking will be considered improper and the process will be repeated. If at the end of the third re-marking the area is still found to be improperly marked, liquidated damages will be assessed equal to 40% of the total payment of the area checked and, at the option of the DNR, the individual may be decertified.

Some marking jobs, especially in hardwoods, can be quite variable. Because of this variation, the prescription associated with an Bid Item may define inspection procedures that vary from the standards. If this occurs, then the prescription standards take precedent.



EXAMPLE
Marking Prescription Quality Check¹

Point	Initial BA	Residual BA Target = 80	Within Target? ±10%	Crop Tree	Must Cut	
					≥9" DBH	<9" DBH
1	100	80	Y	Y	Y	
2	120	100		Y		
3	80	70	Y	Y	Y	
4	90	90	Y			
5	120	80	Y	Y		Y
6	130	100		Y	Y	
7	60	50	Y ²	Y	Y	
8	90	80	Y	Y		Y
9	80	70	Y	Y	Y	
10	70	50				
	94 ³	77 ³	7	8	5	2
					7	

¹ From form R4039-3 Marking Prescription & Sawlog Check, appendix 15

²BA is low, but crop tree released with a must cut tree. O.K. point. (The inspector should make footnotes to explain exceptions.)

³Note that these averages include all points, even the point with low initial BA (60) and residual BA (50). The inspector does not use these numbers to evaluate the quality. These numbers are only calculated for general information. The evaluation of acceptable residual BA is done in the column "Within Target". In this case it's based on 7 out of 10 points being a 'Yes'. It is not based on the average residual of 77 sq. ft.

Residual BA: $7/10 * 100 = 70\%$ **Note: 70% to pass.**
Crop Trees: $8/10 * 100 = 80\%$ **Note: 70% to pass.**
Must Cut Trees: $7/10 * 100 = 70\%$ **Note: 70% to pass.**

3. Inspection for accuracy in cumulative VBAR tally cruised stands.

Where the trees were sampled by point cruising with cumulative VBAR tally, the DNR will check the accuracy of the cruise by inspecting at least 10% of the cruise points. The number of check-points to be established in any one check area will be equal to at least 10% of the check area acreage, e.g. a 40 acre check area will require at least four check points.

On the check-point, all trees that are "in" will be measured and tallied by species – total trees and sticks and total sawlog trees and sawlog sticks will be recorded. The vendor's tally card will be compared to the inspectors tally. Points will be assigned to the vendor-tally based on a comparison with the DNR tally. One point will be assigned for each stick and each tree difference, by species, between the vendor and the DNR. If a species is miss-identified, but the tree was cruised, points off for that tree will only be recorded once (see example). A perfect score for a check-point would occur when the vendor's sticks and trees, by species, equal the DNR tally (in this case, no points would be assessed). A DNR tally of 10 sticks and 3 trees for sugar maple total trees and 3 sticks and 1 tree for sugar maple sawlog trees compared to a vendor tally of 8 sticks and 2 trees for sugar maple total trees and 2 sticks and 1 tree for sugar maple sawlog trees would produce a score of 4.



The final score will be determined by taking the sum of all the vendor's points and comparing them to the DNR total (all sticks plus all trees). If the vendor score falls between 0%-20%, then the vendor tally will be considered accurate. If the vendor's score is greater than 20%, the tally will be considered inaccurate. If the tally is considered inaccurate, then the vendor will have to re-cruise all other points in the check area. The DNR check points will not require re-cruising. The DNR cruise will be used for volume calculations on these points.

After re-cruising, the DNR will again establish check-points (different than the original) equal to at least 10% of the check area. If the vendor score falls between 0%-20%, then the vendor tally will be considered accurate. If the vendor's score is greater than 20%, the tally will be considered inaccurate. If the tally is considered inaccurate, then the vendor will have to re-cruise all other points in the check area. The DNR check points will not require re-cruising. The DNR cruise will be used for volume calculations on these points.

After the second re-cruising, the DNR will again establish new check-points equal to at least 10% of the check area. If the vendor's score falls between 0%-20%, then the vendor's tally will be considered accurate and there will be no damages assessed. If the vendor's score is greater than 20%, the tally will be considered inaccurate. At the end of the third re-cruise, if the vendor's score is greater than 20%, liquidated damages will be assessed. Liquidated damages are defined as 40% of the total payment for the area checked and, at the option of the DNR, the individual may be decertified.

EXAMPLE

Cumulative Tally Check Cruise (form R4039-6, appendix 15)

Pt	Sp	Vendor's				DNR's				Points Off			
		Total		Logs		Total		Logs		Total		Logs	
		Tr	St	Tr	St	Tr	St	Tr	St	Tr	St	Tr	St
1	01	1	1	1	1	1	1	1	1	0	0	0	0
8	03	5	20	2	4	4	16	2	4	1	4	0	0
8	05	1	6	0	0	0	0	0	0	1	6	0	0
8	06	0	0	0	0	1	6	0	0	0 ¹	0 ¹	0	0
	--	--	--	--	--	12	39	5	9	3	13	0	2
						65				18			

¹On point 8, the vendor called a white ash a basswood. Note that she had 1 basswood tree with 6 sticks and no white ash trees. She should have cruised 0 basswood trees and 1 white ash with 6 sticks. Since the points off for calling a white ash a basswood were taken on the basswood line of the tally sheet, there are no additional points taken on the white ash line of the cruise sheet. This is done to prevent 'double jeopardy' for missing a species.

SCORE: $18/65 * 100 = 28\%$ **Note:** $\leq 20\%$ to pass.

4. Inspection for accuracy in VBAR tally cruised stands.

Where the trees were sampled by point cruising with VBAR tally, the DNR will check the accuracy of the cruise by inspecting at least 10% of the cruise points. The number of check-points to be established in any one check area will be at



least 10% of the check area acreage, e.g. a 40 acre check area will require at least four check points.

On the check-point, all trees that are “in” will be measured and tallied – number of pulpwood sticks and the number of sawlog sticks and the number of trees for each combination of number of pulpwood sticks and number of sawlog sticks by species. When all check points are measured, the volume will be determined for the total DNR check points and for the vendor’s measurement on those same check-points.

The final score will be determined by comparing the vendor’s check-point volume to the DNR check-point volume. If the vendor volume is within 10% of the DNR volume, the vendor tally will be considered accurate. If the vendor’s volume is more than 10% off from the DNR volume, then the tally will be considered inaccurate and the vendor will have to re-cruise all points in the check area.

After re-cruising, the DNR will again establish check-points (different than the original) equal to at least 10% of the check area. If the vendor’s volume is within 10% of the DNR volume, then the vendor tally will be considered accurate. If the vendor’s volume is more than 10% off from the DNR volume, then the tally will be considered inaccurate and the vendor will have to re-cruise all points in the check area.

After the second re-cruising, the DNR will again establish new check-points equal to at least 10% of the check area. If the vendor’s volume is within 10% of the DNR volume, then the vendor’s tally will be considered accurate and there will be no damages assessed. If the vendor’s volume is more than 10% off from the DNR volume, the tally will be considered inaccurate. At the end of the third re-cruise, if the vendor’s volume is more than 10% off from the DNR volume, liquidated damages will be assessed. Liquidated damages are defined as 40% of the total payment for the area checked and, at the option of the DNR, the individual may be decertified.

5. Inspection for adequacy of establishing interior payment unit boundary marking.
 - a) The DNR will check the placement of unit boundaries. Unless specific landmarks have been identified on the timber sale map, the unit boundary must be within plus or minus two chains of the location as shown on the map. Paint marks for the unit boundaries shall be placed on two sides of the tree with each mark facing out into the sale. If either requirement is not met, the vendor may be required to relocate the unit boundary or repaint the unit lines to the satisfaction of the administrator. Repainting lines may include painting over the unsatisfactory line with a neutral color of paint, as well as painting a new line
 - b) Paint lines shall meet visibility standards (Reference Section I-A, 2.c.3.).
6. Inspection for adequacy of establishing cutting boundaries.
 - a) The DNR will check the placement of the cutting boundary. The cutting boundary shall adhere to the stand boundaries, for those stands designated to be cut and as shown on the furnished compartment map. If only parts of some stands are to be included in the sale, or some other alteration from the stand boundary as shown on the compartment map is



required, these differences will be clearly detailed on the prescription and on the compartment map.

- b) If changes to the cutting boundary established in the field occur, it should be obvious to the inspector why a change was made. If not obvious to the inspector, the vendor should be able to provide a reasonable explanation as to why the established sale boundary differs. If an adequate explanation is not given, the vendor may be required to reestablish the sale boundary to the satisfaction of the inspector.
- c) Paint lines shall meet visibility standards (Reference Section I-A, 2.d.3.).

7. Inspection for accuracy of establishing property boundaries.

- a) The DNR will check the location of property lines established between state and private property. The location of any property line must be run to an accuracy of no more than two feet deviation from true over 1,320 feet of line run. This degree of accuracy must be maintained for **each** 1,320 feet of line established. Deviations will not be allowed to accumulate over distances longer than 1,320 feet. The vendor will be required to relocate and repaint the property line if it is found to exceed this standard.
- b) Paint lines shall meet visibility standards (Reference Section I-A, 2.e.5.).

8. Inspection for accuracy of area determination.

The DNR may check the area determination of a sale. The sale area (e.g. unit, polygon, etc.) as submitted by the vendor must fall within plus or minus 1% of a GPS check performed by a State Inspector. The vendor may be required to re-traverse the sale, relocate the sale boundary and/or repaint the sale boundary if the error is found to exceed this + or - 1% tolerance figure. In addition, liquidated damages equal to 10% of the bid price will be charged.

1.030 Roles and Responsibilities

1.031 Vendor Staff, Roles, and Responsibilities

- 1. Vendor must provide the staffing assigned for each item bid to the DNR. DNR reserves the right to approve and disapprove staff assigned to projects. Substitution of staff after award due to change of employment status and/or unforeseen circumstances may only be made with prior approval of the State.
- 2. Vendor shall possess or obtain at their own expense suitable tools and equipment to carry out the assigned tasks, including ATV's and snowmobiles as required to access isolated sites. Field workers must possess a compass and/or a GPS, a diameter tape, loggers tape, angle gauges/prisms, clinometer/relaskop or similar tools. The DNR will supply only those items as specified in Section I-F, below.



3. Certification: The vendor or his/her representative must be certified to prepare State timber sales. The Vendor also agrees to maintain certification for first line supervisors and on-site field workers, and to complete all contracted work according to DNR standards.
 - a) To work on State of Michigan timber sales without supervision from a DNR employee, you must complete a task book (Appendix 10).
 - b) Items 1 through 4 of the task book must be completed before fieldwork can be started, i.e. classroom, written test, and field tests. You must complete these items to be Pre-qualified to bid.
 - c) Items 5 and 6 of the task book will be completed in the field on your first State job after completing Items 1 through 4. Some items may wait for a field site that includes those features..
 - d) Items 7 to 11 of the task book are specific to the type of fieldwork that you will be performing. You need to complete these items in the field on the first State job you perform requiring this work. For example, Item 8 is “Demonstrate Ability to Cruise Timber.” You must complete this item on your first State cruising job to continue cruising timber on State land. You will then be certified as a Cruiser and this will be documented in the Certification section of the task book.
 - e) To maintain timber marker and cruiser certification, you must complete Items 1 and 2 of the task book on a yearly basis.
4. Pre-work meeting: Before a bid Item can be started, the Vendor will arrange with the DNR a pre-work meeting between the vendor, the vendor’s field staff, and the local Unit. If a contract employee is not present at the meeting, approval from the Unit Manager is required prior to the employee working on the bid Item.

Staffing:

The vendor shall staff the project with personnel who possess talent and expertise in the field of Forestry.

a. Vendor or his/her representative shall possess the following qualifications:

- 1) a bachelor’s, or higher, degree in forestry from an accredited forestry school or a 2-year technical degree in forestry or equivalent education and work experience.
- 2) knowledge of and experience in silviculture of upland and lowland forest types common to Michigan, with special emphasis on northern hardwoods.
- 3) certification as a DNR – FOREST RESOURCES Timber Marker and Cruiser.

b. All on-site field workers shall possess the following qualifications:

- 1) possess an associate’s degree in forest technology, OR
- 2) have completed two years of a B.S. in forestry, OR



- 3) have a minimum of two years of technical forestry experience including significant time working in timber marking in northern hardwood, northern red oak and red pine as well as other forest types common to Michigan.

AND, in addition to meeting one of the above requirements:

- 4) be certified as a DNR – FOREST RESOURCES Timber Marker and Cruiser.

c. Above certifications will be maintained by:

- 1) satisfactory performance, And
- 2) annual attendance at the Marking and Cruising Course and passing the written test.

1.032 STATE STAFF, ROLES, AND RESPONSIBILITIES

The State will provide appropriate background and resource data and supplies as listed below. These materials will be on loan to the vendor when needed, but must remain under the control of the DNR office from which they are loaned according to that office-established practice for making such loans. Items such as aerial photographs and original maps should be handled with care, not taken into the field or placed in other potentially damaging situations, unless absolutely necessary. They should be returned as soon as possible, as they are a valuable resource used by many individuals, within and outside of the DNR. Vendors will be required to reimburse the DNR for the replacement value of items damaged beyond normal wear and tear.

1. Aerial photographs of the treatment area covered under the contract showing:
 - a. Treatment area boundaries
 - b. Access roads
 - c. Private or other non-DNR owned lands within or adjacent to treatment areas
 - d. Lakes, streams, rivers, and wetlands
2. Cover type maps of the area under the contract showing:
 - a. Treatment area boundaries
 - b. GPS coordinates for location of critical lines (if available)
 - c. Access roads
 - d. Private or other non-DNR owned lands within or adjacent to treatment areas (including permission to use/cross non-State owned areas, if necessary)
 - e. Lakes, streams, rivers, and wetlands
 - f. Prescribed treatments
3. Paint. Paint specifications and MSDS sheets will be available to potential vendors. Paint delivery and/or pick-up will be coordinated with the local office. Vendor's work schedule must coincide with the DNR work schedule for paint supply. The DNR will not be available on weekends or evenings. Paint dilution will not be allowed.
4. The inspector's check forms will be made available to the vendor upon the request of the vendor.
5. The inspector's check locations should be GPS'ed, located on a map, flagged or otherwise made available to the vendor.



6. The Unit Manager or his/her representative will complete a Checklist for Vendor Prepared Sales (R4102, Appendix 9) to determine completeness. The final inspection will occur within 10 working days of receipt of invoice.

The following individual will be the Project Manager:

Douglas Heym
Department of Natural Resources
Forest Resources Division
Mason Bldg., 5th Floor
P.O. Box 30452
Lansing, MI 48909-7952
Email: Heymd@michigan.gov
Phone: 517.335.3342

The following individual will be the Contract Administrator:

Deb Stolecki
Department of Natural Resources
Forest Resources Division
Mason Bldg., 5th Floor
PO Box 30452
Lansing, MI 48909-7952
Email: stoleckid@michigan.gov
Phone: 517.373.7103

The following individual will be the Contract Compliance Inspector:

Patrick Avendt
Financial Services
Procurement Services
Department of Natural Resources
Mason Bldg., 6th Floor
PO Box 30028
Lansing, MI 48909
Email: avendtp@michigan.gov
Phone: 517.373.9902

1.040 Project Plan

1.041 Project Plan Management – Deleted – N/A

1.042 Reports/Project Control
Project Control

The Vendor will carry out this project under the direction and control of the Department of Natural Resources, Forest Resources Division (DNR FRD). Although there will be continuous liaison with the Vendor team, Contract Administrator and/or Project Manager, there may be periodic meetings with the Vendor's project manager for the purpose of reviewing progress and providing necessary guidance to the Vendor in solving problems.

Reports



1. Monthly reports. The Vendor will submit brief written monthly summaries of progress which outline the work accomplished during the reporting period; work to be accomplished during the subsequent reporting period; problems, real or anticipated which should be brought to the attention of the Contract Administrator and/or Project Manager and notification of any significant deviation from previously agreed-upon work plans.

Monthly reports will be submitted electronically to the Contract Administrator and to the local Management Unit in either a table or spreadsheet format. It shall contain the status of each project as listed by unit, sale name, compartment, and stand. It must show by item, the actual and anticipated due date, and indicate all work done at the time of the report, e.g. 100 of 200 acres marked, all line work complete.

2. Timber sale report. The final timber sale report will contain the following:
 - a) All cruising and marking data summarized on approved forms suitable for data entry into the Timber Sale PC program.
 - b) Map showing the location of cruise plots.
 - c) Record of paint used, by individual sale or treatment area.
 - d) Line maps and GPS data.
 - e) A hard copy map (plus a digital map if available) indicating the area treated and showing treatment boundaries (with GPS coordinates if possible), strata boundaries (with GPS coordinates if possible), and locations of plot centers (with GPS coordinates if possible) for all sample plots taken.

1.050 Acceptance

1.051 Criteria – Deleted – N/A

1.052 Final Acceptance – Deleted – N/A

1.060 Proposal Pricing

1.061 Proposal Pricing

Prices quoted for work are firm for bid item. The invoice should show payment amount and should reflect actual work done by the payment dates, less any penalty cost charges accrued by those dates. As a general policy, statements shall be forwarded to the designated representative by the 15th day of the following month.

1.062 Price Term – Deleted – N/A

1.063 Tax Excluded from Price – Deleted – N/A

1.064 Holdback – Deleted – N/A

1.070 Additional Requirements

1.071 Additional Terms and Conditions specific to this Statement of Work

1. Decertification

A field worker, i.e. vendor, vendor's representative, supervisor, or on-site field worker, may be decertified if their performance is consistently unsatisfactory. The following procedure will apply:



In the event that the Unit Manager or his/her representative is dissatisfied with the quality of an individual's field work, the Unit Manager or his/her representative will bring it to the vendor's attention. The Unit Manager or his/her representative will spend a reasonable amount of time in the field with the individual to explain the reasons for dissatisfaction and seek appropriate improvements. The Unit Manager or his/her representative will use the Timber Sale Preparation Checklist in Appendices 9 to document contract performance and corrective action taken.

If the Unit Manager or his/her representative remains dissatisfied with the individual's work and feels further time in the field with the individual would be unproductive, he/she will call for a performance review of the individual's work for the purpose of determining whether the individual should be decertified.

A Timber Management Specialist (appendix 2), and the vendor or his/her representative will conduct this performance review.

If at the completion of the review, the Timber Management Specialist finds the individual should not be certified, the individual may be decertified. The Contract Administrator and/or Project Manager will make the final decision on decertification after hearing and carefully weighing the details. Decertification will result in the immediate termination of all work by the decertified individual. To again become certified, the individual must complete a task book. The decertification of a vendor or his/her representative may result in the termination of an awarded bid item.

1. Confidentiality and Restrictions for Bidding on Timber Sale

To be fair to all potential vendors on timber sales generated from this contract, vendor agrees not to share information generated under this contract with outside parties. Failure to comply with this requirement shall result in the current contract being cancelled, the vendor with whom information was shared being disqualified from bidding on the work related to this contract, AND the vendor being excluded from bidding on further contracts.

All data gathered, generated, or otherwise obtained from this contractual service will be the exclusive property of the DNR from the time that such gathering, generation, or other method of obtaining data begins. Likewise all records and copies of records, in either electronic or any other format, made in the process of gathering, handling, analyzing, computing or reporting of data collected during the performance of these contractual services shall be the exclusive property of the DNR and shall be provided to the DNR at the conclusion of these contractual services, or prior to that time if requested in writing by the Project Manager. These data shall not be shared with any party not covered in these contractual services unless specifically requested by the DNR.

The vendor will not be permitted to bid on timber sales resulting from his/her own cruising, marking, or other contract tasks.



Article 2, Terms and Conditions

2.000 Contract Structure and Term

2.001 Contract Term

The prequalification is for a period of three (3) years beginning March 4, 2013 through March 4, 2016. All outstanding Purchase Orders must also expire upon the termination (cancellation for any of the reasons listed in Section 2.150) of these terms and conditions, unless otherwise extended under same. Absent an early termination for any reason, Purchase Orders issued but not expired, by the end of the prequalification'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 prequalification may be renewed in writing by mutual agreement of the parties not less than 30 days before its expiration. The prequalification may be renewed for up to three (3) additional one (1) year periods.

2.003 Legal Effect

Vendor must show acceptance of the Contract by signing two (2) copies of the Contract and returning them to the Contract Administrator. The Vendor 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 Vendor 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 Vendor or payment under the Contract, until Vendor 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 Vendor 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 State of Michigan, Department of Natural Resources (The DNR). The DNR is the sole point of contact in the State with regard to all procurement and contractual matters relating to the Contract. The DNR **is the only State office authorized to change, modify, amend, alter or clarify the prices, specifications, terms and conditions of the Contract.** The Administrator within the Dept. of Natural Resources is:

Patrick Avendt, Buyer
Procurement Services
Department of Natural Resources
Mason Bldg., 6th Floor
PO Box 30028
Lansing, MI 48909
avendtp@michigan.gov
Telephone: (517) 373-9902

2.022 Contract Compliance Inspector

Upon receipt at Procurement Services of the properly executed Contract, it is anticipated that the person named below, or any other person so designated, be authorized to monitor the Contract on a day-to-day basis, during its term. However, monitoring of this Contract implies **no authority to change, modify, clarify, amend, or otherwise alter the prices, terms, conditions and specifications of such Contract as that authority is retained by Procurement Services.** The Contract Compliance Inspector for this Contract is:

Deborah Stolecki
Department of Natural Resources



Forest, Mineral and Fire Management Division
 Mason Bldg., 5th Floor
 PO Box 30452
 Lansing, MI 48909-7952
 Email: stoleckid@michigan.gov
 Phone: 517.373-7103

2.023 Project Manager

The following individual will oversee and coordinate the day-to-day activities for the Contract during its term:

Douglas Heym
 Department of Natural Resources
 Forest, Mineral and Fire Management Division
 Mason Bldg., 5th Floor
 P.O. Box 30452
 Lansing, MI 48909-7952
 Email: Heymd@michigan.gov
 Phone: 517.335.3342

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 Vendor 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 Vendor to provide a detailed outline of all work to be done, including tasks necessary to accomplish the services/deliverables, timeframes, listing of key personnel assigned, estimated hours for each individual per task, and a complete and detailed cost justification.

If the State requests or directs the Vendor to perform any Services/Deliverables that are outside the scope of the Vendor’s responsibilities under the Contract (“New Work”), the Vendor must notify the State promptly, and before commencing performance of the requested activities, that it believes the requested activities are New Work. If the Vendor fails to notify the State before commencing performance of the requested activities, any such activities performed before notice is given by the Vendor shall be conclusively considered to be in-scope Services/Deliverables, not New Work.

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

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

- (a) Change Requests
 - (i) State Requests



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

(ii) Vendor Recommendations

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

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

(iv) By giving Vendor written notice within a reasonable time, the State shall be entitled to accept a Vendor proposal for Change, to reject it or to reach another agreement with Vendor. Should the parties agree on carrying out a Change, a written Contract Change Notice shall be prepared and issued under this Contract, describing the Change and its effects on the Services and any affected components of this Contract (a "Contract Change Notice").

(v) No proposed Change shall be performed until the proposed Change has been specified in a duly executed Contract Change Notice issued by the Department of Natural Resources, Procurement Services.

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

NOTE:

If a proposed contract change is approved by the Project Manager and Contract Administrator, the Contract Administrator will submit a request for change to the Contract Compliance Inspector. If the Contract Compliance Inspector agrees with the proposed modification, and all required approvals are obtained (including State Administrative Board), DNR Procurement Services will issue an addendum to the Contract, via a Contract Change Notice. **Vendors who provide products or services prior to the issuance of a Contract Change Notice by the DNR, risk non-payment for the out-of-scope/pricing products and/or services.**

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

2.027 Relationship of the Parties

The relationship between the State and Vendor is that of client and independent vendor. No agent, employee, or servant of Vendor or any of its Subvendors must be deemed to be an employee, agent or servant of the State for any reason. Vendor is solely and entirely responsible for its acts and the acts of its agents, employees, servants and Subvendors 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 Vendor and Vendor 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) Vendor 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 Vendor 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 Vendor intends to assign the Contract or any of the Vendor's rights or duties under the Contract, the Vendor must notify the State in writing at least 90 days before the assignment. The Vendor 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

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



2.033 Permits

Vendor 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 Vendor's website, even if the Vendor'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

Vendor 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 vendor if the State determines that the vendor has used its position (whether as an incumbent Vendor, or as a Vendor 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 Vendor 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

Vendor 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, Vendor 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 Vendor when requested as work progresses, but not more frequently than monthly, in amounts approved by the Contract Administrator, after negotiation. Vendor 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 Vendor'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 Vendor (and its Subvendors, 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

Vendor may submit an invoice to the Unit Manager upon completion of each item. The invoice should include: Item description, dollar amount to be paid, date, and P.O. number. Completion means that all information, e.g., cruise data, GPS files, summary sheets, sketch maps, etc., is submitted and a final inspection has been completed. The Unit Manager or his/her representative will complete a Checklist for Vendor Prepared Timber Sale (R4102, Appendix 9) to determine completeness within 10 working days of receipt of invoice. This final inspection is required for work to be considered complete, the invoice approved, and payment made. The Vendor is responsible for insuring that the final State inspection is accomplished before the bid item due date. There will be no additional time granted for the bid item if the State inspection succeeding the invoice indicates that additional work is



needed. For example, a State inspection occurs within 10 working days of invoice receipt and this inspection indicates that the work is not complete or that the work does not meet contract standards. If the Vendor cannot finish the work and schedule a State inspection before the bid item due date, then liquidated damages may be charged. This final inspection will be used as the basis for a Vendor Performance Report which will be entered into the State of Michigan's accounting database as a permanent record. All payments shall be made in accordance with the Prompt Payment Act, P.A. 279 of 1984.

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 Vendor 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 Vendor, toward fulfillment of the Contract.

2.047 Final Payment

The making of final payment by the State to Vendor 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. Vendor's acceptance of final payment by the State under the Contract must constitute a waiver of all claims by Vendor 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 Vendor must register with the State electronically at <http://www.cpexpress.state.mi.us>. As stated in 1984 PA 431 et. seq., 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

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

2.052 Sales and Use Taxes

Vendors 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. Vendors 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 Vendor Personnel Qualifications

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



independent vendors engaged by Vendor solely in a staff augmentation role must be treated by the State as if they were employees of Vendor for the Contract only; however, the State understands that the relationship between Vendor and Subvendor is an independent vendor relationship.

2.062 Vendor Key Personnel

- (a) The Vendor 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, Vendor 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) Vendor must not remove any Key Personnel from their assigned roles on the Contract without the prior written consent of the State. The Vendor'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 Vendor, 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 Vendor personnel policies or Collective Bargaining Agreement(s) as long as the State receives prior written notice before shadowing occurs and Vendor provides 30 days of shadowing unless parties agree to a different time period. The Vendor 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 Vendor 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 Vendor 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 Vendor 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 Vendor 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 Vendor Personnel Location

All staff assigned by Vendor to work on the Contract must perform their duties either primarily at Vendor'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 Vendor personnel may be assigned office space to be shared with State personnel.

2.065 Vendor Identification

Vendor employees must be clearly identifiable while on State property by wearing a State-issued badge, as required. Vendor 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

Vendor must cause its personnel and the personnel of any Subvendors to cooperate with the State and its agents and other vendors including the State's Quality Assurance personnel. As reasonably requested by the State in writing, the Vendor must provide to the State's agents and other vendors reasonable access to Vendor'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 Vendor's time schedule for the Contract is very specific and must not unnecessarily or unreasonably interfere with, delay, or otherwise impede Vendor's performance under the Contract with the requests for access.

2.067 Vendor Return of State Equipment/Resources

The Vendor 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 Vendor must assume responsibility for all contractual activities, whether or not that Vendor performs them. Further, the State considers the Vendor 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 Subvendors, including firm name and address, contact person and a complete description of work to be subcontracted. The State reserves the right to approve Subvendors and to require the Vendor to replace Subvendors found to be unacceptable. The Vendor is totally responsible for adherence by the Subvendor to all provisions of the Contract. Any change in Subvendors must be approved by the State, in writing, prior to such change.

2.070 Subcontracting by Vendor

2.071 Vendor Full Responsibility

Vendor has full responsibility for the successful performance and completion of all of the Services and Deliverables. The State will consider Vendor 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

Vendor must not delegate any duties under the Contract to a Subvendor unless the DNR-Procurement has given written consent to such delegation. The State reserves the right of prior written approval of all Subvendors and to require Vendor to replace any Subvendors 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 Subvendor(s) for the removed Subvendor must be fully qualified for the position. If the State exercises this right, and the Vendor cannot immediately replace the removed Subvendor, 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 Subvendor 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 Subvendor Bound to Contract

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

2.075 Competitive Selection

The Vendor must select Subvendors (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 Vendor's personnel whom the parties agree will perform the Services/Deliverables at State facilities (collectively, the "State Facilities"). The Vendor 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 Vendor in the course of providing the Services. Vendor must not, without the prior written consent of the State, use any State Facilities or access any State information systems provided for the Vendor's use, or to which the Vendor 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 Vendor'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 Vendor personnel eligibility for working within State facilities and systems. The investigations will include Michigan State Police Background checks (ICHAT) and may include the National Crime Information Center (NCIC) Finger Prints. Proposed Vendor 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.

2.092 Security Breach Notification

If the Vendor breaches this Section, the Vendor must (i) promptly cure any deficiencies and (ii) comply with any applicable federal and state laws and regulations pertaining to unauthorized disclosures. Vendor and the State will cooperate to mitigate, to the extent practicable, the effects of any breach, intrusion, or unauthorized use or disclosure. Vendor must report to the State, in writing, any use or disclosure of Confidential Information, whether suspected or actual, other than as provided for by the Contract within 10 days of becoming aware of the use or disclosure or the shorter time period as is reasonable under the circumstances.

2.093 PCI Data Security Standard

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

(b) The Vendor must notify the CCI (within 72 hours of discovery) of any breaches in security where cardholder data has been compromised. In that event, the Vendor must provide full cooperation to the Visa, MasterCard, Discover and state Acquirer representative(s), and/or a PCI approved third party to



conduct a thorough security review. The Vendor must make the forensic report available within two weeks of completion. The review must validate compliance with the current PCI Data Security Standards for protecting cardholder data.

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

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

2.100 Confidentiality

2.101 Confidentiality

Vendor 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 Vendor must mean all non-public proprietary information of Vendor (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 Vendor 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 Vendor 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 Vendor 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 Subvendors who must have access to fulfill the purposes of the Contract. Disclosure to, and use by, a Subvendor is permissible where (A) use of a Subvendor is authorized under the Contract, (B) the disclosure is necessary or otherwise naturally occurs in connection with work that is within the Subvendor's scope of responsibility, and (C) Vendor obligates the Subvendor in a written Contract to maintain the State's Confidential Information in confidence. At the State's request, any employee of Vendor and of any Subvendor 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 Vendor's and the Subvendor's obligations under this Section and of the employee's obligation to Vendor or Subvendor, 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, Vendor must certify to the State that Vendor 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 Vendor 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 Vendor'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. Vendor must provide all reasonable facilities and assistance for the State's representatives.

2.112 Examination of Records

For seven (7) years after the Vendor provides any work under the Contract (the "Audit Period"), the State may examine and copy any of Vendor's books, records, documents and papers pertinent to establishing Vendor's compliance with the Contract and with applicable laws and rules. The State must notify the Vendor 20 days before examining the Vendor's books and records. The State does not have the right to review any information deemed confidential by the Vendor 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 Vendor, or any Subvendor of Vendor performing services in connection with the Contract.

2.113 Retention of Records

Vendor 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 Vendor'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 Vendor and the State will meet to review each audit report promptly after issuance. The Vendor 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 Vendor 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 Vendor must pay all of the reasonable costs of the audit.

2.120 Warranties

- 2.121 Warranties and Representations - Deleted – N/A**
- 2.122 Warranty of Merchantability- Deleted – N/A**
- 2.123 Warranty of Fitness for a Particular Purpose - Deleted – N/A**
- 2.124 Warranty of Title - Deleted – N/A**
- 2.125 Equipment Warranty - Deleted – N/A**
- 2.126 Equipment to be New - Deleted – N/A**
- 2.127 Prohibited Products - Deleted – N/A**
- 2.128 Consequences For Breach - Deleted – N/A**

2.130 Insurance

2.131 Liability Insurance

The Vendor 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 Vendor’s performance of Services under the terms of the Contract, whether the Services are performed by the Vendor, or by any Subvendor, or by anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable.

The Vendor 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 Vendor 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 Vendor 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 Vendor’s policy contains higher limits, the State must be entitled to coverage to the extent of the higher limits.

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

- 1. Commercial General Liability with the following minimum coverage:
 - \$500,000 General Aggregate Limit other than Products/Completed Operations
 - \$500,000 Products/Completed Operations Aggregate Limit
 - \$100,000 Personal & Advertising Injury Limit
 - \$100,000 Each Occurrence Limit
 - \$100,000 Fire Damage Limit (any one fire)



The Vendor 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 Vendor 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 Vendor must have vehicle liability insurance on any auto including owned, hired and non-owned vehicles used in Vendor's business for bodily injury and property damage as required by law.

The Vendor 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 Vendor 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 Vendor'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, Vendor 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 Vendor 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 Vendor or its Subvendors, 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 Vendor for any reason under the Contract, and the equipment, software and other contents of the office space, including without limitation, those contents used by Vendor 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 Vendor. 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 Subvendor Insurance Coverage

Except where the State has approved in writing a Vendor subcontract with other insurance provisions, Vendor must require all of its Subvendors under the Contract to purchase and maintain the insurance coverage as described in this Section for the Vendor in connection with the performance of work by those Subvendors. Alternatively, Vendor may include any Subvendors under Vendor's insurance on the



coverage required in this Section. Subvendor must fully comply with the insurance coverage required in this Section. Failure of Subvendor to comply with insurance requirements does not limit Vendor's liability or responsibility.

2.133 Certificates of Insurance and Other Requirements

Vendor must furnish to DNR-Procurement, certificate(s) of insurance verifying insurance coverage or providing satisfactory evidence of self-insurance as required in this Section (the "Certificates"). The Certificate must be on the standard "accord" form or equivalent. **THE CONTRACT OR PURCHASE ORDER NO. MUST BE SHOWN ON THE CERTIFICATE OF INSURANCE TO ASSURE CORRECT FILING.** All Certificate(s) are to be prepared and submitted by the Insurance Provider. All Certificate(s) must contain a provision indicating that coverages afforded under the policies **MUST NOT BE CANCELLED, MATERIALLY CHANGED, OR NOT RENEWED** without 30 days prior written notice, except for 10 days for non-payment of premium, having been given to the Director of Procurement, DNR. The notice must include the Contract or Purchase Order number affected. Before the Contract is signed, and not less than 20 days before the insurance expiration date every year thereafter, the Vendor 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 Vendor 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 Vendor under the Contract to any indemnified party or other persons. Vendor is responsible for all deductibles with regard to the insurance. If the Vendor 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 Vendor 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 Vendor, or the Vendor must pay that cost upon demand by the State.

2.140 Indemnification

2.141 General Indemnification

To the extent permitted by law, the Vendor 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 Vendor in the performance of the Contract and that are attributable to the negligence or tortious acts of the Vendor or any of its Subvendors, or by anyone else for whose acts any of them may be liable.

2.142 Code Indemnification

To the extent permitted by law, the Vendor must indemnify, defend and hold harmless the State from any claim, loss, or expense arising from Vendor'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 Vendor or any of its Subvendors, 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 Vendor or any of its Subvendors 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 Vendor 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 Vendor or its Subvendors, 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 Vendor's opinion be likely to become the subject of a claim of infringement, the Vendor must at the Vendor'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 Vendor, (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 Vendor, (iii) accept its return by the State with appropriate credits to the State against the Vendor'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 Vendor 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 Vendor, 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 Vendor under the Contract.

2.145 Continuation of Indemnification Obligations

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

(b) If Vendor 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 Vendor must, at the request of the State, demonstrate to the reasonable satisfaction of the State, the Vendor's financial ability to carry out its defense and indemnity obligations under the Contract; (iii) the Vendor 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 Vendor in writing within 10 days after the State's receipt of Vendor's information requested by the State under clause (ii) of this paragraph if the State determines that the Vendor has failed to demonstrate to the reasonable satisfaction of the State the Vendor'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 Vendor 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 Vendor. If it is determined that the claim was one against which Vendor was required to indemnify the State, upon request of the State, Vendor 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 Vendor breaches the Contract, and the State, in its sole discretion, determines that the breach is curable, then the State must provide the Vendor 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 Vendor in writing, if the Vendor (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 Vendor 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 Vendor 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 Vendor 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) Vendor 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 Vendor. The State must give Vendor 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 Vendor for the agreed-to level of the Services or production of Deliverables to be provided by Vendor are not appropriated or otherwise unavailable, the State may, upon 30 days written notice to Vendor, 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 Vendor under this Section, the State must pay Vendor 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 Vendor 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 Vendor, an officer of Vendor, or an owner of a 25% or greater share of Vendor 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 Vendor 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 Vendor 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 Vendor 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 Vendor's possession, (c) return all materials and property provided directly or indirectly to Vendor 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 Vendor 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 Vendor 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 Vendor 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 Vendor under the Contract, at the option of the State, becomes the State's property, and Vendor 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, Vendor 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 Vendor

2.161 Termination by Vendor

If the State breaches the Contract, and the Vendor in its sole discretion determines that the breach is curable, then the Vendor 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 Vendor may terminate the Contract if the State (i) materially breaches its obligation to pay the Vendor 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 Vendor to perform the Services, or (iii) does not cure the breach within the time period specified in a written notice of breach. But the Vendor must discharge its obligations under **Section 2.190** before it terminates the Contract.

2.170 Transition Responsibilities – Deleted N/A

2.171 Contractor Transition Responsibilities – Deleted N/A

2.172 Contractor Personnel Transition – Deleted N/A

2.173 Contractor Information Transition – Deleted N/A

2.174 Contractor Software Transition – Deleted N/A

2.175 Transition Payments – Deleted N/A

2.176 State Transition Responsibilities – Deleted N/A

2.180 Stop Work

2.181 Stop Work Orders

The State may, at any time, by written stop work order to Vendor, require that Vendor 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 Vendor, 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, Vendor 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 Vendor 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 Vendor's costs properly allocable to, the performance of any part of the Contract; and (b) Vendor 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 Vendor 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 Vendor 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 Vendor for loss of profits because of a stop work order issued under this **Section 2.180**.

2.190 Dispute Resolution

2.191 In General

Any claim, counterclaim, or dispute between the State and Vendor arising out of or relating to the Contract or any Statement of Work must be resolved as follows. For all Vendor claims seeking an increase in the amounts payable to Vendor under the Contract, or the time for Vendor's performance, Vendor must submit a letter, together with all data supporting the claims, executed by Vendor'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 Vendor or the time for Vendor's performance for which Vendor believes the State is liable and covers all costs of every type to which Vendor is entitled from the occurrence of the claimed event, and (c) the claim and the supporting data are current and complete to Vendor's best knowledge and belief.

2.192 Informal Dispute Resolution

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

- (i) The representatives of Vendor 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 Vendor representatives, but may include the preparation of agreed upon statements of fact or written statements of position.
- (iv) Following the completion of this process within 60 calendar days, the Director of Procurement, DNR, or designee, must issue a written opinion regarding the issue(s) in dispute within 30 calendar days. The opinion regarding the dispute must be considered the State's final action and the exhaustion of administrative remedies.

(b) This Section must not be construed to prevent either party from instituting, and a party is authorized to institute, formal proceedings earlier to avoid the expiration of any applicable limitations period, to preserve a superior position with respect to other creditors, or under **Section 2.193**.

(c) The State will not mediate disputes between the Vendor 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 Vendor will not be subject to the provisions of **Section 2.192** is where a party makes a good faith determination that a breach of the terms of the Contract by the other party is the that the damages to the party resulting from the breach will be so immediate, so large or severe and so incapable of adequate redress after the fact that a temporary restraining order or other immediate injunctive relief is the only adequate remedy.

2.194 Continued Performance

Each party agrees to continue performing its obligations under the Contract while a dispute is being resolved except to the extent the issue in dispute precludes performance (dispute over payment must not be deemed to preclude performance) and without limiting either party's right to terminate the Contract as provided in **Section 2.150**, as the case may be.

2.200 Federal and State Contract Requirements

2.201 Nondiscrimination

In the performance of the Contract, Vendor 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. Vendor 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 Subvendor. 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 Vendor of the State, in relation to the Contract, must not enter into a contract with a Subvendor, 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 Vendor as an employer or the name of the Subvendor, manufacturer or supplier of Vendor appears in the register.

2.203 Workplace Safety and Discriminatory Harassment

In performing Services for the State, the Vendor 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 Vendor must comply with Civil Service regulations and any applicable agency rules provided to the Vendor. For Civil Service Rules, see <http://www.mi.gov/mdcs/0,1607,7-147-6877---,00.html>.

2.204 E-Verify - Deleted – N/A

2.205 Prevailing Wage - Deleted – N/A

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

Vendor 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, Vendor 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. Vendor agrees to appoint agents in the State of Michigan to receive service of process.

2.220 Limitation of Liability

2.221 Limitation of Liability

The Vendor's liability for damages to the State shall be limited to the value of the issued Purchase Order for the bid item. The foregoing limitation of liability shall not apply to claims for infringement of United States patent, copyright, trademarks or trade secrets; to claims for personal injury or damage to property caused by the gross negligence or willful misconduct of the Vendor; to claims covered by other specific provisions of this Contract calling for liquidated damages; or to court costs or attorney's fees awarded by a court in addition to damages after litigation based on this Contract.

The State's liability for damages to the Vendor shall be limited to the value of the Purchase Order for the bid item.

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

2.230 Disclosure Responsibilities

2.231 Disclosure of Litigation

(a) Disclosure. Vendor must disclose any material criminal litigation, investigations or proceedings involving the Vendor (and each Subvendor) or any of its officers or directors or any litigation, investigations or proceedings under the Sarbanes-Oxley Act. In addition, each Vendor (and each Subvendor) must notify the State of any material civil litigation, arbitration or proceeding which arises during the term of the Contract and extensions, to which Vendor (or, to the extent Vendor is aware, any Subvendor) is a party, and which involves: (i) disputes that might reasonably be expected to adversely affect the viability or financial stability of Vendor or any Subvendor; or (ii) a claim or written allegation of fraud against Vendor or, to the extent Vendor is aware, any Subvendor by a governmental or public entity arising out of their business dealings with governmental or public entities. The Vendor 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 Vendor'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 Vendor (or a Subvendor) to continue to perform the Contract according to its terms and conditions, or
- (ii) whether Vendor (or a Subvendor) 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 Vendor must provide the State all reasonable assurances requested by the State to demonstrate that:



- (a) Vendor and its Subvendors must be able to continue to perform the Contract and any Statements of Work according to its terms and conditions, and
- (b) Vendor and its Subvendors 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) Vendor must make the following notifications in writing:
 - (1) Within 30 days of Vendor 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, Vendor must notify DNR-Procurement.
 - (2) Vendor must also notify DNR Procurement within 30 days whenever changes to asset valuations or any other cost changes have occurred or are certain to occur as a result of a change in ownership or officers.
 - (3) Vendor must also notify DNR Procurement within 30 days whenever changes to company affiliations occur.

2.232 Call Center Disclosure - Deleted – N/A

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

Vendor 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 Deleted – N/A

2.242 Service Level Agreements (SLAs) – Deleted – N/A

2.243 Liquidated Damages

A. The State and the Vendor hereby agree to the specific standards set forth in this Contract. It is agreed between the Vendor and the State that the actual damages to the State as a result of Vendor's failure to provide promised services would be difficult or impossible to determine with accuracy. The State and the Vendor therefore agree that liquidated damages as set out herein shall be a reasonable approximation of the damages that shall be suffered by the State as a result thereof. Accordingly, in the event of such damages at the written direction of the State, the Vendor shall pay the State the indicated amount as liquidated damages, and not as a penalty. Amounts due the State as liquidated damages, if not paid by the Vendor within fifteen (15) days of notification of assessment, may be deducted by the State from any money payable to the Vendor pursuant to this Contract. The State will notify the Vendor in writing of any claim for liquidated damages pursuant to this paragraph on or before the date the State deducts such sums from money payable to the Vendor. No delay by the State in assessing or collecting liquidated damages shall be construed as a waiver of such rights.

B. The Vendor shall not be liable for liquidated damages when, in the opinion of the State, incidents or delays result directly from causes beyond the control and without the fault or



negligence of the Vendor. Such causes may include, but are not restricted to, acts of God, fires, floods, epidemics, and labor unrest; but in every case the delays must be beyond the control and without the fault or negligence of the Vendor.

C. Liquidated damages will be assessed as detailed in Section 2.243, Compliance and Inspection Procedures.

D. Liquidated damages will be charged for Items not completed by the due date listed on the prescription. As defined, completion means that the Unit Manager or his/her representative has received, inspected and approved all work. If an Item does not pass inspection, there will be no extension of time. Liquidated damages for late completion are defined as ½% of the Item price per day.

The State will pay liquidated damages to the vendor if the final inspection is not made within 10 working days of receipt of the invoice (see 2.092). Liquidated damages for late inspections are defined as ½% of the Item price per day.

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 Subvendors 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 Vendor'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 Vendor as of a date specified by the State in a written notice of termination to the Vendor, except to the extent that the State must pay for Services/Deliverables provided through the date of termination.

The Vendor 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 Vendor which are caused by acts or omissions of its Subvendors will not relieve Vendor of its obligations under the Contract except to the extent that a Subvendor is itself subject to an Excusable Failure condition described above and Vendor cannot reasonably circumvent the effect of the Subvendor'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 - Deleted – N/A**
- 2.252 Delivery of Deliverables - Deleted – N/A**
- 2.253 Testing - Deleted – N/A**

- 2.254 Approval of Deliverables, In General - Deleted – N/A**
- 2.255 Process For Approval of Written Deliverables - Deleted – N/A**
- 2.256 Process for Approval of Services - Deleted – N/A**
- 2.257 Process for Approval of Physical Deliverables - Deleted – N/A**
- 2.258 Final Acceptance - Deleted – N/A**

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 Vendor 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 Vendor 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 Vendor, insofar as any the Deliverable, by operation of law, may not be considered work made for hire by the Vendor for the State. From time to time upon the State's request, the Vendor 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 Vendor or its agents, Subvendors or representatives under the Contract. The Vendor 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 Vendor. No employees of the Vendor, other than those on a strictly need-to-know basis, have access to the State's data. Vendor must not possess or assert any lien or other right against the State's data. Without limiting the generality of this Section, the Vendor 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 Vendor 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 Vendor for any purpose. The State must not possess or assert any lien or other right against the Vendor'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 - Deleted – N/A



2.270 State Standards

2.271 Existing Technology Standards - Deleted – N/A

2.272 Acceptable Use Policy - Deleted – N/A

2.273 Systems Changes - Deleted – N/A

2.280 Extended Purchasing

2.281 MIDEAL - Deleted – N/A

2.282 State Employee Purchases - Deleted – N/A

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 Vendor 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 Vendor’s Work. Before the commencement of Work, the State must advise the Vendor 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 Vendor encounters material reasonably believed to be a Hazardous Material and which may present a substantial danger, the Vendor 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 Vendor, or does not result in whole or in part from any violation by the Vendor 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 Vendor 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 Vendor 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 Vendor, or results in whole or in part from any violation by the Vendor 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 Vendor, the Vendor 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).

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.