

STATE OF MICHIGAN
 DEPARTMENT OF TECHNOLOGY, MANAGEMENT AND BUDGET
 PROCUREMENT
 P.O. BOX 30026, LANSING, MI 48909
 OR
 530 W. ALLEGAN, LANSING, MI 48933

CHANGE NOTICE NO. 3
 to
CONTRACT NO. 071B0200081
 between
THE STATE OF MICHIGAN
 and

NAME & ADDRESS OF CONTRACTOR:	PRIMARY CONTACT	EMAIL
FirstLab 100 Highpoint Drive, Suite 102 Chalfont, PA 18914-3926	Mary Ellen Petti	mpetti@firstlab.com
	TELEPHONE	CONTRACTOR #, MAIL CODE
	(800) 732-3784	

STATE CONTACTS	AGENCY	NAME	PHONE	EMAIL
CONTRACT COMPLIANCE INSPECTOR	MDOT	Marcele Edington	(517) 373-7645	edingtonm@michigan.gov
BUYER	DTMB	Don Mandernach	(517) 241-7233	mandernachd@michigan.gov

CONTRACT SUMMARY:			
DESCRIPTION Drug and Alcohol Compliance Assistance Program – Michigan Department of Transportation			
INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW
January 1, 2010	December 31, 2012	2, 1 yr. options	March 31, 2013
PAYMENT TERMS	F.O.B	SHIPPED	SHIPPED FROM
N/A	N/A	N/A	N/A
ALTERNATE PAYMENT OPTIONS:			AVAILABLE TO MiDEAL PARTICIPANTS
<input type="checkbox"/> P-card <input type="checkbox"/> Direct Voucher (DV) <input type="checkbox"/> Other			<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
MINIMUM DELIVERY REQUIREMENTS:			
N/A			

DESCRIPTION OF CHANGE NOTICE:				
EXTEND CONTRACT EXPIRATION DATE	EXERCISE CONTRACT OPTION YEAR(S)	EXTENSION BEYOND CONTRACT OPTION YEARS	LENGTH OF OPTION/EXTENSION	EXPIRATION DATE AFTER CHANGE
<input type="checkbox"/> No <input checked="" type="checkbox"/> Yes	<input checked="" type="checkbox"/>	<input type="checkbox"/>	3 Months	June 30, 2013
VALUE/COST OF CHANGE NOTICE:			ESTIMATED AGGREGATE CONTRACT VALUE REMAINS:	
\$0.00			\$108,705.00	

Per Agency ITRAC request dated 1/8/13 and vendor agreement dated 1/25/13, an additional three months of the first option year (three months were added starting 1/1/13 through 3/31/13) will be utilized for this Contract to allow for the preparation of the new RFP. The new end date will be 6/30/13.

All other terms, conditions, specifications and pricing remain unchanged.

STATE OF MICHIGAN
 DEPARTMENT OF TECHNOLOGY, MANAGEMENT AND BUDGET
 PROCUREMENT
 P.O. BOX 30026, LANSING, MI 48909
 OR
 530 W. ALLEGAN, LANSING, MI 48933

CHANGE NOTICE NO. 2
 to
CONTRACT NO. 071B0200081
 between
THE STATE OF MICHIGAN
 and

NAME & ADDRESS OF CONTRACTOR:	PRIMARY CONTACT	EMAIL
FirstLab 100 Highpoint Drive, Suite 102 Chalfont, PA 18914	Mary Ellen Petti	mpetti@firstlab.com
	TELEPHONE	CONTRACTOR #, MAIL CODE
	(800) 732-3784	

STATE CONTACTS	AGENCY	NAME	PHONE	EMAIL
CONTRACT COMPLIANCE INSPECTOR	MDOT	Marcele Edington	517-373-7645	edingtonm@michigan.gov
BUYER	DTMB	Don Mandernach	517-241-7233	mandernachd@michigan.gov

CONTRACT SUMMARY:			
DESCRIPTION: Drug and Alcohol Compliance Assistance Program – Michigan Dept. of Transportation			
INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW
January 1, 2010	December 31, 2012	2, one year	December 31, 2012
PAYMENT TERMS	F.O.B	SHIPPED	SHIPPED FROM
N/A	N/A	N/A	N/A
ALTERNATE PAYMENT OPTIONS:			AVAILABLE TO MiDEAL PARTICIPANTS
<input type="checkbox"/> P-card <input type="checkbox"/> Direct Voucher (DV) <input type="checkbox"/> Other			<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
MINIMUM DELIVERY REQUIREMENTS:			
N/A			

DESCRIPTION OF CHANGE NOTICE:				
EXTEND CONTRACT EXPIRATION DATE	EXERCISE CONTRACT OPTION YEAR(S)	EXTENSION BEYOND CONTRACT OPTION YEARS	LENGTH OF OPTION/EXTENSION	EXPIRATION DATE AFTER CHANGE
<input type="checkbox"/> No <input checked="" type="checkbox"/> Yes	<input checked="" type="checkbox"/>	<input type="checkbox"/>	3 months	March 31, 2013
VALUE/COST OF CHANGE NOTICE:		ESTIMATED REVISED AGGREGATE CONTRACT VALUE:		
\$0.00		\$108,705.00		
Per Agency ITRAC request dated 9/27/12 and vendor agreement dated 10/8/12, three months of the first option year will be utilized for this Contract. The new end date will be March 31, 2013. All other terms, conditions, specifications and pricing remain unchanged.				

STATE OF MICHIGAN
DEPARTMENT OF MANAGEMENT AND BUDGET
PROCUREMENT & REAL ESTATE SERVICES ADMINISTRATION
 P.O. BOX 30026, LANSING, MI 48909
 OR
 530 W. ALLEGAN, LANSING, MI 48933

November 22, 2010

CHANGE NOTICE NO. 1
TO
CONTRACT NO. 071B0200081
between
THE STATE OF MICHIGAN
and

NAME & ADDRESS OF CONTRACTOR		TELEPHONE (800) 732-3784 Mary Ellen Petti	
FirstLab 1364 Welsh Rd., Suite C-2 North Wales, PA 19454			
mpetti@firstlab.com		BUYER/CA (517) 241-1218 Brandon Samuel	
Contract Compliance Inspector: Barbara Wickerham (517) 335-2583 wickerhamb@michigan.gov Drug and Alcohol Compliance Assistance Program – Michigan Department of Transportation			
CONTRACT PERIOD: 3 yrs. + 3 one-year options From: January 1, 2010 To: December 31, 2012			
TERMS	N/A	SHIPMENT	N/A
F.O.B.	N/A	SHIPPED FROM	N/A
MINIMUM DELIVERY REQUIREMENTS N/A			

NATURE OF CHANGE:

Effective December 1, 2010, the price per test for the Michigan Department of Transportation (MDOT) is hereby changed to \$17.95.

All other terms, conditions, specifications and pricing remain unchanged.

AUTHORITY/REASON:

Per request of vendor and DTMB/Procurement & Real Estate Services Administration approval.

ESTIMATED CONTRACT VALUE REMAINS: \$108,705.00

STATE OF MICHIGAN
DEPARTMENT OF MANAGEMENT AND BUDGET
PURCHASING OPERATIONS
 P.O. BOX 30026, LANSING, MI 48909
 OR
 530 W. ALLEGAN, LANSING, MI 48933

December 15, 2009

NOTICE
TO
CONTRACT NO. 071B0200081
between
THE STATE OF MICHIGAN
and

NAME & ADDRESS OF CONTRACTOR FirstLab 1364 Welsh Rd., Suite C-2 North Wales, PA 19454 <p style="text-align: right;">mpetti@firstlab.com</p>	TELEPHONE (800) 732-3784 Mary Ellen Petti
	BUYER/CA (517) 373-7396 Andy Ghosh, CPPB
Contract Compliance Inspector: Barbara Wickerham (517) 335-2583 Drug and Alcohol Compliance Assistance Program – Michigan Department of Transportation	
CONTRACT PERIOD: 3 yrs. + 3 one-year options From: January 1, 2010 To: December 31, 2012	
TERMS <p style="text-align: center;">N/A</p>	SHIPMENT <p style="text-align: center;">N/A</p>
F.O.B. <p style="text-align: center;">N/A</p>	SHIPPED FROM <p style="text-align: center;">N/A</p>
MINIMUM DELIVERY REQUIREMENTS <p style="text-align: center;">N/A</p>	

The terms and conditions of this Contract are those of RFP #07119200278, this Contract Agreement and the vendor's quote dated September 30, 2009. In the event of any conflicts between the specifications, and terms and conditions, indicated by the State and those indicated by the vendor, those of the State take precedence.

Current Authorized Spend Limit: \$108,705.00

**STATE OF MICHIGAN
 DEPARTMENT OF MANAGEMENT AND BUDGET
 PURCHASING OPERATIONS
 P.O. BOX 30026, LANSING, MI 48909
 OR
 530 W. ALLEGAN, LANSING, MI 48933**

**CONTRACT NO. 071B0200081
 between
 THE STATE OF MICHIGAN
 and**

NAME & ADDRESS OF CONTRACTOR FirstLab 1364 Welsh Rd., Suite C-2 North Wales, PA 19454 <div style="text-align: right;">mpetti@firstlab.com</div>	TELEPHONE (800) 732-3784 Mary Ellen Petti BUYER/CA (517) 373-7396 Andy Ghosh, CPPB
Contract Compliance Inspector: Barbara Wickerham (517) 335-2583 Drug and Alcohol Compliance Assistance Program – Michigan Department of Transportation	
CONTRACT PERIOD: 3 yrs. + 3 one-year options From: January 1, 2010 To: December 31, 2012	
TERMS <div style="text-align: center;">N/A</div>	SHIPMENT <div style="text-align: center;">N/A</div>
F.O.B. <div style="text-align: center;">N/A</div>	SHIPPED FROM <div style="text-align: center;">N/A</div>
MINIMUM DELIVERY REQUIREMENTS <div style="text-align: center;">N/A</div>	
MISCELLANEOUS INFORMATION: <p>The terms and conditions of this Contract are those of RFP #07119200278, this Contract Agreement and the vendor's quote dated September 30, 2009. In the event of any conflicts between the specifications, and terms and conditions, indicated by the State and those indicated by the vendor, those of the State take precedence.</p> <p>Current Authorized Spend Limit: \$108,705.00</p>	

THIS IS NOT AN ORDER: This Contract Agreement is awarded on the basis of our inquiry bearing the RFP #07119200278. Orders for delivery may be issued directly by the Michigan Department of Transportation through the issuance of a Purchase Order Form.

FOR THE CONTRACTOR: <div style="text-align: center;"> FirstLab _____ Firm Name </div> <div style="text-align: center;"> _____ Authorized Agent Signature </div> <div style="text-align: center;"> _____ Authorized Agent (Print or Type) </div> <div style="text-align: center;"> _____ Date </div>	FOR THE STATE: <div style="text-align: center;"> _____ Signature Andy Ghosh, CPPB, Buyer Specialist _____ Name/Title Services Division, Purchasing Operations _____ Division </div> <div style="text-align: center;"> _____ Date </div>
---	---



STATE OF MICHIGAN
Department of Management and Budget
Purchasing Operations

CONTRACT NO. 071B0200081
Drug & Alcohol Compliance Assistance Program for MDOT

Buyer Name: Andy Ghosh, CPPB
Telephone Number: 517-373-7396
E-Mail Address: ghosha@michigan.gov



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ATTACHMENTS:

Attachment A, Pricing

**DEFINITIONS**

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

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

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

Contractor(s) are those companies that submit a proposal in response to this Contract.

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 Contract. It is used as a placeholder to maintain consistent numbering.

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

DMB means the Michigan Department of Management and Budget.

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

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

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

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

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

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

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

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

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



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

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

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

SLA means Service Level Agreement.

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

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

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

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

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

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

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

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



Article 1 – Statement of Work (SOW)

1.010 Project Identification

1.011 Project Request

This Contract is for the purpose of obtaining services to provide compliance assistance for Michigan local intrastate bus transit agencies regarding United States Department of Transportation (USDOT) drug and alcohol program and related legislation. This service would include a drug and alcohol consortium which provides: transit agency consortium management drug and alcohol testing, resource identification and coordination, oversight and quality control, record keeping, Federal Transit Administration report securement (Management Information System Report), education, consultation, and training for Michigan transit agencies and supporting service agents, policy development assistance and review. The terms of this Contract are limited by Article 2.

1.012 Background

USDOT considers one of their highest priorities to be the safety of public transportation. Alcohol and drug abuse within the transit industry, which can have a significant negative effect on that goal. Therefore, in order to minimize this effect, several substantial pieces of legislation were passed. These pieces of legislation attempt to eliminate and control drug and alcohol impaired work performance largely by requiring drug and alcohol policies, drug and alcohol testing, and monitoring of possible drug or alcohol impaired work performance.

The transit industry is affected by many USDOT legislative sources including the National Highway Traffic Safety Administration (NHTSA), the Federal Transit Administration (FTA), Federal Motor Carrier Safety Administration (FMCSA), U.S. Coast Guard (USCG) and Federal Railroad Administration (FRA), etc.

In addition to the current legislation to which the transit industry must adhere, any additional laws which become in effect throughout the remainder of the contract must be identified and incorporated into the program.

Problem Statement

The public transit industry is heavily regulated. Keeping abreast of all the relevant legislation is a challenge. Transit management must make many compliance related decisions for their organizations. These decisions can have serious organizational consequences, such as increasing risk and liability, requiring major policy adjustments, seriously impacting public relations (and consequently local funding), and affecting Union relations or bargaining issues.

Implementation of the federal drug and alcohol legislation has created a challenge for transit providers in a time of increasing needs and decreasing resources. These transit providers have limited time and funding to administer the mandated organizational drug and alcohol programs. The required outside resources that must be identified, trained, and monitored, as well as the many procedural details that must be correctly followed to be in compliance, is a formidable challenge.

There are approximately 80 transit agencies statewide that must comply with these federally mandated drug and alcohol programs. In addition to providing technical assistance to these agencies, the Michigan Department of Transportation (MDOT) is legally responsible for recipients of Section 5311 funds to be in compliance with the regulations.

It is critical that the third-party administrator be extremely knowledgeable of and able to analyze, as well as explain all of the legal documents which must be carefully followed by each transit agency in order to be considered in compliance by the U.S. Department of Transportation, as well as the State of Michigan and any other current/future legislation. This includes overall general guidelines, as well as the myriad of specific requirements which are stated or indicated. MDOT will not be providing regulatory information to the third-party administrator. It is the responsibility of the third-party administrator to identify and access all of the federal and state legislation which is relevant to the drug and alcohol compliance programs for the Michigan transit agencies.

Project Goal

The goal of this project is to ensure legally sound compliance for all the Michigan transit agencies regarding the USDOT Drug and Alcohol Testing Regulations during the calendar years of 2010-2014.

Project Objectives

1. Minimize the compliance costs
2. Simplify the compliance procedure
3. Identify and provide compliance resources



4. Educate, clarify and advise
5. Reduce state administration and involvement
6. Comply with reporting for transit agencies receiving Section 5311 federal funds.

1.020 Scope of Work and Deliverables

1.021 In Scope

The strategy will be to secure the services of a third party administrator to provide two categories of service:

- Group A. Consortium Members and MDOT – to develop, organize, and administer a statewide consortium.
- Group B. All Transit Agencies and MDOT.

Group A – Consortium Members and MDOT:
(Agencies will be responsible for service fees, except as noted.)

1. Collection Site identification, training, and quality control

- a) The Contractor will work with each transit agency to identify local collection sites which meet its needs, making every effort to keep the current resources unless unacceptable. Each transit agency will have available to them collection site(s) with both urine collection personnel as well as breath alcohol technicians unless there are no high quality dual testing sites in existence in the geographical area. The Contractor will also train collection site personnel, and do ongoing quality control. An unsatisfactory collection site should be reported to the transit agency.
- b) The Contractor will also, if needed, serve as a liaison between the collection sites and the transit agencies, identifying, recommending, and replacing collection sites as needed. In most cases, collection sites should be in the same county as the transit agency office where the employee is located.
- c) Some collection sites must be available 24 hours a day. If a collection site is needed outside the normal business hours of 8:00 am - 5:00 pm, (usually post-accident or reasonable suspicion) the Contractor will be available and able to advise the collection site of the arrival of the employee at the transit agency's request. This service must be provided 24 hours a day, 7 days a week with a free telephone line.
- d) The Contractor will provide Breath Alcohol Technician (BAT) program management services and BAT location management fees for quality control.

Contractor's Response to Task:

FirstLab will provide the MDOT agencies with specimen collection/breath alcohol testing facilities/service providers located in each county as stated in item 1 b) above.

FirstLab will identify facilities that provide both urine specimen collection and breath alcohol testing services wherever possible. If there are no facilities in the county that provide both specimen collection and breath alcohol testing services, the closest facilities that offer each service will be identified. All facilities identified will offer services, at a minimum Monday through Friday, between the hours of 8:00 AM and 5 PM.) Extended hours facilities will be identified. FirstLab will also identify facilities/service providers that perform drug and alcohol testing on weekends and 24 hrs. per day. For unscheduled, emergency testing needs, FirstLab maintains a toll-free "After Hours Hotline" with 24-hours a day, seven-day week coverage for the purpose of locating and assisting with afterhours reasonable suspicion and post-accident testing services. The After Hours coordinator will identify the facility to be used coordinate with the facility to ensure forms, supplies and personnel are available and advise them that an MDOT agency employee is expected for testing.

FirstLab maintains signed service agreements/contracts with all specimen collection/breath alcohol testing sites and service providers to ensure that they have DHHS/DOT qualified personnel, utilize DHHS and DOT collection/testing procedures, and meet physical facility standards for urine specimen collection and alcohol testing as specified by applicable federal regulations. Collection and Testing service providers are required to maintain specimen integrity and security and donor confidentiality and privacy in accordance with DHHS and DOT standards.



Please Note: FirstLab will endeavor, wherever possible, to retain those existing specimen collection/alcohol testing facilities with whom the MDOT has a high degree of satisfaction and will find appropriate replacements for facilities that have not performed to the MDOT satisfaction. Any new or replacement facilities must meet with MDOT approval.

FirstLab's Account Managers and the MRO Department are responsible for quality assurance of the specimen collection sites and alcohol testing facilities. Collection/testing site/ error logs are maintained and corrective documentation on all errors is faxed ASAP following an incident. Follow up calls are made to the site to ensure future compliance. If a collection/testing site continue to commit errors, the Account Manager will contact the MDOT agency representative and recommend a replacement site. In addition, all collection collection/alcohol testing service providers will be reviewed annually to ensure qualified personnel, training requirements, and standard operating procedures are in place. In addition, on-site audits of collection/testing sites whose performance on quality control measurements falls below acceptable standards will be conducted by FirstLab regulatory personnel when necessary. FirstLab will provide collector audit and quality assurance reports to the MDOT upon request.

See Appendix 5 for DOT Collection Procedure Handbook

2. **Medical Review Officer (MRO) identification, receipt and communication of test results, coordination, and quality control**
 - a) The Contractor will identify medical review officer(s).
 - b) The Contractor will receive test results from the MRO(s) and communicate them appropriately to the transit agency representative.
 - c) The Contractor will also ensure that the necessary services occur in a timely and acceptable manner.

Contractor's Response to Task:

FirstLab will provide the services of a Medical Review Officer (MRO), a licensed physician with a background in substance abuse disorders and drug test result interpretation. All FirstLab MROs meet the qualification training standards of DOT and DHHS and have extensive experience in workplace drug testing programs. The MRO will review and interpret all laboratory test findings and confidentially report only to authorized personnel at the MDOT. The MRO will:

- Review laboratory results and custody and control form documentation for accuracy
- Authorize appropriate re-confirmation analysis of specimens (including split specimen testing)
- Interview employees whose test results are reported by the laboratory as positive, invalid, adulterated or substituted.
- Report verified results to MDOT authorized contacts.

The FirstLab MRO Department consists of the Chief Medical Review Officer, Dr. Natalie Hartenbaum plus 4 MRO physicians and 3 MRO assistants. All MROs are currently certified to meet DOT standards. Currently Dr. Natalie Hartenbaum and Dr. Philip Lopez are full time employees of FirstLab.

The MRO Department functions separately and independently from the Third Party Administrator (TPA) Departments of FirstLab in order to preserve the integrity of the MRO process. All initial contact and interviews with specimen donors are conducted directly by the MRO physicians. These tasks are never delegated to the assistants. For regulated testing, the MROs follow the DOT procedures outlined in 49 CFR Part 40. For non-DOT testing, customized protocols based on MDOT agency instructions are used. The MDOT agency DERs will have full access to FirstLab's MRO Department to discuss test results and other testing issues. DERs and specimen donors can reach the MROs via a toll free number which provides after-hour access to the physicians.

For all DOT testing, verified non-negative results are communicated via immediate phone contact to the MDOT agency's Designated Employer Representative (DER). This practice alerts the responsible party that a positive, invalid-cancelled, adulterated or substituted result has been verified and that the employee must be removed from performing safety-sensitive duty or sent immediately for a re-collection of a specimen. The DER can then obtain an MRO signed test result certificate via fax or the website.



All MRO interviews with test donors adhere to the confidentiality requirements of applicable Federal regulations. In addition, reporting of medical information critical to safety or medical qualification standards is done in accordance with applicable state and federal rules.

The MRO shall receive drug test results from the laboratory via secure electronic download - i.e. For all non-negative laboratory results, the MRO shall require a copy of the I custody and control form signed by the laboratory certifying scientist, in addition to the electronic laboratory test result report. In addition for all DOT-regulated drug tests, the MRO shall require a copy of the federal custody and control form containing the applicant/employee's signature. The MRO shall perform a review of these documents prior to verifying and reporting the final test result determination. If the documents require correction or completion, the MRO shall request same from the collection site or the laboratory as appropriate and in accordance with applicable federal regulations. The MRO shall contact the laboratory scientists as appropriate to discuss atypical test results, to request additional information, or to order additional analysis of the specimen as required by applicable federal regulations.

The MRO shall contact the specimen donor (applicant or employee) via telephone using the numbers provided by the donor at the time of the test. If the MRO is unsuccessful in contacting the donor after multiple tries in a 24 hour period, the MRO shall contact the MDOT agency designated representative for assistance. Non-negative test results will be reported to the MDOT agency without an interview with the donor only in circumstances permitted under applicable federal regulations.

The MRO shall conduct a telephonic interview with the donor, offering the donor the opportunity to present documentation of an alternative medical explanation for the test result. After receipt and review of such documentation and its acceptability to the MRO, the MRO will verify the test as negative or cancelled depending on the circumstances. The MRO's interpretation and verification of non-negative results will follow the dictates of applicable federal regulations. If there is no acceptable medical explanation for the laboratory findings, the MRO will report the results to the MDOT agency as a non-negative result. All non-negative verified test results will be signed and reported by the MRO. In circumstances of a verified positive, adulterated or substituted test result, the MRO shall notify the donor of his/her right to have the split specimen reconfirmed in accordance with applicable federal regulations. Once the MRO verifies a non-negative test result, the MDOT agency DER may access all results through the FirstLab Result Retrieval System in a secure and confidential manner.

For all non-negative verified results, The MDOT will receive a call from a member of the FirstLab MRO Staff or their FirstLab Account Manager to alert them that a verified non -negative test result is being released to the FirstLab Result Retrieval System.

FirstLab's MROs and MRO assistants are available in the Corporate Office from 8:30 p.m. to 5:00 p.m. FirstLab ensures its MROs are always available via toll-free telephone numbers to consult after-hours with employees regarding test results.

See Appendix 3 for MRO Certifications

3. Laboratory identification, coordination, and quality control

- a) The Contractor will identify laboratories which meet USDOT criteria, and coordinate services as well as do quality control. (MDOT pays for service fees for quality control). The laboratory must process specimens in a timely manner.
- b) The Contractor will also negotiate a competitive pricing system (available due to the volume) with the laboratories for the transit agencies to pay for their employee testing.

Contractor's Response to Task:

Laboratory analysis of specimens will be provided by a Laboratory certified the Substance Abuse and Mental Health Services Administration (SAMHSA) a division of the United States Department of Health and Human Services (DHHS). FirstLab will ensure that the laboratory has met the standards for accreditation as a Forensic Urine Drug Testing Laboratory, meeting the minimum standards for Federal Workplace Drug Testing Programs.

Specimens will be sent to the lab utilizing laboratory-run couriers or national overnight courier service. Laboratory negative screening results for drug tests will be reported to FirstLab's Medical Review Officer



within 24 – 48 hours of receipt of the specimen by the laboratory and, after an administrative review, including the custody and control form, will be immediately available to MDOT agency designated representatives. As a general rule, confirmed non-negative (positive, substituted, adulterated) results are reported to the Medical Review Officer within 48 – 72 hours of receipt of the specimen at the laboratory.

Each testing laboratory is electronically linked to FirstLab to accurately and efficiently communicate drug test results. All reports are received by direct download from the lab's computer. Information is transmitted directly into FirstLab's computer system, which eliminates the possibility of human error in the manual transfer of data.

FirstLab will negotiate and establish a fee for the laboratory service, to include custody and control forms, specimen collection kits, overnight transportation of specimens from the collection facility to the laboratory, initial and confirmation analysis at the laboratory, and reporting of results to the MRO. This all inclusive laboratory fee is bundled into the cost per drug test and FirstLab will pay all laboratory invoices for laboratory services.

See Appendix 2 for Laboratory Certifications

4. **Testing** - Additional specific services to assist with the following required types of drug and alcohol testing are:
- Random - Maintain and generate employee numbers for quarterly testing, with a separate pool for each transit agency if desired, notify each transit system of each draw, and follow-up with reminder calls if test results are not received within a reasonable time after notification.

Contractor's Response to Task:

FirstLab will provide a random testing selection system that ensures compliance with DOT/FTA regulations. FirstLab will maintain the random pool(s) for the MDOT agencies making additions and deletions, as necessary, after receiving input from the MDOT agency. The random testing list will be generated to DOT specifications by the FirstLab random number generation computer program and provided to the designated MDOT agency contact(s). Random selection lists are provided via secure email delivery notice, are posted on the secure website for access by authorized MDOT agency contacts, or can be faxed to a secure fax location.

FirstLab provides quarterly random status reports, showing progress toward meeting the minimum annual testing requirements, to designated employer representatives. Random Testing compliance reports are also available to track completed and uncompleted tests for selected individuals. The FirstLab account manager will communicate with the MDOT agency designated contacts to ensure that random tests are completed in a timely manner.

The total number of employees selected for random testing will equal or exceed the number or percentage specified by the DOT/FTA regulations on an annual basis. Adjustments to the number of employees selected for each selection period are made based on random test completions in previous quarters. Random selections are made quarterly to ensure that random testing is spread throughout the calendar year.

The following is a detailed description of FirstLab's random selection process:

FirstLab uses a custom proprietary software package for generating random lists. The software is written in Visual Basic and accesses a Microsoft SQL Server database. FirstLab's random selection software has been evaluated by an independent auditor and determined to provide "true random selection." The random generator is integrated with FirstLab's Result Retrieval System database.

The MDOT would provide lists of eligible employees to FirstLab, including all identifiers necessary for linking random test results to the selected employee (e.g. name, SSN, employee number, employer location, etc.). Separate pools for each MDOT transit agency can be maintained and used for selection. A complete history of the random pool and selections made from the pool is maintained, including an audit trail of when employees are added to or removed from the pool of eligible employees.

See Appendix 7 for *FirstLab* Report on the Random Selection Process.



- b) Follow-up - Schedule and notify transit agencies according to Substance Abuse Professional's guidelines, track, remind if test results are not reported within a reasonable time after notification, reiterate mandatory procedures as required by drug regulations should the employee fail a drug and/or alcohol test

FirstLab will provide assistance in scheduling Return-To-Duty and Follow-Up testing for DOT-regulated employees who have tested positive or refused to test and who have completed SAP recommended rehabilitation and/or education and must be tested as a condition of resuming a safety sensitive position. Such scheduling and testing is conducted in accordance with the requirements of 49 CFR Part 40 for DOT-regulated employers.

The following services are included in the comprehensive monitoring Follow-Up program up to five years:

- **Return to Duty Recommendation**
FirstLab reviews the Substance Abuse Professional's (SAP's) return to duty recommendation to ensure DOT compliance and advises the Designated Employer Representative (DER) to conduct Return to Duty testing.
- **Develop Follow-up Testing Schedule**
Upon receipt of a Negative Return to Duty drug or alcohol test, FirstLab plans the Follow-up testing schedule in accordance with the SAP's recommendations.
- **Follow-up Testing Notification**
FirstLab notifies the DER 3-5 days prior to a scheduled Follow-up test as a reminder that a Follow-up test is due.
- **Monitor compliance to follow-up testing program**
FirstLab monitors the database to ensure the scheduled Follow-up test is completed as scheduled and notifies DER or other authorized contact as indicated by client protocol.
- **Document and report on successful completion of the employee's follow-up program.**
- **FirstLab carefully monitors the entire follow-up testing program and submits written notification to the DER upon successful completion of the program**

- c) Blind performance - Provide, submit, track, and do quality control.

Contractor's Response to Task:

FirstLab will submit "Blind Samples" to the SAMHSA laboratory that performs the testing for the MDOT agencies' programs. Proficiency specimens are purchased from a licensed reference laboratory, are shipped to FirstLab's offices where FirstLab staff member's package and send the specimens to the laboratory with accompanying custody and control forms so that the specimens are not known to the laboratory as proficiency tests. The FirstLab MRO receives all results from the laboratory for the proficiency specimens and reviews and interprets the results based on the expected results for the proficiency specimens. Any discrepancies in the laboratories' performance are reported to the DHHS and DOT as required by regulations. A report of the blind performance testing program is available to the MDOT agencies quarterly.

- d) Post-accident - Consult by telephone with transit agency management at their request, regarding individual cases.
- e) Reasonable suspicion - Consult by telephone with transit agency management at their request, regarding individual cases.

FirstLab will provide telephonic consultation with MDOT transit agency management at their request, regarding individual cases. Consultation will be provided by the FirstLab Account Manager, Manager Workplace Programs, Director of Operations, and/or Chief Regulatory Affairs Officer. After hours consultation on post-accident and reasonable suspicion incidents is also available via the FirstLab 24 hour "Hotline" coordinator.

- f) Return to duty - Reiterate mandatory procedures according to regulations should the employee fail the drug and/or alcohol test.



- d) Pre-employment - Reiterate mandated procedures if applicant fails the test.

Contractor's Response to Task:

FirstLab will provide advice and regulatory guidance to MDOT transit agencies on requirements related to return to duty and pre-employment testing, including employer actions necessitated when a return to duty or pre-employment test is positive, adulterated, substituted, or cancelled.

5. **Record keeping/reporting** - The Contractor will a) maintain and provide for each transit agency the necessary testing records, and, b) provide for each transit agency the testing statistics needed for annual FTA reporting.

Contractor's Response to Task:

FirstLab has successfully designed, implemented and maintained data collection and record keeping procedures and reports that meet or exceed DOT regulatory requirements. FirstLab will provide MDOT agencies with statistical reports indicating the number and outcome of tests performed for each quarter and cumulatively year-to-date as well as statistical summary reports of all laboratory testing. These reports are available at any time MDOT agencies wishes to generate them. FirstLab also maintains statistical data categorized and formatted to satisfy the DOT Management Information System (MIS) reporting requirements (e.g. FTA, FMCSA, FRA, and USCG).

At a minimum, FirstLab statistical reports provide the following information:

Number of specimens collected by type of test, (e.g. pre-employment, random, reasonable suspicion, post-accident);

Number of positives verified by a Medical Review Officer by type of test and type of controlled substance;

Number of negative controlled substance tests verified by a Medical Review Officer by type of test;

Number of cancelled, adulterated, and substituted tests verified by the MRO by type of test.

The test summary, MIS and other statistical reports are available to MDOT agencies on the secure access web-site. Random compliance reports are also standard statistical reports available from FirstLab. Detailed random compliance reports (Selected Not Tested and Tested Not Selected) providing reconciliation of random tests conducted on those individuals selected for testing are also available.

FirstLab will provide for proper documentation and storage of test results for the appropriate period of time to comply with 49 CFR Part 40 and/or client-specific requirements and supply such records to MDOT agency authorized personnel using confidential secure protocols

6. **Billing** - The Contractor will submit periodic invoices to the transit agencies and collect fees for their drug testing, including laboratory and MRO charges.

Contractor's Response to Task:

FirstLab will invoice each MDOT agency monthly for drug tests the agency conducts. The per drug test fee will include laboratory and MRO charges.

7. **24 hour toll free consultation service** - The Contractor will make this service available to transit agency managers and MDOT in reference to drug or alcohol program questions and concerns that may arise. The Contractor must be able to give recommendations and answer questions about legally correct compliance procedures to be followed regarding the drug program. Included in this assistance must be solutions regarding reasonable cause referrals.

Contractor's Response to Task:

FirstLab provides 24 hour/7 day per week toll-free telephonic post-accident and reasonable suspicion testing assistance. An on-call coordinator responds to an inquiry or request for assistance within 30 minutes. FirstLab's P/A & R/S Assistance Coordinators are well trained and knowledgeable in DOT regulations. The assistance includes information concerning post-accident and reasonable suspicion testing criteria, coordination to accomplish required testing, and follow-up to ensure that any test results are received and appropriately processed.



8. **Recommend modifications** to improve efficiency/effectiveness/quality of compliance programs to transit agencies and to MDOT.

Contractor's Response to Task:

FirstLab will provide continuous process improvement feedback to MDOT and its transit agencies. Quarterly conference calls are often used as a vehicle to accomplish this exchange of ideas.

9. **Litigation Assistance** -The Contractor will, for a fee, provide legal representation and expert testimony as requested by individual transit agencies.

Contractor's Response to Task:

FirstLab will provide litigation assistance and expert testimony as requested. FirstLab's MROs regularly provide expert testimony for clients in arbitration hearings and other administrative proceedings related to drug testing. Dr. Donna Smith, FirstLab's Regulatory Affairs Officer is also available to provide testimony related to DOT regulations and procedures.

10. **Audit Assistance** -The Contractor will, for a fee, provide audit assistance as requested by individual transit agencies.

Contractor's Response to Task:

FirstLab staff members will assist MDOT transit agencies in the event of a DOT agency Drug and Alcohol Testing Program Compliance Audit. As a TPA, FirstLab understands that, our staff may be responsible for gathering and providing any materials requested by the DOT agency for an audit, and may also be required to travel to any of the MDOT agency locations that the auditors visit. FirstLab will also assist the transit agencies with resolving any audit findings through implementation of corrective actions and/or preparation of responses to the auditing agency. FirstLab has been successfully providing both pre-audit support and on-site audit support to ensure our clients' compliance with USDOT standards and regulations for 20 years

11. **Keep MDOT informed** of deliberate repetitive non-compliance that continues after correction and assistance has been given. This applies to transit agencies, as well as any of the resources utilized, such as collection sites. MDOT will be responsible for service fees.

Contractor's Response to Task:

FirstLab will report repeated non-compliance issues to the appropriate MDOT or transit agency personnel. Non-compliance issues may involve service providers (e.g. collection or breath alcohol testing facilities, transit agencies not conducting random or follow-up tests, etc.) The FirstLab Account Manager is responsible for monitoring testing activity for his/her assigned accounts, and in coordination with the MRO Department and other FirstLab quality assurance staff, ensures that issues related to non-compliance or program deficiencies are resolved.

**Group B – All Transit Agencies:
(MDOT is responsible for service fees)**

1. Consultation/Expert Advice

Provide "expert" advice, as requested by individual transit systems regarding their programs and procedures.

- Policy Formulation - The Contractor will: a) provide to each transit agency a model policy which meets the applicable USDOT standards (NHTSA, and FTA or FHWA), as well as optional additions, and b) consult with each agency individually regarding their policy as needed.

Contractor's Response to Task:

FirstLab will provide a model policy meeting the requirements of the applicable DOT agency regulations to each MDOT transit agency. FirstLab's Regulatory Affairs Officer will provide individual policy/program consultation to the MDOT transit agencies upon their request.

- Regulation Update/Bulletins - The Contractor must develop (or obtain from other resources) and distribute timely written bulletins for each transit agency regarding any relevant changes the in law as needed as well as



any clarifications which may be needed, based on identified areas of confusion. These bulletins need to receive MDOT approval prior to distribution.

Contractor's Response to Task:

FirstLab provides period updates to its DOT-regulated clients when regulation changes, additions or proposals are issued by the DOT. These updates are generally in the form of FirstLab Reports which summarize and discuss the impact of the changes or proposed amendments. Communications from the Office of the Secretary of Transportation, Office of Drug and Alcohol Policy and Compliance and the DOT agencies are posted to the FirstLab website as news items for our clients and email or fax alerts are sent to affected clients concerning the updates. FirstLab will provide copies of any bulletins or FirstLab Reports to MDOT before they are distributed to MDOT transit agencies.

- Programs and procedures advice - The Contractor will provide expert advice as requested by individual transit agencies regarding their programs and procedures.

Contractor's Response to Task:

FirstLab will provide expert advice as requested by the MDOT transit agencies regarding their programs and procedures. FirstLab's Regulatory Affairs Officer is responsible for this service component.

- Clarify regulations - The Contractor will clarify regulations jointly with MDOT.

Contractor's Response to Task:

FirstLab will provide interpretations and opinions published or issued by DOT concerning the DOT regulations. If there is no published or issued regulatory guidance on a matter raised by MDOT or its transit agencies, FirstLab will facilitate obtaining a written interpretation or opinion from the appropriate DOT agency. Because both FirstLab's President, Dennis Bennett and Regulatory Affairs Officer, Dr. Donna Smith were among the principal authors of the DOT drug and alcohol testing regulations issued from 1989-1995, FirstLab's expertise in this area is unparalleled.

- Union /Management Issues - The Contractor will advise regarding Union/Management issues as needed.

Contractor's Response to Task:

FirstLab will provide non-legal subject matter advice and counsel to MDOT and its transit agencies as needed.

- Legislative changes - The Contractor will keep abreast and inform regarding any legislative changes. (Also to MDOT)

Contractor's Response to Task:

FirstLab will provide notice and information concerning relevant legislative changes or proposals impacting MDOT or its transit agencies' substance abuse testing programs.

- General Consultation - The Contractor will consult with transit agencies regarding areas of confusion as needed. (Also to MDOT)

Contractor's Response to Task:

FirstLab will provide comprehensive consultation and advice to MDOT and its transit agencies on policy, program, compliance and other issues related to substance abuse testing.

2. Management/Supervision Education and Training

The Contractor will: a) provide training sessions as deemed necessary by MDOT. These sessions will focus on the legal requirements, as well as the recommended strategy for compliance. The Contractor must show they have a qualified, experienced trainer with drug/alcohol program management expertise and experience to teach the participants about strategies for compliance activities which maximize organizational efficiency and effectiveness. This training must include development of the supervisory skills needed for their role, including intervention techniques. The trainer provided must be a nationally recognized expert in FTA drug and alcohol regulations and training. They must have conducted training at local, state and federal levels, and have experience with FTA drug



and alcohol programs and training. Trainer must also have knowledge of Part 655, Part 40, Rx/OTC, new FTA initiatives and interpretation of those initiatives. All trainers must receive MDOT approval prior to conducting any training sessions. All training session agendas and materials will be reviewed and approved by MDOT prior to scheduling. Training will not be limited to, but will include the following topics or any other topic MDOT feels is necessary:

Contractor's Response to Task:

FirstLab will provide training sessions as determined by MDOT. All training modules and sessions will focus on the regulatory requirements and recommended strategy for compliance. Dr. Donna Smith, FirstLab's Regulatory Affairs and Program Development Officer develops and facilitates or conducts all FirstLab training and education services for DOT-regulated clients. Dr. Smith is a qualified, experienced trainer with drug/alcohol program management expertise and experience. She is a nationally recognized expert on DOT regulations, has conducted training courses and developed curriculum materials for the Substance Abuse Program Administrators Association, the American College of Occupational and Environmental Medicine, the American Society of Addiction Medicine, The American Association of Clinical Toxicologists and numerous Substance Abuse Professional training organizations. She is a certified trainer for urine specimen collectors and breath alcohol technicians. Dr. Smith has conducted training at local, state and federal levels, and has extensive experience with FTA drug and alcohol programs and training, including having conducted training programs for Florida, South Carolina, Illinois, and Pennsylvania state transit organizations and their local transit agencies. Dr. Smith has extensive knowledge of Part 655, Part 40, Rx/OTC, new FTA initiatives and the interpretation of those initiatives.

The training course and curriculum modules developed by Dr. Smith focus on the development of supervisory skills needed for their role in reasonable suspicion testing, including intervention techniques. FirstLab will submit all training session agendas and materials to MDOT for review and approval prior to scheduling. FirstLab's training courses are available as classroom sessions, live webinars, and DVD self-paced learning with accompanying workbook and written exercises. The courses and training materials currently available from FirstLab include:

Substance Abuse Management Training. The Contractor will provide a Substance Abuse Management training course geared towards new and experienced transit operators. The training will include comprehensive overview of the FTA Drug and Alcohol Testing Program. The training will cover topics such as policy compliance and updating, drug and alcohol testing procedures, procurement of testing services, employee and supervisor training, and recordkeeping, among others. The module will be interactive among the instructor and the participants. In addition, the session will include exercises to facilitate mastery of the concepts.

Contractor's Response to Task:

FirstLab has a Designated Employer Representative (DER) training course geared towards new and experienced transit operators. The training includes a comprehensive overview of the FTA Drug and Alcohol Testing Program, including the role and responsibilities of the DER, transit agency policy requirements, drug and alcohol testing procedures, service agent roles, employee and supervisor training requirements and recordkeeping. The training module is interactive and includes knowledge assessment exercises to facilitate mastery of the concepts.

Reasonable Suspicion Train-the-Trainer Workshop. The Contractor will provide a Reasonable Suspicion Training course. The FTA Drug and Alcohol Testing Program regulation states that an employer must require a covered employee to submit to a drug and alcohol test when the employer has reasonable suspicion to believe that the employee has used a prohibited drug or misused alcohol as defined in the regulations. The reasonable suspicion determination must be made by a supervisor that is trained in detecting the symptoms of drug use and alcohol misuse. This training module is provided for transit system employees that may be responsible for making reasonable suspicion determinations. The class participants will be trained in the facts, circumstances, physical evidence, physical signs and symptoms or patterns and/or behaviors that are associated with prohibited drug use or alcohol misuse. Train-the-trainer information will also be provided for transit management staff who will use the material to train their own supervisors.

Contractor's Response to Task:

FirstLab has a Supervisors' Reasonable Suspicion Testing Training course. The course includes training on the facts, circumstances, physical evidence, physical signs and symptoms or patterns and/or



behaviors that are associated with prohibited drug use or alcohol misuse. Train-the-trainer information is included for transit management staff that can use the course materials to train their own supervisors.

Prescription and Over-The-Counter Medication. The Contractor will provide Prescription and Over-The-Counter Medication use in the Transit Industry training. This training module is designed to increase awareness of the potential hazards of prescription and OTC medications in the transit industry. The presentation summarizes the FTA challenge to the transit industry, employer responsibilities, employee responsibilities, policy recommendations, model procedures for implementing the policy, and training efforts within the transit industry. An appendix to the presentation summarizes major classifications of Rx and OTC medications and possible side effects that could adversely affect an employee's ability to safely perform safety-sensitive job duties.

Contractor's Response to Task:

FirstLab has a Prescription and Over-The-Counter Medication training course based on the components of the FTA's Prescription and Over-The-Counter Medication Tool Kit. This training module is designed to increase awareness of the potential hazards of prescription and OTC medications in the transit industry and includes employer and employee responsibilities, policy recommendations, model procedures for implementing a prescription and OTC medication policy, and recommendation for training initiatives with employees and managers. The course materials include a summary of major classifications of Rx and OTC medications and possible side effects that could adversely affect an employee's ability to safely perform safety-sensitive job duties. The FirstLab Prescription and OTC Medication training course was developed jointly by Dr. Donna Smith and Dr. Natalie Hartenbaum, FirstLab's Chief MRO. Dr. Hartenbaum served as a consultant to the FTA in the development of the FTA's Prescription and OTC Medication Tool Kit, and is a nationally recognized expert in the field of occupational medicine and the impact of medication usage on cognitive and motor performance of safety-sensitive transportation functions.

Post-Accident Drug and Alcohol Testing. The Contractor will provide a training module geared toward decision making following a transit accident in which drug and alcohol testing is required. The course describes in detail the FTA regulation concerning post-accident testing as well as forms and documentation required to ensure the transit system maintains compliance. The course also includes a real-life scenario section where participants must decide if a post-accident test is required based on accident reports.

Contractor's Response to Task:

FirstLab has a training module on Post-Accident Drug and Alcohol Testing designed to train transit managers on the FTA regulation concerning post-accident testing, the forms and documentation required to ensure the transit system compliance with post-accident testing requirements, and procedures for accomplishing post accident testing. . The course includes role plays and vignettes where participants must decide if a post-accident test is required based on accident report information.

4. Account Management

- **Consortium membership** – Annually, the Contractor will provide a formal open enrollment period for transit agencies to join or continue membership in the consortium for the next calendar year (through MDOT). This may include developing and mailing brochures during the open enrollment period

Contractor's Response to Task:

FirstLab will provide annually an open enrollment period for transit agencies to join or continue membership in the consortium for the next calendar year (through MDOT). FirstLab will develop and mail brochures, flyers and other consortium information to transit agencies at the direction of MDOT.

- **FTA Reports** - The Contractor will review and verify (for accuracy) on-line FTA annual drug and alcohol testing reports from Section 5311 recipients, as well as advise as needed.

Contractor's Response to Task:

FirstLab will review and validate FTA annual drug and alcohol Management Information System (MIS) reports from Section 5311 recipients and provide assistance to the recipients in the preparation and corrections to their MIS reports.



1.022 Work and Deliverable

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

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

The following information is provided by MDOT and shall be used as the basis for pricing and making the award. While these numbers will be used for the basis of making an award, the actual numbers may vary during the term of the contract. Joining the MDOT consortium is an option, and not all transit agencies will elect this option. Except where specified, numbers represent totals for a one-year period of the consortium.

- Number of safety sensitive employees covered 700
- Number of random selection pools: up to 30
- Location of organizations affected: Statewide
- Number of breath alcohol tests: 100
- Number of drug tests: 200
- Number of collection sites: 100
- Number of FTA/FMCSA transit agencies: 80
- Number of agencies for Annual Promotion Campaign: 80
- Number of requests from transit agencies for consultation, "expert" advice, program modification recommendations: 200 @ 1 hour each

Consultation/Expert Advice and Training will be delivered on an as-needed basis, in a timely fashion, to the transit agencies or MDOT. Training dates will be set by MDOT at least 60 days prior to the training.

Account Management will be done on an on-going basis. The consortium membership drive is to be conducted annually to allow transit agencies to continue or join for the next calendar year. FTA Reports are due at the beginning of each calendar year following the year the reporting is for. Reporting is now done on-line.

Contractor Response to Tasks:

FirstLab will provide all requirements listed in Article 1 as described in the previous section. FirstLab will provide all deliverables and work products within the time-lines specified by MDOT.

1.030 Roles and Responsibilities

1.031 Contractor Staff, Roles, and Responsibilities

Identify personnel requirements by number and skill including names and proposed physical location of executive and professional personnel who would be employed in this project. Indicate through the use of organizational diagrams and/or narrative statements, the proposed project manager and staff support, subcontracting and specific functions of each assigned individual. Also provide detailed qualifications of employees or subcontractors who will be assigned to this project.

The State reserves the right to approve personnel for this project and to require replacement of personnel found to be unacceptable at any time during the project.

Contractor Response to Tasks:

FirstLab's executive team has a combined total of over 100 years of toxicology, laboratory and regulatory experience. This makes FirstLab uniquely equipped to provide efficient, confidential, administrative, management and consulting services. All key personnel identified below are based in the FirstLab offices in North Wales, PA, with the exception of Mr. Bennett who is based in FirstLab's Waynesboro, PA office, Dr. Donna Smith who is based in FirstLab's St. Petersburg, FL office and Mr. Kirk Cizerle who is based in FirstLab's Norfolk, VA office. Mr. Bennett, Dr. Smith and Mr. Cizerle provide supervision and training of FirstLab's management, operations, MRO, and Information Technology staffs on a monthly basis at the North Wales, PA office.

Account Representative /Manager

FirstLab will assign a full time Account Manager to the MDOT account with appropriate backup to ensure that MDOT is completely comfortable with the availability, speed and quality of responsiveness to the service



needs of the MDOT organization and its transit agencies on a daily basis. The Account Manager is available daily during normal business Monday through Friday.

The Account Manager will be responsible for all areas of the day-to-day management of The MDOT drug and alcohol testing program, including scheduling of testing and training, billing questions, resolving service questions or problems from any source. The Account Manager will be located at FirstLab's corporate offices, located in North Wales, PA. FirstLab hours of operation are Monday to Friday 8:00 AM-5:30 PM ET. Interactive Voice Response data access and Web-enabled reporting functions are available 24 hours a day. Our afterhours coordinator is available 24 X 7 to address post-accident and emergency situations.

Account Executive

The MDOT account will be supervised by Regina Doural, Manager of Workplace Programs. Ms. Doural provides daily interaction with the MDOT account manager and is available for resolution of any service issues or other program needs presented by MDOT or its transit agencies.

Director of Operations

Lynn Carr, Director of Operations for FirstLab, is responsible for the management of daily operational issues as well as the organization, development and execution of policies and procedures. Her duties also include overseeing numerous drug and alcohol testing programs of FirstLab clients and oversight of the MRO Administrators' functions. In order to fulfill these responsibilities, Ms. Carr maintains a close relationship with all DHHS-certified laboratories contracted with FirstLab.

Data Systems Manager

Kirk Cizerle, Chief Information Officer. Mr. Cizerle has been with FirstLab since 2006, when he assumed the position of Chief Information Officer. Mr. Cizerle has over 13 years experience in Information Technology and a thorough understanding of every aspect of Technical Management holding positions from developer to executive. Prior to joining FirstLab, Mr. Cizerle was the Chief Information Officer for StayStat, a software development company that specialized in developing enterprise level software applications for the healthcare industry. Mr. Cizerle is responsible for the supervision and oversight of all of FirstLab's Information technology staff, including programmers, network administrators and business analysts who meet the data management needs of FirstLab's clients and the company's internal processes.

Medical Review Office

Natalie P. Hartenbaum, M.D., M.P.H., F.A.C.O.E.M. Chief Medical Review Officer. Dr. Hartenbaum received her B.A. in Biology from Temple University and her M.D. from Temple University School of Medicine. She also has a M.P.H. in Occupational Medicine from the Medical College of Wisconsin. Dr. Hartenbaum completed her internship and residency in Internal Medicine at Abington Memorial Hospital, Abington PA. She served additional residencies in Internal Medicine and Occupational and Environmental Medicine at Tulane University and Thomas Jefferson University Hospital, Philadelphia, PA. Dr. Hartenbaum is Board Certified in Internal Medicine and Occupational Medicine and is a Fellow of the American College of Occupational and Environmental Medicine.

Dr. Hartenbaum has extensive professional experience in occupational medicine having served as Medical Director for Consolidated Rail Corporation (Conrail), Assistant Medical Director, CentraMed Occupational Health Specialists, and as Occupational Health Physician at Merck and CO., Inc. She has particular expertise in DOT driver qualification medical examinations, return to work and fitness for duty determinations, and workplace drug and alcohol testing. She currently serves on the faculties of the University of Pennsylvania and the American College of Occupational and Environmental Medicine (ACOEM), teaching courses in occupational medicine.

FirstLab also employs the services of 4 other certified MROs. Resumes and certifications can be found in Appendix 3.

FirstLab also provides the services of our Senior Management team for ongoing consultation and assistance to the MDOT

Dennis J. Bennett, M.Ed. President. Mr. Bennett has been with FirstLab for 12 years and was promoted to the position of President in May 2004. From 1999-2004, he held the position of Chief Operating Officer and from 1994 -1999 he served as the company's Vice President of Government Affairs.



Prior to joining the company in June 1994, Mr. Bennett completed 22 years of work within the federal government's Alcohol and Drug Abuse Prevention and Control Programs. In his last position, he was a program analyst with the Secretary's Office of Drug Enforcement and Program Compliance, U.S. Department of Transportation (DOT) in Washington, DC. That office was responsible for developing, coordinating, and overseeing alcohol and drug regulations, policies, programs and information within the regulated transportation industry.

Mr. Bennett received his Bachelor's Degree in Psychology from the University of Connecticut in 1972 and a Master's Degree in Education (M.Ed.) with an emphasis in drug and alcohol studies from Boston University in 1976. He is an Army veteran.

Donna R. Smith, Ed. D, Regulatory Affairs and Program Development Officer. Dr. Smith is based in St. Petersburg, FL and is responsible for the oversight of all areas of regulatory compliance, including client consultation and regulatory training programs. In addition, she has responsibility for the review and development of client drug free workplace policies and procedures. Dr. Smith previously served as the Acting Director, Drug Enforcement and Program Compliance, for the U.S. Department of Transportation in Washington, D.C., coordinating the development, implementation, and enforcement of policies and procedures for the transportation industry workplace drug and alcohol testing programs. She also served as Senior Advisor to the Secretary of Transportation for monitoring all components of the DOT and industry drug and alcohol testing programs, as well as coordinating its enforcement and compliance efforts. She was a principal author of the DOT drug and alcohol testing regulations and numerous government publications on drug and alcohol testing procedures.

Mary Ellen Petti, Chief Development Officer. Ms. Petti is responsible for the oversight of all vertical marketing activities for FirstLab. Her duties also include the exploration, evaluation and development of new services and business opportunities, as well as the design and delivery of diversified outsourcing initiatives in the areas of educational programs, alternative testing methods, Internet products, and regulatory compliance services. In addition, she oversees all laboratory relationships and strategic partnerships and has responsibility for the review and approval of all client, vendor and partnership contracts.

Ms. Petti joined FirstLab in 1990, as one of the founders and has been responsible for the design and administration of many of the drug and alcohol programs currently in place for FirstLab's clients. Prior to joining FirstLab, Ms. Petti served as Vice President of Special Projects for Princeton Diagnostic Laboratories of America (PDLA), one of the first laboratories to receive certification from the National Institute on Drug Abuse (NIDA) to perform drug testing for safety sensitive employees subject to federally mandated testing. She was responsible for Customer Service operations, the IT Department, Specimen Receiving and Identification (Accessioning), the outsourcing of clinical laboratory work and the development of forms, specimen collection kits and standard operating procedures to ensure the laboratory's compliance with the NIDA guidelines. In addition, she developed onsite specimen collection protocols and coordinated client testing events for the National Consortium for a Drug Free Workplace (NCDFW) and for sports organizations such as the NY Giants and NY Jets.

See Appendix 1 for brief bio of FirstLab's Key Personnel

See Appendix 1 for FirstLab's organization chart

Subcontractors providing services to MDOT and its transit agencies under this project are limited to the DHHS certified drug testing laboratory that will provide all laboratory services for urine drug testing. The certifications and description of the laboratory are provided at Appendix 2.

1.040 Project Plan

1.041 Project Plan Management

The contractor shall carry out this project under the direction and control of MDOT. There will be open communication between the contractor and the MDOT project coordinator.

Within ten (10) working days after the award of the contract, the contractor shall submit a finalized work plan to the project coordinator for approval. The work plan shall include all tasks to be completed, time frames for each task, and personnel assigned to each task.

The work shall be carried out to the satisfaction of MDOT. All correspondence and major work elements shall be provided for MDOT to review prior to finalizing, and be acceptable to MDOT. MDOT will not be the legal information source for the



Contractor regarding the drug regulations. Instead, it is imperative that the Contractor be an expert in the content of current related legislation, as well as any future developments. The work must be accomplished by staff acceptable to MDOT.

Contractor Response to Tasks:

FirstLab will conduct a thorough needs assessment of the MDOT program to ensure that the drug-and alcohol-testing program is structured to meet the transit agencies' and MDOT's requirements. To ensure effective coordination and communication, once awarded the contract FirstLab will facilitate a series of teleconference implementation meetings with key personnel from MDOT and any transit agencies designated by MDOT to ensure a smooth and seamless transition from their current providers.

FirstLab will provide MDOT with a work plan within 10 days of the award that meets all the requirements of the project plan outlined above. All deliverables, work products, and tasks will be accomplished in full compliance with applicable federal and state regulations.

1.042 Reports

MDOT will require quarterly random reports plus other reports using data being collected by the Contractor which will be provided to MDOT on an as-needed basis. MDOT will periodically ask for reports needed to monitor the transit agencies or Contractor.

Contractor Response to Tasks:

FirstLab provides a variety of statistical reports statistical reports of drug and alcohol testing activity conducted by its clients. All reports are available on-line to authorized MDOT and transit agency representatives. These reports are available at all times with current and historical data.

Available reports include:

- **Random Testing Management and Compliance**
- **MIS Testing Activity**
- **Turnaround time reports**
- **Laboratory statistical reports**
- **Blind Proficiency Testing**

FirstLab's statistical reports can be configured to include the data for each individual transit agency and also as "combined" or "parent" reports that includes data from all MDOT agencies.

See Appendix 4 for Sample Internet Reports

1.050 Acceptance

1.051 Criteria

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

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

The criteria will be used by the State to determine Acceptance of the Services and/or Deliverables provided under this Contract.

The work shall be carried out to the satisfaction of MDOT. All correspondence and major work elements shall be provided for MDOT to review prior to finalizing, and be acceptable to MDOT. MDOT will not be the legal information source for the Contractor regarding the drug regulations. Instead, it is imperative that the Contractor be an expert in the content of current related legislation, as well as any future developments. The work must be accomplished by staff acceptable to MDOT.

**1.052 Final Acceptance**

Final acceptance will occur upon successful completion of the final contract year's reporting requirements.

1.060 Proposal Pricing**1.061 Proposal Pricing**

For authorized Services and Price List, see Attachment A.

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

1.062 Price Term

Prices quoted are firm for the entire length of the Contract.

1.063 Tax Excluded from Price

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

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

1.064 Holdback - Not Applicable**1.070 Additional Requirements****1.071 Additional Terms and Conditions specific to this Contract – Not Applicable**



Article 2, Terms and Conditions

2.000 Contract Structure and Term

2.001 Contract Term

The Contract is for a period of 3 years beginning January 1, 2010, through December 31, 2012. All outstanding Purchase Orders must also expire upon the termination (cancellation for any of the reasons listed in **Section 2.150**) of the Contract, unless otherwise extended under the Contract. Absent an early termination for any reason, Purchase Orders issued but not expired, by the end of the Contract's stated term, will remain in effect for the balance of the fiscal year for which they were issued.

2.002 Options to Renew

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

2.003 Legal Effect

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

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

2.004 Attachments & Exhibits

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

2.005 Ordering

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

2.006 Order of Precedence

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

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

2.007 Headings

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

**2.008 Form, Function & Utility**

If the Contract is for use of more than one 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 or more of the provisions of the Contract is declared invalid, the remaining provisions of the Contract remain in full force and effect.

2.010 Consents and Approvals

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

2.011 No Waiver of Default

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

2.012 Survival

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

2.020 Contract Administration**2.021 Issuing Office**

The Contract is issued by the Department of Management and Budget, Purchasing Operations and Michigan Department of Transportation [MDOT] (collectively, including all other relevant State of Michigan departments and agencies, the "State"). Purchasing Operations is the sole point of contact in the State with regard to all procurement and contractual matters relating to the Contract. Purchasing Operations **is the only State office authorized to change, modify, amend, alter or clarify the prices, specifications, terms and conditions of the Contract.** The Contractor Administrator within Purchasing Operations for the Contract is:

Andy Ghosh, CPPB, Contract Administrator
Purchasing Operations
Department of Management and Budget
Mason Bldg, 2nd Floor
PO Box 30026
Lansing, MI 48909
Email: ghosha@michigan.gov
Phone: 517-373-7396

2.022 Contract Compliance Inspector

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

Barbara Wickerham, Compliance Analyst
Michigan Department of Transportation
425 W. Ottawa, Lansing, MI 48909
wickerhamb@michigan.gov
Phone: 517-335-2583
Fax: (517) 373-7997

**2.023 Project Manager**

The following individual will oversee the project:

Barbara Wickerham, Compliance Analyst
Michigan Department of Transportation
425 W. Ottawa, Lansing, MI 48909)
wickerhamb@michigan.gov
Phone: 517-335-2583
Fax: (517) 373-7997

2.024 Change Requests

The State reserves the right to request, from time to time, any changes to the requirements and specifications of the Contract and the work to be performed by the Contractor under the Contract. During the course of ordinary business, it may become necessary for the State to discontinue certain business practices or create Additional Services/Deliverables. At a minimum, to the extent applicable, the State would like the Contractor to provide a detailed outline of all work to be done, including tasks necessary to accomplish the services/deliverables, timeframes, listing of key personnel assigned, estimated hours for each individual per task, and a complete and detailed cost justification.

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

Change Requests:

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

2.025 Notices

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

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

2.026 Binding Commitments

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

2.027 Relationship of the Parties

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

**2.028 Covenant of Good Faith**

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

2.029 Assignments

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

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

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

2.030 General Provisions**2.031 Media Releases**

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

2.032 Contract Distribution

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

2.033 Permits

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

2.034 Website Incorporation

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

2.035 Future Bidding Preclusion

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

2.036 Freedom of Information

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

**2.037 Disaster Recovery**

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

2.040 Financial Provisions**2.041 Fixed Prices for Services/Deliverables**

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

2.042 Adjustments for Reductions in Scope of Services/Deliverables

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

2.043 Services/Deliverables Covered

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

2.044 Invoicing and Payment – In General

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

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

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

(d) The specific payment schedule for any Contract(s) entered into, as the State and the Contractor(s) will mutually agree upon. The schedule 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.

2.045 Pro-ration

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

2.046 Antitrust Assignment

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

2.047 Final Payment

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



the State for payment under the Contract, other than those claims previously filed in writing on a timely basis and still unsettled.

2.048 Electronic Payment Requirement

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

2.050 Taxes

2.051 Employment Taxes

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

2.052 Sales and Use Taxes

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

2.060 Contract Management

2.061 Contractor Personnel Qualifications

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

2.062 Contractor Key Personnel

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



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

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

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

2.064 Contractor Personnel Location

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

2.065 Contractor Identification

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

2.066 Cooperation with Third Parties

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

2.067 Contractor Return of State Equipment/Resources

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

2.068 Contract Management Responsibilities

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

2.070 Subcontracting by Contractor

2.071 Contractor Full Responsibility

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

2.072 State Consent to Delegation

Contractor must not delegate any duties under the Contract to a Subcontractor unless the Department of Management and Budget, Purchasing Operations has given written consent to such delegation. The State reserves the right of prior



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

2.073 Subcontractor Bound to Contract

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

2.074 Flow Down

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

2.075 Competitive Selection

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

2.080 State Responsibilities

2.081 Equipment

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

2.082 Facilities

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

2.090 Security

2.091 Background Checks

On a case-by-case basis, the State may investigate the Contractor's personnel before they may have access to State facilities and systems. The scope of the background check is at the discretion of the State and the results will be used to determine Contractor personnel eligibility for working within State facilities and systems. The investigations will include Michigan State Police Background checks (ICHAT) and may include the National Crime Information Center (NCIC) Finger Prints. Proposed Contractor personnel may be required to complete and submit an RI-8 Fingerprint Card for the NCIC Finger Print Check. Any request for background checks will be initiated by the State and will be reasonably related to the type of work requested.



All Contractor personnel must comply with the State's security and acceptable use policies for State IT equipment and resources. See <http://www.michigan.gov/dit>. Furthermore, Contractor personnel must agree to the State's security and acceptable use policies before the Contractor personnel will be accepted as a resource to perform work for the State. The Contractor must present these documents to the prospective employee before the Contractor presents the individual to the State as a proposed resource. Contractor staff must comply with all Physical Security procedures in place within the facilities where they are working.

2.092 Security Breach Notification

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

2.093 PCI Data Security Requirements – Not Applicable

2.100 Confidentiality

2.101 Confidentiality

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

2.102 Protection and Destruction of Confidential Information

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

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

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

2.103 Exclusions

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



receiving party (i) promptly provides the furnishing party with notice of the legal request, and (ii) assists the furnishing party in resisting or limiting the scope of the disclosure as reasonably requested by the furnishing party.

2.104 No Implied Rights

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

2.105 Respective Obligations

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

2.110 Records and Inspections

2.111 Inspection of Work Performed

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

2.112 Examination of Records

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

2.113 Retention of Records

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

2.114 Audit Resolution

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

2.115 Errors

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

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

2.120 Warranties

2.121 Warranties and Representations



The Contractor represents and warrants:

- (a) It is capable in all respects of fulfilling and must fulfill all of its obligations under the Contract. The performance of all obligations under the Contract must be provided in a timely, professional, and workman-like manner and must meet the performance and operational standards required under the Contract.
- (b) The Contract Appendices, Attachments and Exhibits identify the equipment and software and services necessary for the Deliverable(s) to perform and Services to operate in compliance with the Contract's requirements and other standards of performance.
- (c) It is the lawful owner or licensee of any Deliverable licensed or sold to the State by Contractor or developed by Contractor under the Contract, and Contractor has all of the rights necessary to convey to the State the ownership rights or licensed use, as applicable, of any and all Deliverables. None of the Deliverables provided by Contractor to the State under the Contract, nor their use by the State, will infringe the patent, copyright, trade secret, or other proprietary rights of any third party.
- (d) If, under the Contract, Contractor procures any equipment, software or other Deliverable for the State (including equipment, software and other Deliverables manufactured, re-marketed or otherwise sold by Contractor under Contractor's name), then in addition to Contractor's other responsibilities with respect to the items in the Contract, Contractor must assign or otherwise transfer to the State or its designees, or afford the State the benefits of, any manufacturer's warranty for the Deliverable.
- (e) The Contract signatory has the power and authority, including any necessary corporate authorizations, necessary to enter into the Contract, on behalf of Contractor.
- (f) It is qualified and registered to transact business in all locations where required.
- (g) Neither the Contractor nor any affiliates, nor any employee of either, has, must have, or must acquire, any contractual, financial, business, or other interest, direct or indirect, that would conflict in any manner or degree with Contractor's performance of its duties and responsibilities to the State under the Contract or otherwise create an appearance of impropriety with respect to the award or performance of this Agreement. Contractor must notify the State about the nature of the conflict or appearance of impropriety within two days of learning about it.
- (h) If any of the certifications, representations, or disclosures made in the Contractor's original bid response change after the Contract start date, the Contractor must report those changes immediately to the Department of Management and Budget, Purchasing Operations.

2.122 Warranty of Merchantability

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

2.123 Warranty of Fitness for a Particular Purpose

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

2.124 Warranty of Title

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

2.125 Equipment Warranty – Not Applicable

2.126 Equipment to be New

If applicable, all equipment provided under the Contract by Contractor must be new where Contractor has knowledge regarding whether the equipment is new or assembled from new or serviceable used parts that are like new in performance or has the option of selecting one or the other. Equipment that is assembled from new or serviceable used



parts that are like new in performance is acceptable where Contractor does not have knowledge or the ability to select one or other, unless specifically agreed otherwise in writing by the State.

2.127 Prohibited Products

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

2.128 Consequences For Breach

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

2.130 Insurance

2.131 Liability Insurance

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

2.132 Subcontractor Insurance Coverage

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

2.133 Certificates of Insurance and Other Requirements

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

The Contractor must maintain all required insurance coverage throughout the term of the Contract and any extensions and, in the case of claims-made Commercial General Liability policies, must secure tail coverage for at least three years



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

2.140 Indemnification

2.141 General Indemnification

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

2.142 Code Indemnification

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

2.143 Employee Indemnification

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

2.144 Patent/Copyright Infringement Indemnification

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

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

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

2.145 Continuation of Indemnification Obligations

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



2.146 Indemnification Procedures

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

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

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

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

2.150 Termination/Cancellation

2.151 Notice and Right to Cure

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

2.152 Termination for Cause

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

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

(c) If the State chooses to partially terminate the Contract for cause, charges payable under the Contract will be equitably adjusted to reflect those Services/Deliverables that are terminated and the State must pay for all



Services/Deliverables for which Final Acceptance has been granted provided up to the termination date. Services and related provisions of the Contract that are terminated for cause must cease on the effective date of the termination.

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

2.153 Termination for Convenience

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

2.154 Termination for Non-Appropriation

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

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

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

2.155 Termination for Criminal Conviction

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

2.156 Termination for Approvals Rescinded

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

2.157 Rights and Obligations upon Termination

(a) If the State terminates the Contract for any reason, the Contractor must (a) stop all work as specified in the notice of termination, (b) take any action that may be necessary, or that the State may direct, for preservation and protection of Deliverables or other property derived or resulting from the Contract that may be in Contractor's possession, (c) return all materials and property provided directly or indirectly to Contractor by any entity, agent or employee of the State, (d)



transfer title in, and deliver to, the State, unless otherwise directed, all Deliverables intended to be transferred to the State at the termination of the Contract and which are resulting from the Contract (which must be provided to the State on an "As-Is" basis except to the extent the amounts paid by the State in respect of the items included compensation to Contractor for the provision of warranty services in respect of the materials), and (e) take any action to mitigate and limit any potential damages, or requests for Contractor adjustment or termination settlement costs, to the maximum practical extent, including terminating or limiting as otherwise applicable those subcontracts and outstanding orders for material and supplies resulting from the terminated Contract.

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

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

2.158 Reservation of Rights

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

2.160 Termination by Contractor

2.161 Termination by Contractor

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

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

2.170 Transition Responsibilities

2.171 Contractor Transition Responsibilities

If the State terminates the Contract, for convenience or cause, or if the Contract is otherwise dissolved, voided, rescinded, nullified, expires or rendered unenforceable, the Contractor agrees to comply with direction provided by the State to assist in the orderly transition of equipment, services, software, leases, etc. to the State or a third party designated by the State. If the Contract expires or terminates, the Contractor agrees to make all reasonable efforts to effect an orderly transition of services within a reasonable period of time that in no event will exceed (30) days. These efforts must include, but are not limited to, those listed in **Sections 2.171, 2.172, 2.173, 2.174, and 2.175**.

2.172 Contractor Personnel Transition

The Contractor must work with the State, or a specified third party, to develop a transition plan setting forth the specific tasks and schedule to be accomplished by the parties to effect an orderly transition. The Contractor must allow as many personnel as practicable to remain on the job to help the State, or a specified third party, maintain the continuity and consistency of the services required by the Contract. In addition, during or following the transition period, in the event the State requires the Services of the Contractor's Subcontractors or vendors, as necessary to meet its needs, Contractor agrees to reasonably, and with good-faith, work with the State to use the Services of Contractor's Subcontractors or vendors. Contractor must notify all of Contractor's subcontractors of procedures to be followed during transition.

2.173 Contractor Information Transition

The Contractor agrees to provide reasonable detailed specifications for all Services/Deliverables needed by the State, or specified third party, to properly provide the Services/Deliverables required under the Contract. The Contractor must



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

2.174 Contractor Software Transition

The Contractor must reasonably assist the State in the acquisition of any Contractor software required to perform the Services/use the Deliverables under the Contract. This must include any documentation being used by the Contractor to perform the Services under the Contract. If the State transfers any software licenses to the Contractor, those licenses must, upon expiration of the Contract, transfer back to the State at their current revision level. Upon notification by the State, Contractor may be required to freeze all non-critical changes to Deliverables/Services.

2.175 Transition Payments

If the transition results from a termination for any reason, reimbursement must be governed by the termination provisions of the Contract. If the transition results from expiration, the Contractor will be reimbursed for all reasonable transition costs (i.e. costs incurred within the agreed period after contract expiration that result from transition operations) at the rates agreed upon by the State. The Contractor must prepare an accurate accounting from which the State and Contractor may reconcile all outstanding accounts.

2.176 State Transition Responsibilities

In the event that the Contract is terminated, dissolved, voided, rescinded, nullified, or otherwise rendered unenforceable, the State agrees to perform the following obligations, and any others upon which the State and the Contractor agree:

- (a) Reconciling all accounts between the State and the Contractor;
- (b) Completing any pending post-project reviews.

2.180 Stop Work

2.181 Stop Work Orders

The State may, at any time, by written stop work order to Contractor, require that Contractor stop all, or any part, of the work called for by the Contract for a period of up to 90 calendar days after the stop work order is delivered to Contractor, and for any further period to which the parties may agree. The stop work order must be identified as a stop work order and must indicate that it is issued under this **Section 2.180**. Upon receipt of the stop work order, Contractor must immediately comply with its terms and take all reasonable steps to minimize incurring costs allocable to the work covered by the stop work order during the period of work stoppage. Within the period of the stop work order, the State must either: (a) cancel the stop work order; or (b) terminate the work covered by the stop work order as provided in **Section 2.150**.

2.182 Cancellation or Expiration of Stop Work Order

The Contractor must resume work if the State cancels a Stop Work Order or if it expires. The parties will agree upon an equitable adjustment in the delivery schedule, the Contract price, or both, and the Contract must be modified, in writing, accordingly, if: (a) the stop work order results in an increase in the time required for, or in Contractor's costs properly allocable to, the performance of any part of the Contract; and (b) Contractor asserts its right to an equitable adjustment within 30 calendar days after the end of the period of work stoppage; provided that, if the State decides the facts justify the action, the State may receive and act upon a Contractor proposal submitted at any time before final payment under the Contract. Any adjustment must conform to the requirements of **Section 2.024**.

2.183 Allowance of Contractor Costs

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

2.190 Dispute Resolution

2.191 In General

Any claim, counterclaim, or dispute between the State and Contractor arising out of or relating to the Contract or any Statement of Work must be resolved as follows. For all Contractor claims seeking an increase in the amounts payable to Contractor under the Contract, or the time for Contractor's performance, Contractor must submit a letter, together with all data supporting the claims, executed by Contractor's Contract Administrator or the Contract Administrator's designee certifying that (a) the claim is made in good faith, (b) the amount claimed accurately reflects the adjustments in the amounts payable to Contractor or the time for Contractor's performance for which Contractor believes the State is liable



and covers all costs of every type to which Contractor is entitled from the occurrence of the claimed event, and (c) the claim and the supporting data are current and complete to Contractor's best knowledge and belief.

2.192 Informal Dispute Resolution

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

(i) The representatives of Contractor and the State must meet as often as the parties reasonably deem necessary to gather and furnish to each other all information with respect to the matter in issue which the parties believe to be appropriate and germane in connection with its resolution. The representatives must discuss the problem and negotiate in good faith in an effort to resolve the dispute without the necessity of any formal proceeding.

(ii) During the course of negotiations, all reasonable requests made by one party to another for non-privileged information reasonably related to the Contract must be honored in order that each of the parties may be fully advised of the other's position.

(iii) The specific format for the discussions will be left to the discretion of the designated State and Contractor representatives, but may include the preparation of agreed upon statements of fact or written statements of position.

(iv) Following the completion of this process within 60 calendar days, the Director of Purchasing Operations, DMB, or designee, must issue a written opinion regarding the issue(s) in dispute within 30 calendar days. The opinion regarding the dispute must be considered the State's final action and the exhaustion of administrative remedies.

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

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

2.193 Injunctive Relief

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

2.194 Continued Performance

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

2.200 Federal and State Contract Requirements

2.201 Nondiscrimination

In the performance of the Contract, Contractor agrees not to discriminate against any employee or applicant for employment, with respect to his or her hire, tenure, terms, conditions or privileges of employment, or any matter directly or indirectly related to employment, because of race, color, religion, national origin, ancestry, age, sex, height, weight, marital status, or physical or mental disability. Contractor further agrees that every subcontract entered into for the performance of the Contract or any purchase order resulting from the Contract must contain a provision requiring non-discrimination in employment, as specified here, binding upon each Subcontractor. This covenant is required under the Elliot Larsen Civil Rights Act, 1976 PA 453, MCL 37.2101, et seq., and the Persons with Disabilities Civil Rights Act, 1976 PA 220, MCL 37.1101, et seq., and any breach of this provision may be regarded as a material breach of the Contract.

2.202 Unfair Labor Practices

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



appears in this register. Under Section 4 of 1980 PA 278, MCL 423.324, the State may void any Contract if, after award of the Contract, the name of Contractor as an employer or the name of the Subcontractor, manufacturer or supplier of Contractor appears in the register.

2.203 Workplace Safety and Discriminatory Harassment

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

2.204 Prevailing Wage

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

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

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

2.210 Governing Law

2.211 Governing Law

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

2.212 Compliance with Laws

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

2.213 Jurisdiction

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

2.220 Limitation of Liability

2.221 Limitation of Liability

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



The Contractor's liability for damages to the State is limited to two times the value of the Contract. The foregoing limitation of liability does 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 Contractor; to claims covered by other specific provisions of the Contract calling for liquidated damages; or to court costs or attorney's fees awarded by a court in addition to damages after litigation based on the Contract.

The State's liability for damages to the Contractor is limited to the value of the Contract.

2.230 Disclosure Responsibilities

2.231 Disclosure of Litigation

(a) Disclosure. Contractor must disclose any material criminal litigation, investigations or proceedings involving the Contractor (and each Subcontractor) or any of its officers or directors or any litigation, investigations or proceedings under the Sarbanes-Oxley Act. In addition, each Contractor (and each Subcontractor) must notify the State of any material civil litigation, arbitration or proceeding which arises during the term of the Contract and extensions, to which Contractor (or, to the extent Contractor is aware, any Subcontractor) is a party, and which involves: (i) disputes that might reasonably be expected to adversely affect the viability or financial stability of Contractor or any Subcontractor; or (ii) a claim or written allegation of fraud against Contractor or, to the extent Contractor is aware, any Subcontractor by a governmental or public entity arising out of their business dealings with governmental or public entities. The Contractor must disclose in writing to the Contract Administrator any litigation, investigation, arbitration or other proceeding (collectively, "Proceeding") within 30 days of its occurrence. Details of settlements which are prevented from disclosure by the terms of the settlement may be annotated. Information provided to the State from Contractor's publicly filed documents referencing its material litigation will be deemed to satisfy the requirements of this Section.

(b) Assurances. If any Proceeding disclosed to the State under this Section, or of which the State otherwise becomes aware, during the term of the Contract would cause a reasonable party to be concerned about:

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

(c) Contractor must make the following notifications in writing:

- (1) Within 30 days of Contractor becoming aware that a change in its ownership or officers has occurred, or is certain to occur, or a change that could result in changes in the valuation of its capitalized assets in the accounting records, Contractor must notify DMB Purchasing Operations.
- (2) Contractor must also notify DMB Purchasing Operations within 30 days whenever changes to asset valuations or any other cost changes have occurred or are certain to occur as a result of a change in ownership or officers.
- (3) Contractor must also notify DMB Purchasing Operations within 30 days whenever changes to company affiliations occur.

2.232 Call Center Disclosure

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

2.233 Bankruptcy

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

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



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

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

2.240 Performance

2.241 Time of Performance

- (a) Contractor must use commercially reasonable efforts to provide the resources necessary to complete all Services and Deliverables according to the time schedules contained in the Statements of Work and other Exhibits governing the work, and with professional quality.
- (b) Without limiting the generality of **Section 2.241(a)**, Contractor must notify the State in a timely manner upon becoming aware of any circumstances that may reasonably be expected to jeopardize the timely and successful completion of any Deliverables/Services on the scheduled due dates in the latest State-approved delivery schedule and must inform the State of the projected actual delivery date.
- (c) If the Contractor believes that a delay in performance by the State has caused or will cause the Contractor to be unable to perform its obligations according to specified Contract time periods, the Contractor must notify the State in a timely manner and must use commercially reasonable efforts to perform its obligations according to the Contract time periods notwithstanding the State's failure. Contractor will not be in default for a delay in performance to the extent the delay is caused by the State.

2.242 Service Level Agreements (SLAs) – Not Applicable.

2.243 Liquidated Damages - Not Applicable.

2.244 Excusable Failure

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

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

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



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

2.250 Approval of Deliverables

2.251 Delivery Responsibilities - Not Applicable.

2.252 Delivery of Deliverables

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

2.253 Testing

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

2.254 Approval of Deliverables, In General

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

(b) The State's obligation to comply with any State Review Period is conditioned on the timely delivery of Deliverables/Services being reviewed.

(c) Before commencement of its review or testing of a Deliverable/Service, the State may inspect the Deliverable/Service to confirm that all components of the Deliverable/Service have been delivered without material deficiencies. If the State determines that the Deliverable/Service has material deficiencies, the State may refuse delivery of the Deliverable/Service without performing any further inspection or testing of the Deliverable/Service. Otherwise, the review period will be deemed to have started on the day the State receives the Deliverable or the Service begins, and the State and Contractor agree that the Deliverable/Service is ready for use and, where applicable, certification by Contractor according to **Section 2.253**.

(d) The State must approve in writing a Deliverable/Service after confirming that it conforms to and performs according to its specifications without material deficiency. The State may, but is not be required to, conditionally approve in writing a Deliverable/Service that contains material deficiencies if the State elects to permit Contractor to rectify them post-approval. In any case, Contractor will be responsible for working diligently to correct within a reasonable time at Contractor's expense all deficiencies in the Deliverable/Service that remain outstanding at the time of State approval.

(e) If, after three opportunities (the original and two repeat efforts), the Contractor is unable to correct all deficiencies preventing Final Acceptance of a Deliverable/Service, the State may: (i) demand that the Contractor cure the failure and give the Contractor additional time to cure the failure at the sole expense of the Contractor; or (ii) keep the Contract in force and do, either itself or through other parties, whatever the Contractor has failed to do, and recover the difference between the cost to cure the deficiency and the contract price plus an additional sum equal to 10% of the cost to cure the deficiency to cover the State's general expenses provided the State can furnish proof of the general expenses; or (iii) terminate the particular Statement of Work for default, either in whole or in part by notice to Contractor provided



Contractor is unable to cure the breach. Notwithstanding the foregoing, the State cannot use, as a basis for exercising its termination rights under this Section, deficiencies discovered in a repeat State Review Period that could reasonably have been discovered during a prior State Review Period.

(f) The State, at any time and in its reasonable discretion, may halt the testing or approval process if the process reveals deficiencies in or problems with a Deliverable/Service in a sufficient quantity or of a sufficient severity that renders continuing the process unproductive or unworkable. If that happens, the State may stop using the Service or return the applicable Deliverable to Contractor for correction and re-delivery before resuming the testing or approval process.

2.255 Process For Approval of Written Deliverables

The State Review Period for Written Deliverables will be the number of days set forth in the applicable Statement of Work following delivery of the final version of the Deliverable (and if the Statement of Work does not state the State Review Period, it is by default five Business Days for Written Deliverables of 100 pages or less and 10 Business Days for Written Deliverables of more than 100 pages). The duration of the State Review Periods will be doubled if the State has not had an opportunity to review an interim draft of the Written Deliverable before its submission to the State. The State agrees to notify Contractor in writing by the end of the State Review Period either stating that the Deliverable is approved in the form delivered by Contractor or describing any deficiencies that must be corrected before approval of the Deliverable (or at the State's election, after approval of the Deliverable). If the State notifies the Contractor about deficiencies, the Contractor must correct the described deficiencies and within 30 Business Days resubmit the Deliverable in a form that shows all revisions made to the original version delivered to the State. Contractor's correction efforts must be made at no additional charge. Upon receipt of a corrected Deliverable from Contractor, the State must have a reasonable additional period of time, not to exceed the length of the original State Review Period, to review the corrected Deliverable to confirm that the identified deficiencies have been corrected.

2.256 Process for Approval of Services

The State Review Period for approval of Services is governed by the applicable Statement of Work (and if the Statement of Work does not state the State Review Period, it is by default 30 Business Days for Services). The State agrees to notify the Contractor in writing by the end of the State Review Period either stating that the Service is approved in the form delivered by the Contractor or describing any deficiencies that must be corrected before approval of the Services (or at the State's election, after approval of the Service). If the State delivers to the Contractor a notice of deficiencies, the Contractor must correct the described deficiencies and within 30 Business Days resubmit the Service in a form that shows all revisions made to the original version delivered to the State. The Contractor's correction efforts must be made at no additional charge. Upon implementation of a corrected Service from Contractor, the State must have a reasonable additional period of time, not to exceed the length of the original State Review Period, to review the corrected Service for conformity and that the identified deficiencies have been corrected.

2.257 Process for Approval of Physical Deliverables

The State Review Period for approval of Physical Deliverables is governed by the applicable Statement of Work (and if the Statement of Work does not state the State Review Period, it is by default 30 continuous Business Days for a Physical Deliverable). The State agrees to notify the Contractor in writing by the end of the State Review Period either stating that the Deliverable is approved in the form delivered by the Contractor or describing any deficiencies that must be corrected before approval of the Deliverable (or at the State's election, after approval of the Deliverable). If the State delivers to the Contractor a notice of deficiencies, the Contractor must correct the described deficiencies and within 30 Business Days resubmit the Deliverable in a form that shows all revisions made to the original version delivered to the State. The Contractor's correction efforts must be made at no additional charge. Upon receipt of a corrected Deliverable from the Contractor, the State must have a reasonable additional period of time, not to exceed the length of the original State Review Period, to review the corrected Deliverable to confirm that the identified deficiencies have been corrected.

2.258 Final Acceptance

Unless otherwise stated in the Article 1, Statement of Work or Purchase Order, "Final Acceptance" of each Deliverable must occur when each Deliverable/Service has been approved by the State following the State Review Periods identified in **Sections 2.251-2.257**. Payment will be made for Deliverables installed and accepted. Upon acceptance of a Service, the State will pay for all Services provided during the State Review Period that conformed to the acceptance criteria.

2.260 Ownership

2.261 Ownership of Work Product by State

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

2.262 Vesting of Rights



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

2.263 Rights in Data

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

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

2.264 Ownership of Materials

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

2.270 State Standards

2.271 Existing Technology Standards

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

2.272 Acceptable Use Policy

To the extent that Contractor has access to the State computer system, Contractor must comply with the State's Acceptable Use Policy, see <http://www.michigan.gov/ditservice>. All Contractor employees must be required, in writing, to agree to the State's Acceptable Use Policy before accessing the State system. The State reserves the right to terminate Contractor's access to the State system if a violation occurs.

2.273 Systems Changes

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

2.280 Extended Purchasing - Not Applicable.

2.281 MIDEAL – NOT APPLICABLE.

2.282 State Employee Purchases – Not Applicable.

2.290 Environmental Provision

2.291 Environmental Provision

Hazardous Materials:



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

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

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

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

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

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

Refrigeration and Air Conditioning:

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

Environmental Performance:

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

2.300 Other Provisions

2.311 Forced Labor, Convict Labor, Forced or Indentured Child Labor, or Indentured Servitude Made Materials
Equipment, materials, or supplies, that will be furnished to the State under the Contract must not be produced in whole or in part by forced labor, convict labor, forced or indentured child labor, or indentured servitude.

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





Attachment A, Price Proposal
Contract No.

Prices are on a per-item (or hourly) basis and are fixed for the duration of the contract.

Attachment A, - Price Proposal

Prices are on a per-item (or hourly) basis and are fixed for the duration of the contract.

Services	Estimated Hours	Hourly Rate (\$)	Annual Amount (\$)	3 year Amount (\$)
Consultation/Expert Advice <i>FirstLab offers unlimited telephone access to our experts and MROs at no additional charge.</i> <i>Expert Witness fees are listed below under "Additional Services Available"</i>	Unlimited	N/C	N/C	N/C
Account Mgmt.	Unlimited	N/C	N/C	N/C
Collection Site Identification	Unlimited	N/C	N/C	N/C
MRO Identification	Unlimited	N/C	N/C	N/C
Laboratory Identification	Unlimited	N/C	N/C	N/C
Record Keeping/Reporting	Unlimited	N/C	N/C	N/C
Billing	Unlimited	N/C	N/C	N/C
Recommend Modifications	**	N/C	N/C	N/C
Litigation Assistance	10	\$150.00	\$1,500.00	\$ 4,500.00
Audit Assistance	25	\$150.00	\$3,750.00	\$11,250.00
Keep MDOT Informed	Unlimited	N/C	N/C	N/C

(Estimates included in the above table should be based on Section 1.022 – Work and Deliverable)

N/C – No Charge – included in the per test fee*

Testing Services	MDOT's Proposed # of tests needed (annually)	Price per Test (\$)	Annual Amount (\$)	3 year Amount (\$)
Random	700	\$17.00	\$11,900.00	\$35,700.00
Follow-up	25	\$17.00	\$ 425.00	\$ 1,275.00
Blind Performance	25	\$37.00	\$ 925.00	\$ 2,775.00
Post-Accident	50	\$17.00	\$ 850.00	\$ 2,550.00
Reasonable Suspicion	25	\$17.00	\$ 425.00	\$ 1,275.00
Return to Duty	30	\$17.00	\$ 510.00	\$ 1,530.00
Pre-Employment	300	\$17.00	\$5,100.00	\$15,300.00
Service	MDOT's Proposed # of Trainings	Cost per Training (including trainer fees, travel and subsistence)	Annual Amount (\$)	3 year Amount (\$)
Transit Agency Training	Four 2-day sessions per year	\$2,400.00 per Training Event (2 days)	\$9,600.00	\$28,800.00



Service	MDOT's Proposed # of calls (annually)	Cost per call	Annual Amount (\$)	3 year Amount (\$)
24 hour toll-free consultation Consultation or after hours specimen collection/testing set up M-F 5:00pm to 8:00am, Sat. Sun. & holidays	50	\$25.00	\$1,250.00	\$3,750.00
No Charge for consultation services 8:30am to 5:00 pm M-F.		NC	NC	NC

GRAND TOTAL – Three-Year Bid Amount – **\$108,705.00**

- **Authorized Negotiator/Expeditor :**

Mary Ellen Petti
 Chief Development Officer
 1364 Welsh Road, Suite C2
 North Wales, PA 19454
 215-540-1651 ext #210
 mpetti@firstlab.com



*The following Drug Testing services are included in the per test fee:

All Chain-of-Custody and Specimen Collection Supplies
Transportation of Specimens to the Laboratory
DHHS Laboratory Testing
GC/MS Confirmation of all Positive Drug Screening Results
MRO Review of Results
Emergency After-Hours Testing Support
Random Generation
Internet Result Retrieval System & Internet Reports
Unlimited Telephone Consultation
24 Hour a Day/Seven Day a Week Toll-Free Hotline
Consolidated Billing

****IT Development - Recommend Modifications**

FirstLab believes it has assembled a uniquely comprehensive menu of reports. However if the client requires customization of functions or reports outside our current standard offerings, FirstLab may charge for development time. Each project will be examined on a case by case basis to determine pricing.

Additional Services Available

Data entry and tracking of breath alcohol test results	\$ 5.00 each
Reanalysis or split specimen analysis by alternate DHHS Laboratory	\$125.00 each
Employee Drug Awareness Manual – PDF Version	No Charge.
DOT required checks of previous drug/alcohol test results	\$ 25.00 each
Review of Existing Policy & Procedures	\$100.00/hour billed in ½ hour increments
Policy & Procedures Development	\$400.00

Additional Fees for On-Site Services Available

In cases where FirstLab is asked to coordinate after-hours or on-site testing services, additional fees **MAY BE** incurred due to circumstances beyond FirstLab's control. If FirstLab is billed by the collector for these additional fees, they will be reflected on the Client's bill as a direct pass through. The fees listed below represent potential fees that may be charged under the circumstances indicated. These fees may vary depending on available resources. In most cases, pass through fees will be less than the indicated fees. FirstLab will **ALWAYS** strive to find the most cost effective solution to client's needs.

Emergency Collection Fee (Less than 72 hours prior notice) (portal to portal)	\$200/hour/collector
Mileage Fee for Collector's Travel To On-Sites	\$ 0.50/mile (portal to portal)
Waiting Time (On-Site Collections)	\$50.00/hour
No Shows (On-Site Collections)	\$25 per collection missed
Set Up Fees (On-Site Collections)	\$50.00