Form No. DTMB-3521 (Rev. 4/2012)
AUTHORITY: Act 431 of 1984
COMPLETION: Required
PENALTY: Contract change will not be executed unless form is filed

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

July 2, 2012

CHANGE NOTICE NO. 3

to

CONTRACT NO. 071B0200130

between

THE STATE OF MICHIGAN

and

NAME & ADDRESS OF CONTRACTOR:	PRIMARY CONTACT	EMAIL
Philips Healthcare **4315 Commerce Drive, Suite 440-280** **Lafayette, IN 47905**	**Doug Graham**	**doug.graham@philips.com**
	TELEPHONE	CONTRACTOR #, MAIL CODE
	(614) 315-5194	

STATE CONTACTS	AGENCY	NAME	PHONE	EMAIL
CONTRACT COMPLIANCE INSPECTOR:	**DTMB**	**Sue Cieciwa**	**(517) 373-0301**	**cieciwas@michigan.gov**
BUYER:	**DTMB**	**Sue Cieciwa**	**(517) 373-0301**	**cieciwas@michigan.gov**

CONTRACT SUMMARY:			
DESCRIPTION: **Automated External Defibrillators (AEDs) - Statewide**			
INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	AVAILABLE OPTIONS	CURRENT EXPIRATION DATE
March 3, 2010	**March 2, 2013**	**Two One-Year Options**	**March 2, 2013**
PAYMENT TERMS	F.O.B	SHIPPED	SHIPPED FROM
Net 45	**Delivered**	**14 Days ARO**	**Seattle, WA**
ALTERNATE PAYMENT OPTIONS:			AVAILABLE TO MiDEAL PARTICIPANTS
☐ P-card ☒ Direct Voucher (DV) ☐ Other			☒ YES ☐ NO
MINIMUM DELIVERY REQUIREMENTS:			
One (1) AED			

DESCRIPTION OF CHANGE NOTICE:		
OPTION EXERCISED: ☒ NO ☐ YES	IF YES, EFFECTIVE DATE OF CHANGE:	NEW EXPIRATION DATE:
"Procurement Card Order" is hereby DELETED from Section 2.005 Ordering (first sentence) and is hereby CHANGED to: **"The State will issue a written Purchase Order, Blanket Purchase Order, or Direct Voucher which must be approved by the Contract Administrator or the Contract Administrator's designee, to order any Services/Deliverables under this Contract."** **All other terms, conditions, specifications and pricing remain the same. Per vendor request by email dated June 27, 2012 and DTMB Procurement approval.**		
VALUE/COST OF CHANGE NOTICE:	**$0.00**	
ESTIMATED REVISED AGGREGATE CONTRACT VALUE:	**$240,640.00**	

Form No. DMB 234 (Rev. 1/96)
AUTHORITY: Act 431 of 1984
COMPLETION: Required
PENALTY: Contract will not be executed unless form is filed

STATE OF MICHIGAN
DEPARTMENT OF TECHNOLOGY MANAGEMENT AND BUDGET **February 14, 2012**
PROCUREMENT
P.O. BOX 30026, LANSING, MI 48909
OR
530 W. ALLEGAN, LANSING, MI 48933

CHANGE NOTICE NO. 2
TO
CONTRACT NO. 071B0200130
between
THE STATE OF MICHIGAN
And

Fax: 614-448-9221

NAME & ADDRESS OF CONTRACTOR **Philips Healthcare** **4315 Commerce Drive, Suite 440-280** **Lafayette, IN 47905** **e-mail: doug.graham@philps.com**	TELEPHONE Doug Graham **614-315-5194** CONTRACTOR NUMBER/MAIL CODE BUYER/CA (517) 373-0301 **Sue Cieciwa**
Contract Compliance Inspector: Sue Cieciwa **Automated External Defibrillators (AED's) - Statewide**	
CONTRACT PERIOD: **3 yrs. + 2 one-year options** From: **March 3, 2010** To: **March 2, 2013**	
TERMS **Net 45**	SHIPMENT **14 Days ARO**
F.O.B. **Destination**	SHIPPED FROM **Seattle, WA**
MINIMUM DELIVERY REQUIREMENTS **N/A**	
MISCELLANEOUS INFORMATION:	

THIS CONTRACT IS EXTENDED TO LOCAL UNITS OF GOVERNMENT.

NATURE OF CHANGE(S):

Effective immediately, the vendor contact is hereby CHANGED to:

Doug Graham, Indirect Channel Manager
Philips Healthcare
4315 Commerce Drive, Suite 440-280
Lafayette, IN 47905
Phone: (614) 315-5194
Fax: (614) 448-9221
Email: doug.graham@philips.com

All other Pricing, Specifications, Terms and Conditions remain unchanged.

AUTHORITY/REASON:

Per vendor request by email dated February 13, 2012.

TOTAL ESTIMATED CONTRACT VALUE REMAINS: $240,640.00

Form No. DMB 234 (Rev. 1/96)
AUTHORITY: Act 431 of 1984
COMPLETION: Required
PENALTY: Contract will not be executed unless form is filed

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

March 24, 2010

CHANGE NOTICE NO. 1
TO
CONTRACT NO. 071B0200130
between
THE STATE OF MICHIGAN
And

Cell: 630-485-0964 Fax: 610-643-3761

NAME & ADDRESS OF CONTRACTOR **Philips Healthcare** **3000 Minuteman Rd.** **Andover, MA 01810** **e-mail: matt.s.johnson@philps.com**	TELEPHONE Matt Johnson **630-402-0659** CONTRACTOR NUMBER/MAIL CODE BUYER/CA (517) 373-1455 **Laura Gyorkos**
Contract Compliance Inspector: Laura Gyorkos (517) 373-1455 **Automated External Defibrillators (AED's) - Statewide**	
CONTRACT PERIOD: 3 yrs. + 2 one-year options From: **March 3, 2010** To: **March 2, 2013**	
TERMS **Net 45**	SHIPMENT **14 Days ARO**
F.O.B. **Destination**	SHIPPED FROM **Seattle, WA**
MINIMUM DELIVERY REQUIREMENTS **N/A**	
MISCELLANEOUS INFORMATION:	

THIS CONTRACT IS EXTENDED TO LOCAL UNITS OF GOVERNMENT.

NATURE OF CHANGE(S):

Effective immediately REVISED Item/Price Listing per the attached documents.

All other Pricing, Specifications, Terms and Conditions remain unchanged.

AUTHORITY/REASON:

Per DTMB Purchasing Operations.

TOTAL ESTIMATED CONTRACT VALUE REMAINS: $240,640.00

PHILIPS

State of Michigan Price List: RFP 071I0200008

HeartStart FR2+ Defibrillator

FR2+ Automated External Defibrillator Accessories

REF	DESCRIPTION		Michigan PRICE
989803158211	HeartStart AED Defibrillator Pads	1-pack	$25.35
989803158221	HeartStart AED Defibrillator Pads	5-pack	$100.10
M3870A	FR2 AED Infant/Child Defibrillator Pads	1-pack	$63.70
M3863A	Battery, Long-Life LiMn02, for FR2 Series		$159.90
989803136291	Battery, Aviation, LiMN02, FR2 Series		$160.55
M3848A	Battery, Rechargeable LiION for FR2+ (FR2s shipped before 11/12/01 need a software upgrade to use)		$177.45
M3849A	Charger for FR2+ Rechargeable Battery (REF M3848A)		$100.75
68-PCHAT	Fast Response Kit		$27.30
M3873A	FR2+ ECG Assessment Module, AAMI (FR2s shipped prior to 11/12/01 need a software upgrade to use this feature)		$200.85
989803137771	ECG Monitoring Electrodes – 20 3-packs (six week lead time)		$33.80
861386	Guidelines 2005 Owner Upgrade Kit, FR2+		$1,001.00
M3876A	Software Upgrade		$197.60

FR2+ Data Cards

REF	DESCRIPTION	Michigan PRICE
M3854A	Data Card and Tray for FR2 Series	$59.80
M3853A	Data Card Tray for FR2 Series	$5.85
SDCF-05	Adapter, Data Card to PCMCIA	$20.15
M3524A	Data Card Reader	$100.75

Cases/Wall Mount

REF	DESCRIPTION		Michigan PRICE
989803136531	Defibrillator Cabinet, Basic		$153.40
PFE7023D	Defibrillator Cabinet, Premium, Semi-recessed		$284.70
PFE7024D	Defibrillator Cabinet, Premium, Wall Surface		$267.15
M3868A	Carrying Case for FR2 Series		$87.10
M3869A	Vinyl Carrying Case for FR2 Series		$87.10
M3857A	Wall Mount Bracket		$59.80
M3858A	Defibrillator Wall Sign		$21.45
M3859A	Secure-Pull Seal	10-pack	$6.50
YC	Carrying Case, Plastic Waterproof Shell		$133.90
989803133171	Temperature Control Carry Case		$254.15

FR2+ Cross-Product Compatibility

REF	DESCRIPTION	Michigan PRICE
05-10000	HeartStart Pads Adapter (QUIK-COMBO™)	$25.35
05-10100	HeartStart Pads Adapter (Zoll™)	$25.35
05-10200	HeartStart Pads Adapter (Barrel-style)	$25.35

Event Review Software

REF	DESCRIPTION	Michigan PRICE
861311	Option A01 – HeartStart Review Express Connect Software	$57.20
M3834A	HeartStart Event Review Software – Single PC	$264.55
989803141811	HeartStart Event Review Software – Organization-wide License	$666.25
861431	Option A01 – HeartStart Event Review Pro Software, Single PC	$1,670.50
861431	Option A03 – HeartStart Event Review Pro Software, Site License	$4,013.75
861436	Option A01 – HeartStart Event Review Pro Software, Single PC	$666.25
861436	Option A03 – HeartStart Event Review Pro Software, Site License	$1,335.75

Based on FR2+ Price List Effective 06/29/09

FR2+ Training Materials

REF	DESCRIPTION	Michigan PRICE
M3860-91900	Instructions for Use, FR2+, English	$13.65
M3860-97800	Quick Reference Card, FR2, English	$3.25
M3864A	Training & Admin Pack for FR2 Series	$133.90
M3855A	Charger for FR2 Training & Admin. Pack (includes US power cord)	$83.85
M3864-90001	Reference Guide for Training & Admin Pack, FR2 Series	$13.65
989803150291	HeartStart FR2+ Toolkit, NTSC	$20.15
M3752A	HeartStart AED Trainer 2 (Includes Carrying Case, 1 set of Defibrillator Training Pads)	$233.35
M3753A	Remote Control for AED Trainer 2	$32.50
M3754A	Programming Kit for AED Trainer 2 (includes PC Cable and CD with software)	$20.15
07-10900	Defibrillator Training Pads: 1 set	$16.90
07-11000	Defibrillator Trainer Carrying Case	$16.90
M3871A	FR2 Series Infant/Child Training Pads	$29.90
M3755A	Training Pads for AED Little Anne – 1 set	$18.20
M3756A	AED Little Anne Training System	$387.40

Pricing: The above prices do not include applicable sales taxes. Philips Terms and Conditions of Sale are available upon request.

Shipping: Shipping costs are included in all pricing – FOB destination. Supply only orders totaling less than $300 may be subject to a shipping and handling charge. Rush shipping is available for an additional fee.

Return Process: A Returned Goods Authorization (RGA) number is required for all returns and must be obtained prior to returning product to Philips. To obtain an RGA number, call Customer Service. The RGA number must appear on the outside of the box. All returns are subject to a restocking fee. For more details on Philips Return Policy, contact Customer Service.

Customer Service: Phone: (800) 934-7372 Fax (800) 947-3299

Address: Philips Healthcare, 3000 Minuteman Rd, Andover, MA 01810

PHILIPS

State of Michigan Price List: RFP 071I0200008 January 2010 Revision

HeartStart FRx Defibrillator

HeartStart FRx Defibrillator

REF	DESCRIPTION	Michigan PRICE
861304	HeartStart FRx Defibrillator	$1,249.28
Opt A01	HeartStart FRx Defibrillator Aviation Bundle	$1,262.72

The HeartStart FRx Defibrillator includes an Owner's Manual, Battery, SMART Pads II (1 set), and a Quick Reference Guide. The HeartStart FRx Defibrillator device includes a 5 year manufacturer's warranty at no charge. Battery includes 4 year warranty; pads are warranted until expiration date. Other accessories include a 1 year warranty.

HeartStart FRx Defibrillator Accessories

REF	DESCRIPTION	Michigan PRICE
M5070A	Battery, Long Life LiMnO2 for HS1/FRx	$99.45
989803139301	Aviation Battery, HeartStart FRx (complies with TSO C-142)	$110.50
989803139261	HeartStart SMART Pads II (1 set)	$32.50
989803139311	Infant/Child Key	$63.70
68-PCHAT	Fast Response Kit	$27.30

HeartStart Cases and Wall Mounts

REF	DESCRIPTION	Michigan PRICE
989803136531	Defibrillator Cabinet, Basic	$153.40
PFE7023D	Defibrillator Cabinet, Semi-recessed	$284.70
PFE7024D	Defibrillator Cabinet, Wall Surface	$267.15
M3857A	Wall Mount Bracket	$59.80
M3858A	Defibrillator Wall Sign	$21.45
M3859A	Secure Pull Seal, 10-pack	$6.50
989803139251	Carrying Case, FRx Defibrillator	$87.10
YC	Carrying Case, Plastic Waterproof Shell	$133.90

HeartStart FRx Training Materials and Learning Products

REF	DESCRIPTION	Michigan PRICE
861306	HeartStart FRx Trainer	$224.25
989803139321	FRx Training Toolkit (Includes PowerPoint presentations, presenter's guide, student guide and training DVD)	$20.15
989803139341	FRx Product Training DVD	$9.75
989803138731	FRx Owner's Manual	$13.65
989803138601	FRx Quick Reference Guide	$3.25
989803139271	Training Pads II (Note: for Infant/Child training applications, buy the Infant/Child Key separately)	$50.05
989803139291	Replacement Training Pads II (Includes pads, wire and plug)	$20.15
M5088A	Internal Manikin Adapters (Compatible with HeartStart FRx Trainer 861306 only)	$20.15
M5089A	External Manikin Adapter, 5-pack	$33.80
M5090A	Adult Pads Placement Guide	$16.90
989803139281	Infant/Child Pads Placement Guide	$16.90

FRx Cross-Compatibility

REF	DESCRIPTION	Michigan PRICE
05-10000	HeartStart Pads Adapter (QUICK-COMBOTM)	$25.35
05-10100	HeartStart Pads Adapter (ZollTM)	$25.35
05-10200	HeartStart Pads Adapter (Barrel-style)	$25.35

Based on FRx Price List Effective 06/29/09

FR2+ Training Materials

REF	DESCRIPTION	Michigan PRICE
M3860-91900	Instructions for Use, FR2+, English	$13.65
M3860-97800	Quick Reference Card, FR2, English	$3.25
M3864A	Training & Admin Pack for FR2 Series	$133.90
M3855A	Charger for FR2 Training & Admin. Pack (includes US power cord)	$83.85
M3864-90001	Reference Guide for Training & Admin Pack, FR2 Series	$13.65
989803150291	HeartStart FR2+ Toolkit, NTSC	$20.15
M3752A	HeartStart AED Trainer 2 (Includes Carrying Case, 1 set of Defibrillator Training Pads)	$233.35
M3753A	Remote Control for AED Trainer 2	$32.50
M3754A	Programming Kit for AED Trainer 2 (includes PC Cable and CD with software)	$20.15
07-10900	Defibrillator Training Pads: 1 set	$16.90
07-11000	Defibrillator Trainer Carrying Case	$16.90
M3871A	FR2 Series Infant/Child Training Pads	$29.90
M3755A	Training Pads for AED Little Anne – 1 set	$18.20
M3756A	AED Little Anne Training System	$387.40

Pricing: The above prices do not include applicable sales taxes. Philips Terms and Conditions of Sale are available upon request.

Shipping: Shipping costs are included in all pricing – FOB destination. Supply only orders totaling less than $300 may be subject to a shipping and handling charge. Rush shipping is available for an additional fee.

Return Process: A Returned Goods Authorization (RGA) number is required for all returns and must be obtained prior to returning product to Philips. To obtain an RGA number, call Customer Service. The RGA number must appear on the outside of the box. All returns are subject to a restocking fee. For more details on Philips Return Policy, contact Customer Service.

Customer Service: Phone: (800) 934-7372 Fax (800) 947-3299

Address: Philips Healthcare, 3000 Minuteman Rd, Andover, MA 01810

Form No. DMB 234 (Rev. 1/96)
AUTHORITY: Act 431 of 1984
COMPLETION: Required
PENALTY: Contract will not be executed unless form is filed

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

March 4, 2010

NOTICE
OF
CONTRACT NO. 071B0200130
between
THE STATE OF MICHIGAN
And

Cell: 630-485-0964 Fax: 610-643-3761

NAME & ADDRESS OF CONTRACTOR **Philips Healthcare** **3000 Minuteman Rd.** **Andover, MA 01810** **e-mail: matt.s.johnson@philps.com**	TELEPHONE Matt Johnson **630-402-0659** CONTRACTOR NUMBER/MAIL CODE BUYER/CA (517) 373-1455 **Laura Gyorkos**
Contract Compliance Inspector: Laura Gyorkos (517) 373-1455 **Automated External Defibrillators (AED's) - Statewide**	
CONTRACT PERIOD: 3 yrs. + 2 one-year options From: **March 3, 2010** To: **March 2, 2013**	
TERMS **Net 45**	SHIPMENT **14 Days ARO**
F.O.B. **Destination**	SHIPPED FROM **Seattle, WA**
MINIMUM DELIVERY REQUIREMENTS **N/A**	
MISCELLANEOUS INFORMATION:	

THIS CONTRACT IS EXTENDED TO LOCAL UNITS OF GOVERNMENT.

The terms and conditions of this Contract are those of ITB #071I0200008, this Contract Agreement and the vendor's quote dated 12/1/09. 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.

Estimated Contract Value: $240,640.00

Form No. DMB 234 (Rev. 1/96)
AUTHORITY: Act 431 of 1984
COMPLETION: Required
PENALTY: Contract will not be executed unless form is filed

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. 071B0200130
between
THE STATE OF MICHIGAN
And

Cell: 630-485-0964 Fax: 610-643-3761

NAME & ADDRESS OF CONTRACTOR **Philips Healthcare** **3000 Minuteman Rd.** **Andover, MA 01810** **e-mail: matt.s.johnson@philps.com**	TELEPHONE Matt Johnson **630-402-0659** CONTRACTOR NUMBER/MAIL CODE BUYER/CA (517) 373-1455 **Laura Gyorkos**
Contract Compliance Inspector: Laura Gyorkos (517) 373-1455 **Automated External Defibrillators (AED's) - Statewide**	
CONTRACT PERIOD: 3 yrs. + 2 one-year options From: **March 3, 2010** To: **March 2, 2013**	
TERMS **Net 45**	SHIPMENT **14 Days ARO**
F.O.B. **Destination**	SHIPPED FROM **Seattle, WA**
MINIMUM DELIVERY REQUIREMENTS **N/A**	

MISCELLANEOUS INFORMATION:
THIS CONTRACT IS EXTENDED TO LOCAL UNITS OF GOVERNMENT.

The terms and conditions of this Contract are those of ITB #071I0200008, this Contract Agreement and the vendor's quote dated 12/1/09. 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.

Estimated Contract Value: $240,640.00

THIS IS NOT AN ORDER: This Contract Agreement is awarded on the basis of our inquiry bearing the ITB No. 071I0200008. Orders for delivery will be issued directly by various state agencies and local units of government through the issuance of a Purchase Order Form.

All terms and conditions of the invitation to bid are made a part hereof.

FOR THE CONTRACTOR:	**FOR THE STATE:**
Philips Healthcare Firm Name	Signature
Authorized Agent Signature	**Laura Gyorkos, Buyer** Name/Title
Authorized Agent (Print or Type)	**Commodities Division, Purchasing Operations** Division
Date	Date

STATE OF MICHIGAN
Department of Management and Budget
Purchasing Operations

Contract No. 071B0200130
Vendor: **Philips Healthcare**
Automated External Defibrillators (AEDs) - Statewide and MiDeal

Buyer Name: Laura Gyorkos
Telephone Number: (517) 373-1455
E-Mail Address: gyorkosl@michigan.gov

Table of Contents

DEFINITIONS *16*

Article 1 – Statement of Work (SOW) *18*

1.010 *Project Identification* **18**
1.011 **Project Request** 18
1.012 **Background** 18

1.020 *Scope of Work and Deliverables* **18**
1.021 **In Scope** 18
1.022 **Work and Deliverable** 18

1.030 *Roles and Responsibilities* **20**
1.031 **Contractor Staff, Roles, and Responsibilities** 20

1.040 *Project Plan* **21**
1.041 **Project Plan Management – Deleted, Not Applicable** 21
1.042 **Reports** 21

1.050 *Acceptance* **22**
1.051 **Criteria** 22
1.052 **Final Acceptance – Deleted, Not Applicable** 22

1.060 *Proposal Pricing* **22**
1.061 **Proposal Pricing** 22
1.062 **Price Term** 23
1.063 **Tax Excluded from Price** 23
1.064 **Holdback – Deleted, Not Applicable** 23

1.070 *Commodity Requirements and Terms* *23*

Product Quality **23**
1.0701 **Specifications** 23
1.0702 **Alternate Bids** 23
1.0703 **Research and Development** 23
1.0704 **Quality Assurance Program** 24
1.0705 **Warranty for Products or Services** 24
1.0706 **Training** 26
1.0707 **Special Programs** 26
1.0708 **Security** 26

Delivery Capabilities **27**
1.0709 **Time Frames** 27
1.0710 **Minimum Order** 28
1.0711 **Packaging** 28
1.0712 **Palletizing** 28
1.0713 **Delivery Term** 28
1.0714 **Contract Performance** 28
1.0715 **Place of Performance** 28
1.716 **Environmental Requirements** 29

Article 2, Terms and Conditions *30*

2.000 *Contract Structure and Term* **30**
2.001 **Contract Term** 30
2.002 **Options to Renew** 30
2.003 **Legal Effect** 30
2.004 **Attachments & Exhibits** 30
2.005 **Ordering** 30
2.006 **Order of Precedence** 30
2.007 **Headings** 31

2.008 Form, Function & Utility 31
2.009 Reformation and Severability 31
2.010 Consents and Approvals 31
2.011 No Waiver of Default 31
2.012 Survival 31

2.020 Contract Administration **31**
2.021 Issuing Office 31
2.022 Contract Compliance Inspector (CCI) 31
2.023 Project Manager – Deleted, Not Applicable 32
2.024 Change Requests 32
2.025 Notices 32
2.026 Binding Commitments 33
2.027 Relationship of the Parties 33
2.028 Covenant of Good Faith 33
2.029 Assignments 33

2.030 General Provisions **34**
2.031 Media Releases 34
2.032 Contract Distribution 34
2.033 Permits 34
2.034 Website Incorporation 34
2.035 Future Bidding Preclusion 34
2.036 Freedom of Information 34
2.037 Disaster Recovery 34

2.040 Financial Provisions **34**
2.041 Fixed Prices for Services/Deliverables 34
2.042 Adjustments for Reductions in Scope of Services/Deliverables 35
2.043 Services/Deliverables Covered 35
2.044 Invoicing and Payment – In General 35
2.045 Pro-ration 35
2.046 Antitrust Assignment 35
2.047 Final Payment 35
2.048 Electronic Payment Requirement 35

2.050 Taxes **35**
2.051 Employment Taxes 35
2.052 Sales and Use Taxes 35

2.060 Contract Management **35**
2.061 Contractor Personnel Qualifications 36
2.062 Contractor Key Personnel 36
2.063 Re-assignment of Personnel at the State's Request 36
2.064 Contractor Personnel Location 36
2.065 Contractor Identification 36
2.066 Cooperation with Third Parties 36
2.067 Contract Management Responsibilities 36
2.068 Contractor Return of State Equipment/Resources 37

2.070 Subcontracting by Contractor **37**
2.071 Contractor full Responsibility 37
2.072 State Consent to delegation 37
2.073 Subcontractor bound to Contract 37
2.074 Flow Down 37
2.075 Competitive Selection 38

2.080 State Responsibilities **38**
2.081 Equipment 38
2.082 Facilities 38

2.090 Security **38**

2.091 Background Checks 38
2.092 Security Breach Notification 38
2.093 PCI Data Security Requirements – Deleted, Not Applicable 38

2.100 Confidentiality **38**
2.101 Confidentiality 39
2.102 Protection and Destruction of Confidential Information 39
2.103 Exclusions 39
2.104 No Implied Rights 39
2.105 Respective Obligations 40

2.110 Records and Inspections **40**
2.111 Inspection of Work Performed 40
2.112 Examination of Records 40
2.113 Retention of Records 40
2.114 Audit Resolution 40
2.115 Errors 40

2.120 Warranties **41**
2.121 Warranties and Representations 41
2.122 Warranty of Merchantability 42
2.123 Warranty of Fitness for a Particular Purpose 42
2.124 Warranty of Title 42
2.125 Equipment Warranty 42
2.126 Equipment to be New 43
2.127 Prohibited Products 43
2.128 Consequences For Breach 43

2.130 Insurance **43**
2.131 Liability Insurance 43
2.132 Subcontractor Insurance Coverage 45
2.133 Certificates of Insurance and Other Requirements 45

2.140 Indemnification **46**
2.141 General Indemnification 46
2.142 Code Indemnification 46
2.143 Employee Indemnification 46
2.144 Patent/Copyright Infringement Indemnification 46
2.145 Continuation of Indemnification Obligations 47
2.146 Indemnification Procedures 47

2.150 Termination/Cancellation **47**
2.151 Notice and Right to Cure 47
2.152 Termination for Cause 48
2.153 Termination for Convenience 48
2.154 Termination for Non-Appropriation 48
2.155 Termination for Criminal Conviction 49
2.156 Termination for Approvals Rescinded 49
2.157 Rights and Obligations upon Termination 49
2.158 Reservation of Rights 50

2.160 Termination by Contractor **50**
2.161 Termination by Contractor 50

2.170 Transition Responsibilities **50**
2.171 Contractor Transition Responsibilities 50
2.172 Contractor Personnel Transition 50
2.173 Contractor Information Transition 50
2.174 Contractor Software Transition 51
2.175 Transition Payments 51
2.176 State Transition Responsibilities 51

2.180 ***Stop Work*** **51**
2.181 **Stop Work Orders** 51
2.182 **Cancellation or Expiration of Stop Work Order** 51
2.183 **Allowance of Contractor Costs** 51

2.190 ***Dispute Resolution*** **52**
2.191 **In General** 52
2.192 **Informal Dispute Resolution** 52
2.193 **Injunctive Relief** 52
2.194 **Continued Performance** 52

2.200 ***Federal and State Contract Requirements*** **53**
2.201 **Nondiscrimination** 53
2.202 **Unfair Labor Practices** 53
2.203 **Workplace Safety and Discriminatory Harassment** 53
2.204 **Prevailing Wage** 53

2.210 ***Governing Law*** **54**
2.211 **Governing Law** 54
2.212 **Compliance with Laws** 54
2.213 **Jurisdiction** 54

2.220 ***Limitation of Liability*** **54**
2.221 **Limitation of Liability** 54

2.230 ***Disclosure Responsibilities*** **54**
2.231 **Disclosure of Litigation** 54
2.232 **Call Center Disclosure** 55
2.233 **Bankruptcy** 55

2.240 ***Performance*** **55**
2.241 **Time of Performance** 55
2.242 **Service Level Agreements (SLAs) – Deleted, Not Applicable** 56
2.243 **Liquidated Damages** 56
2.244 **Excusable Failure** 56

2.250 ***Approval of Deliverables*** **57**
2.251 **Delivery Responsibilities** 57
2.252 **Delivery of Deliverables** 57
2.253 **Testing** 57
2.254 **Approval of Deliverables, In General** 58
2.255 **Process For Approval of Written Deliverables** 59
2.256 **Process for Approval of Services** 59
2.257 **Process for Approval of Physical Deliverables** 59
2.258 **Final Acceptance** 59

2.260 ***Ownership*** **60**
2.261 **Ownership of Work Product by State** 60
2.262 **Vesting of Rights** 60
2.263 **Rights in Data** 60
2.264 **Ownership of Materials** 60

2.270 ***State Standards*** **60**
2.271 **Existing Technology Standards** 60
2.272 **Acceptable Use Policy** 61
2.273 **Systems Changes** 61

2.280 ***Extended Purchasing*** **61**
2.281 **MiDEAL** 61

2.282 ***State Employee Purchases*** **61**

2.290 ***Environmental Provision*** **61**

2.291 Environmental Provision 61

2.300 Other Provisions **63**

2.301 Forced Labor, Convict Labor, Forced or Indentured Child Labor, or Indentured Servitude Made Materials 63

Attachment A, Price Proposal

DEFINITIONS

"Days" means calendar days unless otherwise specified.

"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/Deliverables within the scope of the Contract, but not specifically provided under any Statement of Work, that once added will result in the need to provide the Contractor with additional consideration.

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

"Business Day," whether capitalized or not, shall mean any day other than a Saturday, Sunday, Office of State **Employer mandated furlough day**, or State-recognized legal holiday (as identified in the Collective Bargaining Agreement for State employees) 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 States computer system.

"Business Critical" means any function identified in any Statement of Work as Business Critical.

"Chronic Failure" is defined in any applicable Service Level Agreements.

"Deleted – Not Applicable" means that section is not applicable or included in this RFP. This is used as a placeholder to maintain consistent numbering.

"Deliverable" means physical goods and/or commodities as required or identified by 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.

"Excusable Failure" has the meaning given in **Section 2.244.**

"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 Services.

"ITB" is a generic term used to describe an Invitation to Bid. The ITB serves as the document for transmitting the RFP to potential bidders

"Key Personnel" means any Personnel designated 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, that once added will result in the need to provide the Contractor with additional consideration.

“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.

“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 Contractor delegates performance of a portion of the Services to, 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.

“Waste reduction”, or “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 this Contract.

Article 1 – Statement of Work (SOW)

1.010 Project Identification

1.011 Project Request

This is a Statewide Contract for Automated External Defibrillators (AEDs) which shall be available to State of Michigan agencies and local units of government through the MiDeal program. The AEDs are intended for use by lay rescuers in state and municipal facilities in case of medical emergencies.

Philips Healthcare is the manufacturer of the AEDs offered in this proposal.

1.012 Background

The State has had previous multiple award contracts with manufacturers/authorized distributors of AEDs. This multiple award approach has proven to be successful for the State of Michigan and will continue with the new contracts. Exact quantities to be purchased are unknown; however, the Contractor will be required to 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. Orders for delivery will be issued directly to the Contractor by state agencies (on the Direct Purchase Order Contract Release Form) and MiDEAL members (local units of government).

1.020 Scope of Work and Deliverables

1.021 In Scope

The contractor shall provide AED products and related equipment accessories as specified in Attachment A, Price Proposal and deliver in the time frame specified in Section 1.0709 Time Frames, to various locations throughout the State.

Philips proposes two models of AEDs to meet the State's needs:
1) HS1 "OnSite" AED
2) FRx AED

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:

A. AED Product Quality/Specifications

1. The HS1 AED has been on the market since 2002. The FRx AED has been on the market since 2005.
2. HS1 & FRx: AED's have continuous monitoring of ECG during CPR.
3. The HS1 model provides visual guidance through pads-placement graphics and illuminated operation buttons, but does not feature a text display. The FRx model provides visual guidance through illuminated graphics and operation buttons, but does not feature a text display.
4. The HS1 & FRx models perform automated daily, weekly, and monthly self-tests.
5. On the HS1 & FRx models, the self tests check electrodes, battery, and circuitry.

B. Ease of Use/Self Testing Features

1. (HS1): To operate the AED, press "on" button or pull the "pull" handle. Follow voice prompts and graphic representation for pads placement. If shock is advised, press illuminated orange "shock" button. (FRx): To operate the AED, press "on" button. Follow voice prompts and illuminated graphics for pads placement. If shock is advised, press the illuminated "shock" button.
2. The HSI AED has one button. (Two buttons, if user chooses not to use "pull" handle) The FRx AED has two buttons.
3. For both AED models, the diagram on the pads shows appropriate pads placement. The pads are interchangeable.
4. The pads are pre-connected on both AED models.
5. The HS1 and FRx batteries are custom.
6. For both models, HS1 & FRx, battery capacity is checked daily, and every time a battery is inserted, as part of the selftests. If the AED fails any self-test, an audible chirp alerts the need for service. The blinking green "Ready" light indicates the AED is ready for use.
7. For both models, (HS1 & FRx), a spare battery is recommended.
8. For both models, (HS1 & FRx), the device circuitry is checked daily, and every time a battery is inserted, as part of the selftests. If the AED fails any self-test, an audible chirp alerts the need for service. The blinking green "Ready" light indicates the AED is ready for use.
9. For both models, (HS1 & FRx), pads integrity is checked daily, and every time a battery is inserted, as part of the selftests. If the AED fails any self-test, an audible chirp alerts the need for service. The blinking green "Ready" light indicates the AED is ready for use.
10. Philips AEDs perform a full energy self-test monthly, and every time a battery is inserted.

C. Electrodes

1. (HS1): Each Pads cartridge is labeled with a use-by date of at least two years from the date of manufacture. (FRx): Each Pads case is labeled with a use-by date of at least two years from the date of manufacture.
2. For both models, (HS1 & FRx), pads integrity and connection is checked daily, and every time a battery is inserted, as part of the self-tests.
3. If the AED fails any self-test including pads integrity/connection, an audible chirp alerts the need for service.
4. A pediatric pads cartridge is available for the HS1 AED. The FRx features an Infant/Child Key in lieu of separate defibrillation pads for pediatric applications. Simply insert the Infant/Child Key into the FRx to signal to the device that the patient is an infant/child. The AED automatically adjusts to provide special pads placement and CPR instructions. The pads icons also flash to show the appropriate pads placement and the device reduces the shock energy to a level ore appropriate for an infant or child.
5. HS1 pads are not compatible with EMS defibrillators. FRx is compatible with EMS defibrillators like the HeartStart MRx. With HeartStart adapters, FRx pads can be plugged into devices from other manufacturers to ensure continuity of care.
6. Philips AEDs have been cleared by the FDA and each feature non-polarized electrodes.
7. For both models, (HS1 & FRx), the pads are pre-connected.

D. Circuitry

1. On both models, (HS1 & FRx), the device circuitry is checked daily, and every time a battery is inserted, as part of the selftests.
2. On both models, (HS1 & FRx), if the AED fails any self-test, an audible chirp alerts the need for service. The blinking green "Ready" light indicates the AED is ready for use.

E. Rescue Data Retrieval

1. The AED is capable of wireless transmission of event data to a PC or Palm PDA, using the IrDA protocol.
2. To download data, put the HS1 into administration mode. Align the HS1 IR port with PC or Palm PDA IR port to transfer event data. (This requires Event Review or Case Capture software.) To download data to the FRx model, put the FRx into administration mode. Align the FRx IR port with PC or Palm PDA IR port to transfer event data. (This requires Event Review or Case Capture software.)
3. Data can not be removed from the HS1 and FRx AED models and they do not use a removable data card.
4. Philips will provide instructions for data retrieval from internal memory.

F. Energy Delivery

1. The AED models deliver a fixed energy output of 150 Joules into a 50-ohm load (adult nominal) and 50 Joules into a 50-ohm load (Infant/Child nominal).
2. Waveform parameters are adjusted as a function of each patient's impedance.
3. HS1 Energy, 150J Adult and 50J Infant/Child, is constant, however, current is variable. Waveform peak current, duration and phase ratio are adjusted to compensate for impedance.
4. Philips AEDs do have programming/upgrading capabilities (with the use of HeartStart Configure or Event Review Software). Because it is impossible to predict what, if any, protocol changes may be recommended by the American Heart Association at any time in the future, Philips cannot guarantee that any such changes may be programmable or upgradeable. However, Philips has successfully worked in the past to design programs/upgrades to update Philips AEDs to revised AHA protocols.

G. Service/Technical Support

1. All warranty replacement AEDs are provided out of Philips' AED manufacturing facility in Seattle, WA. Replacement AEDs are provided in lieu of repair service for devices under warranty. Service is not available through distributors.
2. All AED service is provided by Philips manufacturing site in Seattle, WA.
3. Philips offers customer service and technical support (PST) during regular business hours (8:00am-5:00pm, Monday-Friday -EST).
4. For technical issues, please call toll free: 1-800-263-3342.
5. Philips does not offer repair service, but will replace devices under warranty within 3 business days after appropriate notification from the customer.

1.030 Roles and Responsibilities

1.031 Contractor Staff, Roles, and Responsibilities

Contractors shall have internal controls, approved by Purchasing Operations, to insure that authorized individuals with the State place orders. The contractor shall verify orders that have quantities that appear to be abnormal or excessive.

It is the preference of the State of Michigan that the Contractor have an accessible customer service department with an individual specifically assigned to State of Michigan accounts. It is the preference of the State of Michigan that the Contractor has experienced sales representatives make timely personal visits to State accounts. The Contractor's customer service must respond to State agency inquiries promptly. It is the preference of the State of Michigan that the Contractor provides a statewide toll-free number for customer service calls.

Any supplies and services to be furnished under this contract shall be ordered by issuance of a purchase order, unless otherwise defined within this contract, orders will be issued by the various state agencies and MiDeal members.

All purchase orders are subject to the terms and conditions of this contract. In the event of a conflict between a purchase order and the contract, the contract shall control.

If mailed, a purchase order is considered "issued" when the State deposits the order in the mail. Orders may be issued orally, by facsimile, or by electronic commerce methods.

Philips Account Manager: Matt Johnson (630-485-0964 or matt.s.johnson@philips.com)
Philips Technical Support: 1-800-263-3342 (available 8:00am-5:00pm Pacific, M-F)
Philips Customer Service: 1-800-934-7372 (available 8:00am-5:00pm Eastern, M-F)
Philips Order Administration Manager: Judie Nogler (978-659-7343 or judie.nogler@philips.com)

Philips has the capacity to accept customer orders via phone, fax, postal mail, email, or pre-arranged ecommerce methods. All Philips Order Administration Commercial Operations Specialists are trained and authorized to process all customer orders. In the interest of providing optimal and timely customer service, Philips will not designate one individual for the sole responsibility of Michigan's orders. However, Judie Nogler, Order Administration Manager, is available to address any order processing questions or concerns.

1.040 Project Plan

1.041 Project Plan Management – Deleted, Not Applicable

1.042 Reports

The Contractor shall be able to provide various reports, when requested by the State. Examples include itemized reports of total items purchased by all agencies or individual agencies, open invoice reports, delivery compliance reports, quantity reports, service compliance reports, etc.

In addition, for contracts that are available for purchases by MiDEAL program members (authorized local units of government), contractors must submit reports of purchasing activities to Purchasing Operations, DMB on a quarterly basis.

Quarterly Reports
Quarterly reports of purchasing activity shall include an itemized listing with the State BPO (Contract) number, the name of the state agency or local unit of government which made a purchase, the item number and description of the item purchased, the unit cost of the item purchased, the quantity purchased, the sales amount subject to the administrative fee, and the amount of the 2% administrative fee due the State of Michigan.

E-mail Reports to: mideal@michigan.gov and cieciwas@michigan.gov

Email questions about reports to mideal@michigan.gov .

Philips will provide the Quarterly Reports as described in Section 1.042. In reference to any other reports, Philips will make a reasonable effort to provide them as requested. However, the reports must be related to the contract and Philips must have 30 days written notice for such report requests.

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 state agency representative, or their designee, will review the AED products and related equipment accessories and approve acceptance of goods upon delivery.

All testing/inspection is done by Philips factory (prior to product delivery to the customer) and is subject to Philips quality assurance process. Installation and deployment of all products are the customer's responsibility.

1.052 Final Acceptance – Deleted, Not Applicable

1.060 Proposal Pricing

1.061 Proposal Pricing

Pricing for the items included in this contract is listed on Attachment A, Price Proposal. Quantities specified, if any, are estimates based on prior purchases, and the State is not obligated to purchase in these or any other quantities.

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.

State Administrative Fee:
The Contractor must collect an Administrative Fee on the sales transacted under this Contract. The Contractor must remit the Administrative Fee in U.S. dollars within 30 days after the end of the quarterly sales reporting period. The Administrative Fee equals **two percent (2%)** of the total quarterly sales reported. Contractor must include the Administrative Fee in their prices.

The Contractor must remit any monies due as a result of the close-out report at the time the close-out report is submitted to Purchasing Operations.

The Contractor must pay the Administrative Fee by check. To ensure the payment is credited properly, the Contractor must identify the check as an "Administrative Fee" and include the following information with the payment: *Applicable State BPO Number, report amount(s), and reporting period covered.*

Quarterly Checks:
Contractor must forward the check to the following address:

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

Please make check payable to: State of Michigan

Email questions about checks to mideal@michigan.gov .

1.062 Price Term

Prices quoted are the maximum for a period of 365 days from the date the Contract becomes effective.

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

1.063 Tax Excluded from Price

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

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

1.064 Holdback – Deleted, Not Applicable

1.070 Commodity Requirements and Terms

Product Quality

1.0701 Specifications

Please see *Section 1.022 Work and Deliverables* for Philips' compliance with specifications. Please see the Product Literature for descriptive literature on both the HS1 and FRx AEDs.

1.0702 Alternate Bids

Deleted – Not applicable

1.0703 Research and Development

Philips has demonstrated a robust history of new product development by designing innovative, often patented features into its line of HeartStart AEDs. Philips leads all AED manufacturers in patents issued. The original HeartStart ForeRunner defibrillator was the first to introduce portable biphasic defibrillation to the world and it became the defibrillator of choice for many EMS organizations as well as standard life saving equipment aboard domestic passenger aircraft. The ForeRunner was succeeded by the HeartStart

FR2+ defibrillator which broke new ground minimizing time-to-shock after CPR. The FR2+ was also the first AED with 3-wire ECG monitoring and pediatric defibrillation.

The next AED to be introduced, the HeartStart OnSite/HS1 defibrillator, became the only AED ever to achieve over-the-counter status from the FDA. It was designed with over-the-counter purchase in mind, so it incorporates ground-breaking ease-of-use features such as patented CPR coaching. Philips' latest AED, the HeartStart FRx defibrillator, incorporates CPR coaching, ease-of-use and pre-connected pads into a rugged design while adding yet another innovative feature: the infant/child key. This feature allows one padset to be used for all patients of any age.

Philips continues to build and expand its portfolio of life saving technology by investing in research and innovative design thus continuing a robust legacy of new product development. With more than 650,000 units deployed worldwide, more workplaces, schools and communities place their trust in Philips HeartStart AEDs than any other brand when establishing early defibrillation programs. Philips has earned this trust because we demonstrate innovation in both early defibrillation and quality CPR.

1.0704 Quality Assurance Program

Philips AED Business Unit operates under a formal Quality Management System as required by the Food and Drug Administration, 21CFR part 820, Quality System Regulation and is certified to international standard ISO 13842:2003, Quality Management System- Requirements for Medical Devices. Certificate # S951 03 2156 Issued by TUV America.

These formally documented processes ensure that Philips is able to tightly control the design, manufacturing, distribution and servicing of AEDs.

The general areas controlled under the Quality Management System include:

*Management Awareness
*Training
*Design Controls
*Purchasing Controls
*Production and Process Controls
*Complaint Handling and Customer Feedback
*Corrective and Preventative Action
*Servicing

1.0705 Warranty for Products or Services

Please see Philips AED Warranty. All AED product warranty support is provided through the Philips' factory, and is facilitated through the toll free number (1-800-263-3342).

THE WARRANTIES SET FORTH HEREIN AND IN PHILIPS' WARRANTY DOCUMENT WITH RESPECT TO A PRODUCT (INCLUDING THE SOFTWARE PROVIDED WITH THE PRODUCT) ARE THE ONLY WARRANTIES MADE BY PHILIPS IN CONECTION WITH THE PRODUCT, THE SOFTWARE, AND THE TRANSANTIONS CONTEMPLATED BY THE RFP, AND ARE EXPRESSLY IN LIEU OF ANY OTHER WARRANTIES, WHETHER WRITTEN, ORAL, STATUTORY, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

AED Warranty/Service/Maintenance/Recalls

1. For the specific warranty, please see the Philips AED Warranty.
2. For warranty coverage, please see the Philips AED Warranty.
3. For the HS1 AED, the 5-year basic service cost of ownership includes the replacement of pads cartridges at the end of years 2 and 4 and the replacement of the battery at the end of year 4. For the FRx model, the 5-year basic service cost of ownership includes the replacement of pads at the end of years 2 and 4 and the replacement of the battery at the end of year 4. Please note that FRx uses the same pads for both adult and pediatric applications, saving the cost of purchasing and replacing pediatric pads.
4. Philips AEDs do not require or recommend calibration.
5. 5-Year Recall History:
* Product retrieval initiated September 2007 – (1) HS1 AED: Action initiated to retrieve a single HS1 that was shipped to a customer prior to successfully completing all required manufacturing tests.
* Product retrieval initiated April 2008 – (4594) HS1 AEDs: This retrieval was initiated because the On/Off or Shock button on the front panel may stick in place when pressed, and fail to respond to the button press. This behavior had been found in a very small percentage of the affected units when the action was initiated. The issue was detected only during testing and there have been no reported incidents of a button sticking during emergency use of the AED.
* Product retrieval initiated August 2008 – (1) FRx AED: Action was initiated to retrieve a single FRx AED that was shipped to a customer without successfully passing an initial manufacturing test.
* Product retrieval initiated November 2009 – (1856) HS1/FRx AEDs: The recalled devices contain a component called a capacitor that may not meet Philips performance standards. Failure of the capacitor during use could prevent the AED from delivering effective defibrillation therapy when indicated.
6. Customers are notified of product recalls by receipt request letter delivery, such as USPS registered letter or letters delivered by UPS or FedEx.

Battery

1. The battery in the HS1 and FRx AED models is a 9 Volt DC, 4.2 Ah, lithium manganese dioxide, disposable long-life primary cells.
2. Philips' AED batteries are warranted for four (4) years from the date of installation, provided the battery is installed by the shelf-life date stated on the battery. Please see Philips AED Warranty.
3. For both models, the battery capacity is minimum 200 shocks or 4 hours of operating time. Battery is labeled with an install-by date of at least five (5) years from the date of manufacture. Standby life is typically four (4) years when battery is installed by the install-by date. (The battery will power the AED in standby state within the specified standby temperature range, assuming one battery insertion test and no defibrillation uses.)
4. Philips recommends that the AEDs be stored/carried with one spare battery.
5. For both models, battery capacity is checked daily, and every time a battery is inserted, as part of selftests.
6. If the AED fails any self-test including low-battery, an audible chirp alerts the need for service. The blinking green "Ready" light indicates the AED is ready for use.
7. The device and battery will be able to provide at least 9 shocks and 15 minutes of monitoring use after the low battery indication is first notified.
8. There is no visible battery capacity fuel gauge.
9. The procedure for changing the battery on the HS1 and FRx models: Remove the old battery from the device by depressing the latch. Remove the new battery from the package. Place the bottom end of the new battery into the bottom end of the battery compartment on the back of the AED. Firmly press down on the top (latch) end of the battery until it clicks into place. This procedure can be accomplished quickly and easily.

1.0706 Training

The Contractor shall provide training to individual agencies, when necessary, on aspects of ordering, shipping, billing, and receiving. At the request of the Contract Administrator, the Contractor shall provide in-service training to agency personnel on products, installation, and product safety issues. The Contractor shall also provide agency training jointly with the State as needed during the period covered by the contract at no additional charge. The State is requesting if the vendor will provide, after purchase and delivery, informational sessions at no charge to the State, to educate agency employees about the equipment (e.g., AED, AED cabinet, related fast response kit, etc.). The vendor will not be required to provide CPR/First Aid training, or issue course completion card after taking this additional training, since this is included in the agency's ongoing training program. Estimated time for employee orientation to the equipment, including questions and answers would average 1-2 hours.

Philips will work with the State to provide reasonable product in-service training as requested.

1. Philips offers web-based demonstrations for both FRx and HS1. Additionally, 'live' devices can be used for training exercises by simply inserting appropriate Philips training pads into FRx or HS1. Philips also offers FRx and HS1 Trainers. These training devices are replicas of FRx and HS1 but use consumer-grade batteries and offer eight real-world training scenarios. FRx and HS1 Trainers do not/cannot deliver actual shocks nor can FRx and HS1 AEDs with training pads inserted.
2. Philips offers web-based demonstrations of FRx and HS1. Also, for FRx Philips offers a Product Training DVD. For HS1, Philips offers the HS1 Training Toolkit which contains a training videotape and a CD containing a Powerpoint presentation.
3. Philips offers buyers/end-users thorough training on operation and ownership of FRx and HS1 devices. These informational sessions are provided at no charge and will occur at mutually agreeable times for both Philips and purchasing Agency.
4. Philips may offer reasonable implementation assistance upon purchase of Philips AEDs, per the customer's request. Philips is not bidding any purchasable training or services at this time. However, per the award of a contract and the interest of the State, Philips may offer purchasable training, AED program management and/or medical direction services at a later time.
5. Philips will provide templates free-of-charge for generic AED-use protocols, policies and procedures.

1.0707 Special Programs

At its discretion Philips may offer a Trade-In value for each of Customer's AEDs. This Trade-In value can only be applied as an additional discount toward the purchase of new, Philips AEDs. This Trade-In value shall be a one for one value (one used AED will be credited toward the purchase of one new Philips AED). The Trade-In value shall be valid per the date indicated on any applicable Philips quote. After that date, the Trade-In value will be subject to Philips review, and a new Trade-In value offer shall only be made per Philips sole discretion based on existing market conditions at that time.

Trade-In equipment must be in good working condition and no modifications may be made to the manufacturer specifications. All manuals, power cables, interface cables, and peripherals must be returned with the Trade-In equipment committed by the Customer. Customer is responsible for insuring the Trade-In equipment is made available for pick up by the Philips disposition services agent. If the above conditions are not met within 21 calendar days after the new Philips AEDs are delivered to Purchaser, Philips shall reduce or eliminate the Trade-In discount and submit a credit and re-bill invoice to Customer for the adjusted dollar amount.

The following, additional terms shall apply to all Trade-Ins:
(i) Customer represents and warrants that Customer has good and marketable title to such Trade-In; and
(ii) Title to such Trade-In equipment shall pass from Customer to Philips upon Philips delivery of the new Philips AEDs to Customer; and

(iii) Customer represents and warrants that Customer has removed or de-identified all Protected Health Information from the Trade-In equipment as of the date the equipment is removed; and
(iv) If the condition of the Trade-In is not substantially the same when Philips removes the Trade-In (ordinary wear and tear excepted) as it was when Philips quoted the Trade-In value, then Philips may reduce the price quoted for such Trade-In; and
(v) If Customer delays the removal of the Trade-In, then Philips may reduce the price quoted for such Trade-In.

1.0708 Security

This Contract may require frequent deliveries to State of Michigan facilities. The Contractor shall include all measures utilized by their firm to ensure the security and safety of these buildings. This shall include, but is not limited to, performance of security background checks on all personnel assigned to State of Michigan facilities (i.e. delivery people) and how they are performed, what the security check consists of, the name of the company that performs the security checks, use of uniforms and ID badges, etc. If security background checks are performed on staff, the contractor shall indicate the name of the company that performs the check as well as provide a document stating that each employee has satisfactorily completed a security check and is suitable for assignment to State facilities. Upon request by the State, the contractor shall provide the results of all security background checks.

Upon review of the security measures, the State will decide whether to issue State ID badges to the contractor's delivery personnel or accept the ID badge issued to delivery personnel by the contractor.

The State may decide to also perform a security background check. If so, the contractor will be required to provide to the State a list of all delivery people that will service State of Michigan facilities, including name and date of birth (social security number or driver license number would also be helpful).

The Contractor and its subcontractors shall comply with the security access requirements of individual State facilities; see section 2.091, Background Checks and Security.

Philips' product delivery is provided exclusively by FedEx. Philips is unable to provide background or security information regarding FedEx employees. A list of FedEx delivery employees is not available. Typically Philips will not require access to any state facilities or systems because this contract contemplates the delivery of product.

From time to time Philips personnel may be on State sites to support sales activities and to assist with implementation of early defibrillation programs. Philips shall comply with credentialing requirements reasonably necessary pursuant to AdvaMed Guidance on Credentialing as it applies to Medical Device Manufacturers published by AdvaMed in 2009. Philips currently works with most major credentialing agencies used by healthcare organizations today.

If security background checks are performed on any Philips employees, upon request by the State, Philips may provide relevant results (removing personally identifying information such as social security number, date of birth, and home address) as necessary to support Philips support activities. Philips will not provide the State with employee's social security numbers or driver's license numbers.

Delivery Capabilities

1.0709 Time Frames

It is requested that all orders be delivered within fourteen (14) calendar days after receipt of order.

Expedited delivery is available for a fee, upon request. Philips will make reasonable efforts to meet Customer's delivery requirements. If Philips is unable to meet Customer's delivery requirements,

alternative arrangements may be agreed. In the absence of such agreement, Customer's sole remedy is to cancel the order. If the Customer requests a major delay in the date of delivery of the product, Philips may attempt to arrange re-delivery within a reasonable time or may terminate the order.

1.0710 Minimum Order

The minimum order for the resulting Contract shall be one (1) AED.

Philips acknowledges the State's minimum order.

1.0711 Packaging

The contractor is requested to provide packaging that most closely meets these packaging sizes. The state reserves the right of final approval on packaging offered by the contractor.

Packaging and containers, etc., shall be in accordance with supplier's commercial practice and shall meet the requirements of Department of Transportation (D.O.T.) and rail and motor carrier freight classifications in effect at time of shipment, which will permit application of the lowest freight rate.

Philips' packaging containers meet supplier's commercial practice, DOT requirements and rail/NMFC requirements.

1.0712 Palletizing

Shipments shall be palletized whenever possible and shall conform to the following:

- Manufacturer's standard 4-way shipping pallets are acceptable.
- Maximum height: 5'6"; including pallet.
- Maximum weight: 3500 pounds; including pallet.
- Pallets are to be securely banded or shrink-wrapped.
- The cost of palletizing must be included in the unit price.

Philips may palletize large orders upon customer request. Palletizing will require pre-coordination with Philips representatives and may incur additional shipping and handling costs.

1.0713 Delivery Term

Prices are "F.O.B. Delivered" with transportation charges prepaid on all orders.

1.0714 Contract Performance

Deleted – Not Applicable

1.0715 Place of Performance

The contractor, in the performance of this contract, must state if they intend to use one or more plants or facilities. The following information must be provided for these plants or facilities:

Place of Performance Full address	Owner/Operator of facility to be used	Percent (%) of Contract value to be Performed at listed Location
2301 5th Ave Seattle, WA 98121	Philips Healthcare	100% of final product manufacturing, shipment, and technical/warranty support
3000 Minuteman Rd Andover, MA 01810	Philips Healthcare	100% of other types of customer service (including order processing)

1.716 ***Environmental Requirements***

Deleted – Not Applicable

Article 2, Terms and Conditions

2.000 Contract Structure and Term

2.001 Contract Term

This Contract is for a period of three years beginning March 3, 2010 through March 2, 2013. 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

This 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 two additional one-year periods.

2.003 Legal Effect

Contractor shall show acceptance of this Contract by signing two copies of the Contract and returning them to the Contract Administrator. The Contractor shall 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 this Contract, until Contractor is notified in writing that this 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 this Contract, are incorporated in their entirety and form part of this 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 this Contract. All orders are subject to the terms and conditions of this 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 will be required to 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 the 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

This Contract is issued by the Department of Management and Budget, Purchasing Operations and state agencies (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 this Contract.** The Contractor Administrator within Purchasing Operations for this Contract is:

Laura Gyorkos, Buyer Specialist
Purchasing Operations
Department of Management and Budget
Mason Bldg, 2nd Floor
PO Box 30026
Lansing, MI 48909
Email: gyorkosl@michigan.gov
Phone: (517) 373-1455
Fax: (517) 335-0046

2.022 Contract Compliance Inspector (CCI)

After DMB-PurchOps receives the properly executed Contract, it is anticipated that the Director of Purchasing Operations, in consultation with the State agencies 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 this 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 Contract Compliance Inspector for this Contract is:

Laura Gyorkos, Buyer Specialist
Purchasing Operations
Department of Management and Budget
Mason Bldg, 2nd Floor
PO Box 30026
Lansing, MI 48909
Email: gyorkosL@michigan.gov
Phone: (517) 373-1455
Fax: (517) 335-0046

2.023 Project Manager – Deleted, Not Applicable

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 this Contract, describing the Change and its effects on the Services and any affected components of this Contract (a "Contract Change Notice").

(b) No proposed Change must 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 this 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 party as addressed below, 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.

State:
State of Michigan
Purchasing Operations
Attention: Laura Gyorkos
PO Box 30026
530 West Allegan
Lansing, Michigan 48909

Contractor: Philips Healthcare
Name: Matt Johnson
Address: 3000 Minuteman Rd.
Andover, MA 01810

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 table. 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 or must be deemed to be an employee, agent or servant of the State for any reason. Contractor will be 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 will 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 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 this Contract or project to which it relates shall 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 this 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 this Contract involves the creation, research, investigation or generation of a future RFP, it may be precluded from bidding on the subsequent RFP. The State reserves the right to disqualify any bidder if the State determines that the bidder has used its position (whether as an incumbent Contractor, or as a Contractor hired to assist with the RFP development, or as a Vendor offering free assistance) to gain a competitive advantage on the RFP.

2.036 Freedom of Information

All information in any proposal submitted to the State by Contractor and this Contract is subject to the provisions of the Michigan Freedom of Information Act, 1976 Public Act No. 442, as amended, 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 this Contract will 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 this Contract shall 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

Deleted – Not Applicable

2.043 Services/Deliverables Covered

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

2.044 Invoicing and Payment – In General

All invoices should reflect actual work done. Each state agency will issue a purchase order against the BPO and indicate the ship to/bill to address. Each state agency, local unit of State and MiDEAL member is responsible for their own purchase.

2.045 Pro-ration

Deleted – Not Applicable

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 this Contract.

2.047 Final Payment

Deleted – Not Applicable

2.048 Electronic Payment Requirement

Electronic transfer of funds is required for payments on State Contracts. Contractors are required to register with the State electronically at http://www.cpexpress.state.mi.us. As stated in Public Act 431 of 1984, all contracts that the State enters into for the purchase of goods and services shall 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, including the 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 this 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 this 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 this Contract only; however, the State understands that the relationship between Contractor and Subcontractor is an independent contractor relationship.

2.062 Contractor Key Personnel

Deleted – Not Applicable

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 will perform their duties either primarily at Contractor's offices and facilities or at State facilities. Without limiting the generality of the foregoing, Key Personnel will, 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 agrees to 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 will 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 this 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 agrees not to unnecessarily or unreasonably interfere with, delay or otherwise impeded Contractor's performance under this Contract with the requests for access.

2.067 Contract Management Responsibilities

The Contractor will be required to assume responsibility for all contractual activities, whether or not that Contractor performs them. Further, the State will consider 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.

2.068 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.

2.070 Subcontracting by Contractor

2.071 Contractor full Responsibility

Contractor shall have 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 this Contract, including payment of any and all charges for Services and Deliverables.

2.072 State Consent to delegation

Contractor shall not delegate any duties under this Contract to a Subcontractor unless the Department of Management and Budget, Purchasing Operations has given written consent to such delegation. The State shall have 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 shall be written with reasonable detail outlining the reasons for the removal request. Additionally, the State's request shall be based on legitimate, good-faith reasons. Replacement Subcontractor(s) for the removed Subcontractor shall 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 in 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 shall require the Subcontractor, to the extent of the Services to be performed by the Subcontractor, to be bound to Contractor by the terms of this Contract and to assume toward Contractor all of the obligations and responsibilities that Contractor, by this 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 will be the responsibility of Contractor, and Contractor shall remain responsible for the performance of its Subcontractors to the same extent as if Contractor had not subcontracted such performance. Contractor shall 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 this Contract shall not relieve Contractor of any obligations or performance required under this Contract. Attached as **Exhibit A** is a list of the Subcontractors, if any, approved by the State as of the execution of this Contract, together with a copy of the applicable subcontract.

2.074 Flow Down

Except where specifically approved in writing by the State on a case-by-case basis, Contractor shall 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 shall 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 will 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 agrees that it will 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 will also be expected to 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 will be expected to 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. It is expected the Contractor will present these documents to the prospective employee before the Contractor presents the individual to the State as a proposed resource. Contractor staff will be expected to 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 – Deleted, 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 this Contract, is marked as confidential, proprietary or with a similar designation by the State. "Confidential Information" excludes any information (including this Contract) that is publicly available under the Michigan FOIA.

2.102 Protection and Destruction of Confidential Information

The State and Contractor will 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 this 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 will limit disclosure of the other party's Confidential Information to employees and Subcontractors who must have access to fulfill the purposes of this Contract. Disclosure to, and use by, a Subcontractor is permissible where (A) use of a Subcontractor is authorized under this 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 this 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 this 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, and 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 will 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 this Contract. The performance of all obligations under this Contract must be provided in a timely, professional, and workman-like manner and must meet the performance and operational standards required under this 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 this 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 this 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 this 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 this 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 this 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 this 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) Neither Contractor nor any Affiliates, nor any employee of either has accepted or must accept anything of value based on an understanding that the actions of the Contractor or Affiliates or employee on behalf of the State would be influenced. Contractor must not attempt to influence any State employee by the direct or indirect offer of anything of value.

(i) Neither Contractor nor any Affiliates, nor any employee of either has paid or agreed to pay any person, other than bona fide employees and consultants working solely for Contractor or the Affiliate, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or making of this Contract.

(j) The prices proposed by Contractor were arrived at independently, without consultation, communication, or agreement with any other bidder for the purpose of restricting competition; the prices quoted were not knowingly disclosed by Contractor to any other bidder; and no attempt was made by Contractor to induce any other person to submit or not submit a proposal for the purpose of restricting competition.

(k) All financial statements, reports, and other information furnished by Contractor to the State as part of its response to the RFP or otherwise in connection with the award of this Contract fairly and accurately represent the business, properties, financial condition, and results of operations of Contractor as of the respective dates, or for the respective periods, covered by the financial statements, reports, other information. Since the respective dates or periods covered by the financial statements, reports, or other information, there have been no material adverse change in the business, properties, financial condition, or results of operations of Contractor.

(l) All written information furnished to the State by or for the Contractor in connection with this Contract, including its bid, is true, accurate, and complete, and contains no untrue statement of material fact or omits any material fact necessary to make the information not misleading.

(m) It is not in material default or breach of any other contract or agreement that it may have with the State or any of its departments, commissions, boards, or agencies. Contractor further represents and warrants that it has not been a party to any contract with the State or any of its departments that was terminated by the State or the department within the previous five years for the reason that Contractor failed to perform or otherwise breached an obligation of the contract.

(n) If any of the certifications, representations, or disclosures made in the Contractor's original bid response change after contract award, the Contractor is required to 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 shall be merchantable. All goods provided under this Contract shall be of good quality within the description given by the State, shall be fit for their ordinary purpose, shall be adequately contained and packaged within the description given by the State, shall conform to the agreed upon specifications, and shall 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 shall, in providing goods to the State, convey good title in those goods, whose transfer is right and lawful. All goods provided by Contractor shall 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 this Contract, shall be delivered free of any rightful claim of any third person by of infringement or the like.

2.125 Equipment Warranty

To the extent Contractor is responsible under this Contract for maintaining equipment/system(s), Contractor represents and warrants that it will maintain the equipment/system(s) in good operating condition and will undertake all repairs and preventive maintenance according to the applicable manufacturer's recommendations for the period specified in this Contract.

The Contractor represents and warrants that the equipment/system(s) are in good operating condition and operate and perform to the requirements and other standards of performance contained in this Contract, when installed, at the time of Final Acceptance by the State, and for the contract term commencing upon the first day following Final Acceptance.

Within three (3) business days of notification from the State, the Contractor must adjust, repair or replace all equipment that is defective or not performing in compliance with the Contract. The Contractor must

assume all costs for replacing parts or units and their installation including transportation and delivery fees, if any.

The Contractor must provide a toll-free telephone number to allow the State to report equipment failures and problems to be remedied by the Contractor.

The Contractor agrees that all warranty service it provides under this Contract must be performed by Original Equipment Manufacturer (OEM) trained, certified and authorized technicians.

The Contractor is the sole point of contact for warranty service. The Contractor warrants that it will pass through to the State any warranties obtained or available from the original equipment manufacturer, including any replacement, upgraded, or additional equipment warranties.

2.126 Equipment to be New

If applicable, all equipment provided under this Contract by Contractor shall 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, shall be 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 shall 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 this 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 this 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 this Contract.

All insurance coverages provided relative to this 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 this 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 this Contract must be issued by companies that have been approved to do business in the State.
See www.michigan.gov/dleg.

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 this 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 one million dollars ($1,000,000.00) with a maximum deductible of fifty thousand dollars ($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: three million dollars ($3,000,000.00) each occurrence and three million dollars ($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 this 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 this 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(s) must fully comply with the insurance coverage required in this Section. Failure of Subcontractor(s) 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-PurchOps, 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 WILL 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 this 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 this 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 this Contract, or if any insurer cancels or significantly reduces any required insurance as specified in this 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 this 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 shall 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 this 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 this 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 this 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 will 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 this contract, for cause, by notifying the Contractor in writing, if the Contractor (i) breaches any of its material duties or obligations under this 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 this Contract is terminated for cause, the Contractor must pay all costs incurred by the State in terminating this 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 this 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 this Contract, provided the costs are not in excess of 50% more than the prices for the Service/Deliverables provided under this Contract.

(c) If the State chooses to partially terminate this Contract for cause, charges payable under this 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 this Contract that are terminated for cause must cease on the effective date of the termination.

(d) If the State terminates this 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 this Contract for a termination for convenience.

2.153 Termination for Convenience

The State may terminate this 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 this 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 this Contract in part, the charges payable under this Contract must be equitably adjusted to reflect those Services/Deliverables that are terminated. Services and related provisions of this 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 this Contract extends for several fiscal years, continuation of this Contract is subject to appropriation or availability of funds for this Contract. If funds to enable the State to effect continued payment under this Contract are not appropriated or otherwise made available, the State must terminate this 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 this Contract will be equitably adjusted to reflect any equipment, services or commodities not provided by reason of the reduction.

(c) If the State terminates this 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 this 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 this 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 will 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 this 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 this 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 this 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 this 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 this 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 this Contract, and may further pursue completion of the Services/Deliverables under this Contract by replacement contract or otherwise as the State may in its sole judgment deem expedient.

2.158 Reservation of Rights

Any termination of this 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 this Contract if the State (i) materially breaches its obligation to pay the Contractor undisputed amounts due and owing under this Contract, (ii) breaches its other obligations under this 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 2.160** before it terminates the Contract.

2.170 Transition Responsibilities

2.171 Contractor Transition Responsibilities

If the State terminates this 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 this 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 thirty days. These efforts must include, but are not limited to, those listed in **Sections 2.141, 2.142, 2.143, 2.144, and 2.145.**

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 this 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 will 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 this Contract. The Contractor will provide the State with asset management data generated from the inception of this Contract through the date on which this Contractor is terminated in a comma-delineated format unless otherwise requested by the State. The Contractor will 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 this Contract. This must include any documentation being used by the Contractor to perform the Services under this 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 this 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 will prepare an accurate accounting from which the State and Contractor may reconcile all outstanding accounts.

2.176 State Transition Responsibilities

In the event that this 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 2.150**. 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 will 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 2.153**, 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 be 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 this 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 will 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 will 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, physical or mental disability. Contractor further agrees that every subcontract entered into for the performance of this Contract or any purchase order resulting from this Contract will 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 this Contract in privity of contract with the Contractor shall not be less than the wage rates and fringe benefits established by the Michigan Department of 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 shall 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 this contract in privity of contract with the Contractor shall 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 Labor and Economic Development, the office responsible for enforcement of the wage rates and fringe benefits. You shall keep an accurate record showing the name and occupation of the actual wage and benefits paid to each individual employed in connection with this contract. This record shall 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 shall 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 shall 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 this Contract calling for liquidated damages; or to court costs or attorney's fees awarded by a court in addition to damages after litigation based on this Contract.

2.230 Disclosure Responsibilities

2.231 Disclosure of Litigation

(a) Disclosure. 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 this Contract would cause a reasonable party to be concerned about:

(i) the ability of Contractor (or a Subcontractor) to continue to perform this 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 this 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 will be able to continue to perform this 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 PurchOps.

(2) Contractor must also notify DMB PurchOps 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 PurchOps within 30 days whenever changes to company affiliations occur.

2.232 Call Center Disclosure

Contractor and/or all subcontractors involved in the performance of this 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 this Contract.

2.233 Bankruptcy

The State may, without prejudice to any other right or remedy, terminate this 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 this 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.

(d) Should the State of Michigan issue an Executive Order thru the Office of State Employer mandating furlough days, the furlough days will not be considered a Business Day. The Contractor will not seek additional costs from the State for project schedule extensions to the extent such extensions are needed due to Contractor's inability to complete deliverables and milestones in accordance with the project schedule as a result of the above mentioned furlough days.

2.242 Service Level Agreements (SLAs) – Deleted, Not Applicable

2.243 Liquidated Damages

The parties acknowledge that late or improper completion of the Work will cause loss and damage to the State, and that it would be impracticable and extremely difficult to fix the actual damage sustained by the State as a result. Therefore, Contractor and the State agree that if there is late or improper completion of the Work and the State does not elect to exercise its rights under **Section 2.141**, the State is entitled to collect liquidated damages in the amount of $5,000.00 and an additional $100.00 per day for each day Contractor fails to remedy the late or improper completion of the Work.

It is acknowledged that an Unauthorized Removal will interfere with the timely and proper completion of the Contract, to the loss and damage of the State, and that it would be impracticable and extremely difficult to fix the actual damage sustained by the State as a result of any Unauthorized Removal. Therefore, Contractor and the State agree that in the case of any Unauthorized Removal in respect of which the State does not elect to exercise its rights under **Section 2.141**, the State may assess liquidated damages against Contractor as specified below.

For the Unauthorized Removal of any Key Personnel designated in the applicable Statement of Work, the liquidated damages amount is $25,000.00 per individual if the Contractor identifies a replacement approved by the State under **Section 2.060** and assigns the replacement to the Project to shadow the Key Personnel who is leaving for a period of at least 30 days before the Key Personnel's removal.

If Contractor fails to assign a replacement to shadow the removed Key Personnel for at least 30 days, in addition to the $25,000.00 liquidated damages for an Unauthorized Removal, Contractor must pay the amount of $833.33 per day for each day of the 30 day shadow period that the replacement Key Personnel does not shadow the removed Key Personnel, up to $25,000.00 maximum per individual. The total liquidated damages that may be assessed per Unauthorized Removal and failure to provide 30 days of shadowing must not exceed $50,000.00 per individual.

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, electrical surges or current fluctuations, lightning, earthquake, war, water or other forces of nature or acts of God, delays or failures of transportation, equipment shortages, suppliers' failures, or acts or omissions of common carriers, fire; riots, civil disorders; strikes or other labor disputes, embargoes; injunctions (provided the injunction was not issued as a result of any fault or negligence of the party seeking to have its default or delay excused); or any other cause beyond the reasonable control of a party; provided the non-performing party and its Subcontractors are without fault in causing the default or delay, and the default or delay could not have been prevented by reasonable precautions and cannot reasonably be circumvented by the non-performing party through the use of alternate sources, workaround plans or other means, including disaster recovery plans.

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

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

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

2.250 Approval of Deliverables

2.251 Delivery Responsibilities

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

(a) Shipment responsibilities - Services performed/Deliverables provided under this Contract must be delivered "F.O.B. Destination, within Government Premises." The Contractor must have complete responsibility for providing all Services/Deliverables to all site(s) unless otherwise stated. Actual delivery dates will be specified on the individual purchase order.

(b) Delivery locations - Services will be performed/Deliverables will be provided at every State of Michigan location within Michigan unless otherwise stated in the SOW. Specific locations will be provided by the State or upon issuance of individual purchase orders.

(c) Damage Disputes - At the time of delivery to State Locations, the State must examine all packages. The quantity of packages delivered must be recorded and any obvious visible or suspected damage must be noted at time of delivery using the shipper's delivery document(s) and appropriate procedures to record the damage.

Where there is no obvious or suspected damage, all deliveries to a State Location must be opened by the State and the contents inspected for possible internal damage not visible externally within 14 days of receipt. Any damage must be reported to the Contractor within five days of inspection.

2.252 Delivery of Deliverables

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

2.253 Testing

(a) Before delivering any of the above-mentioned Statement of Work Physical Deliverables or Services to the State, Contractor will first perform all required quality assurance activities to verify that the Physical Deliverable or Service is complete and conforms with its specifications listed in the applicable Statement of Work or Purchase Order. Before delivering a Physical Deliverable or Service to

the State, Contractor must certify to the State that (1) it has performed the quality assurance activities, (2) it has performed any applicable testing, (3) it has corrected all material deficiencies discovered during the quality assurance activities and testing, (4) the Deliverable or Service is in a suitable state of readiness for the State's review and approval, and (5) the Deliverable/Service has all Critical Security patches/updates applied.

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

2.254 Approval of Deliverables, In General

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

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

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

(d) The State will 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 will 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 will be made at no additional charge. Upon receipt of a corrected Deliverable from Contractor, the State will 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 will 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 will be made at no additional charge. Upon implementation of a corrected Service from Contractor, the State will 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 will 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 will be made at no additional charge. Upon receipt of a corrected Deliverable from the Contractor, the State will 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 will 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 will 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 will 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 will adhere to all existing standards as described within the comprehensive listing of the State's existing technology standards at http://www.michigan.gov/dit.

2.272 Acceptable Use Policy

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

2.273 Systems Changes

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

2.280 Extended Purchasing

2.281 MiDEAL

Act Number 431 of the Public Acts of 1984 permits the State of Michigan, Department of Management and Budget, to provide purchasing services to any city, village, county, township, school district, intermediate school district, non-profit hospital, institution of higher education, community, or junior college. As a result of the enactment of this legislation, the MIDEAL Program has been developed. This program extends the use of state contracts to program members. The governmental agency must enter into an agreement with the State of Michigan to become authorized to participate, thus ensuring that local units of government secure a greater return for the expenditure of public funds.

In those cases, contract vendors supply merchandise at the established State of Michigan contract prices and terms. The contract vendor must submit invoices and pay the authorized MIDEAL member on a direct and individual basis according to contract terms.

IT IS MANDATORY THAT ALL CONTRACTS ARE AVAILABLE TO ALL STATE OF MICHIGAN AGENCIES AND AUTHORIZED MIDEAL PURCHASING PROGRAM MEMBERS.

Please Visit Mi DEAL at www.michigan.gov/buymichiganfirst under MiDEAL.

2.282 State Employee Purchases

The State allows State employees to purchase from this Contract. Unless otherwise stated, it is the responsibility of the Contractor to ensure that the State employee is an authorized purchaser before extending the Contract pricing.

The Contractor will supply Contract Services and Deliverables at the established State of Michigan contract prices and terms to the extent applicable and where available. The Contractor must send its invoices to and pay the State employee on a direct and individual basis.

To the extent that authorized State employees purchase quantities of Services or Deliverables under this Contract, the quantities of Services and/or Deliverables purchased will be included in determining the appropriate rate wherever tiered pricing based on quantity is provided.

2.290 Environmental Provision

2.291 Environmental Provision

Energy Efficiency Purchasing Policy – The State seeks wherever possible to purchase energy efficient products. This includes giving preference to U.S. Environmental Protection Agency (EPA) certified 'Energy Star' products for any category of products for which EPA has established Energy Star certification. For other purchases, the State may include energy efficiency as one of the priority factors to consider when choosing among comparable products.

Environmental Purchasing Policy – The State of Michigan is committed to encouraging the use of products and services that impact the environment less than competing products. The State is accomplishing this by including environmental considerations in purchasing decisions, while remaining fiscally responsible, to promote practices that improve worker health, conserve natural resources, and prevent pollution. Environmental components that are to be considered include: recycled content and recyclability; energy efficiency; and the presence of undesirable materials in the products, especially those toxic chemicals which are persistent and bioaccumulative. The Contractor should be able to supply products containing recycled and environmentally preferable materials that meet performance requirements and is encouraged to offer such products throughout the duration of this Contract. Information on any relevant third party certification (such as Green Seal, Energy Star, etc.) should also be provided.

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 the 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 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 shall 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 this contract.

Environmental Performance:
Waste Reduction Program - Contractor shall establish a program to promote cost-effective waste reduction in all operations and facilities covered by this contract. The Contractor's programs shall 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

2.301 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

AED Model #: M5066A-CO1 (HSI) (w/ carrying case) Price/Each: $1027.84

AED Model #: 861304 (FRx) Price/Each: $ 1249.28

Battery #: M5070A (HSI & FRx) Price/Each: $ 99.45

Electrodes #: M5071A (HSI Adult Pads Cartridge) Price/Each: $39.65
Electrodes #: M5072A (HSI Infant/Child Pads Cartridge) Price/Each: $63.70

Electrodes #: 9898031 39261 (FRx SMART Pads II) Price/Each: $32.50

Options: 9898031 39311 FRx Infant/Child Key Price/Each: $63.70

Please see the attached State of Michigan discounted pricing for HIS and FRx devices and accessories.

HeartStart OnSite Defibrillator Price List

PHILIPS

State of Michigan Price List: RFP 071I0200008 January 2010 Revision

HeartStart OnSite Defibrillator

HeartStart OnSite Defibrillator

M5066A HeartStart OnSite Defibrillator (HS1) $962.56
When purchasing M5066A, customer must also choose one carry case option -
Opt C01 Standard Carry Case (recommended; can carry spare battery and pads cartridge) $65.28
Opt C02 Slim Carry Case $23.04
Opt C04 No Carry Case (Customer receives clear vinyl sleeve for holding Quick Reference Guide and call 911 reminder) $0.00

HeartStart OnSite Defibrillator Accessories

M5070A Battery for HeartStart Defibrillator, HS1 $99.45
M5071A Adult SMART Pads Cartridge, HS1 $39.65
M5072A Infant/Child SMART Pads Cartridge, HS1 $63.70
68-PCHAT Fast Response Kit $27.30

HeartStart Cases and Wall Mounts

989803136531 Defibrillator Cabinet, Basic $153.40
PFE7023D Defibrillator Cabinet, Semi-recessed $284.70
PFE7024D Defibrillator Cabinet, Wall Surface $267.15
M3857A Wall Mount Bracket $59.80
M3858A Defibrillator Wall Sign $21.45
M3859A Secure Pull Seal, 10-pack $6.50
M5075A Standard Carry Case for HeartStart HS1 (when ordering case standalone) $87.10
M5076A Slim Carry Case for HeartStart HS1 (when ordering case standalone) $73.45
YC Carrying Case, Plastic Waterproof Shell $133.90

HeartStart OnSite Training Materials and Learning Products

M5066-89100 HeartStart HS1 Toolkit, NTSC $20.15
M5066-91900 Instructions for Use, HeartStart OnSite Defibrillator $13.65
M5066-97800 Quick Reference, HeartStart HS1 $3.25
M5073A Adult Training Pads Cartridge, HS1 $50.05
M5074A Infant/Child Training Pads Cartridge, HS1 $53.30
M5085A HeartStart Trainer $217.75
M5085-91900 Instructions for Use, HeartStart Trainer $6.50
M5087A Replacement Carry Case, HeartStart Trainer $16.90
M5088A Internal Manikin Adapter (Compatible with OnSite Trainer M5085A only) $20.15
M5089A External Manikin Adapter, 5-pack $33.80
M5090A Adult Pads Placement Guide $16.90
M5093A Replacement Pads, Adult Training $20.15
M5094A Replacement Pads, Infant/Child Training $20.15
989803139281 Infant/Child Pads Placement Guide $16.90

The HeartStart OnSite Defibrillator includes a battery, 1 SMART Pads Cartridge, Quick Start Poster, Quick Reference Guide, and Owners Manual plus the user-selected carrying case. The HeartStart OnSite Defibrillator device includes a 60-month manufacturer's warranty. HS1 battery includes a 4-year warranty from time of installation. SMART Pads Cartridge warranty extends to the expiration date. Other accessories include a 12-month warranty.

Page 1 of 2 Based on OnSite Price List Effective 06/29/09

HeartStart Event Review Software

861311 Option A01 – HeartStart Review Express Connect Software $57.20
M3834A HeartStart Event Review Software –Single PC $264.55
989803141811 HeartStart Event Review Software – Organization-wide License $666.25
989803143051 HeartStart Case Capture Palm™ Data Download Software $52.65
989803143041 HeartStart Configure Palm™ & Pocket PC Configuration Software $52.65
861431 Option A01 – HeartStart Event Review Pro Software, Single PC $1,670.50
861431 Option A03 – HeartStart Even Review Pro Software, Site License $4,013.75
861436 Option A01 – HeartStart Event Review Pro Upgrade, Single PC $666.25
861436 Option A03 – HeartStart Even Review Pro Upgrade, Site License $1,335.75

Customer Service: Phone: (800) 934-7372 Fax (800) 947-3299
Return Process: A Returned Goods Authorization (RGA) number is required for all returns and must be obtained prior to returning product to Philips. To obtain an RGA number, call Customer Service. The RGA number must appear on the outside of the box. All returns are subject to a restocking fee. For more details on Philips Return Policy, contact Customer Service.
Address: Philips Healthcare, 3000 Minuteman Rd, Andover, MA 01810
Pricing: The above prices do not include applicable sales taxes. Philips Terms and Conditions of Sale are available upon request.
Shipping: Shipping costs are included in all pricing – FOB destination. Supply only orders totaling less than $300 may be subject to a shipping and handling charge. Rush shipping is available for an additional fee.

Page 2 of 2 Based on OnSite Price List Effective 06/29/09

HeartStart FRx Defibrillator Price List

PHILIPS

State of Michigan Price List: RFP 071I0200008 January 2010 Revision

HeartStart FRx Defibrillator

HeartStart FRx Defibrillator

861304 HeartStart FRx Defibrillator $1,249.28
Opt A01 HeartStart FRx Defibrillator Aviation Bundle $1,262.72

HeartStart FRx Defibrillator Accessories

M5070A Battery, Long Life LiMnO2 for HS1/FRx $99.45
989803139301 Aviation Battery, HeartStart FRx (complies with TSO C-142) $110.50
989803139261 HeartStart SMART Pads II (1 set) $32.50
989803139311 Infant/Child Key $63.70
68-PCHAT Fast Response Kit $27.30

HeartStart Cases and Wall Mounts

989803136531 Defibrillator Cabinet, Basic $153.40
PFE7023D Defibrillator Cabinet, Semi-recessed $284.70
PFE7024D Defibrillator Cabinet, Wall Surface $267.15
M3857A Wall Mount Bracket $59.80
M3858A Defibrillator Wall Sign $21.45
M3859A Secure Pull Seal, 10-pack $6.50
989803139251 Carrying Case, FRx Defibrillator $87.10
YC Carrying Case, Plastic Waterproof Shell $133.90

HeartStart FRx Training Materials and Learning Products

861306 HeartStart FRx Trainer $224.25
989803139321 FRx Training Toolkit (Includes PowerPoint presentations, presenter's guide, student guide and training DVD) $20.15
989803139341 FRx Product Training DVD $9.75
989803138731 FRx Owner's Manual $13.65
989803138601 FRx Quick Reference Guide $3.25
989803139271 Training Pads II (Note: for Infant/Child training applications, buy the Infant/Child Key separately) $50.05
989803139291 Replacement Training Pads II (Includes pads, wire and plug) $20.15
M5088A Internal Manikin Adapters (Compatible with HeartStart FRx Trainer 861306 only) $20.15
M5089A External Manikin Adapter, 5-pack $33.80
M5090A Adult Pads Placement Guide $16.90
989803139281 Infant/Child Pads Placement Guide $16.90

FRx Cross-Compatibility

05-10000 HeartStart Pads Adapter (QUICK-COMBOTM) $25.35
05-10100 HeartStart Pads Adapter (ZollTM) $25.35
05-10200 HeartStart Pads Adapter (Barrel-style) $25.35

The HeartStart FRx Defibrillator includes an Owner's Manual, Battery, SMART Pads II (1 set), and a Quick Reference Guide. The HeartStart FRx Defibrillator device includes a 5 year manufacturer's warranty at no charge. Battery includes 4 year warranty; pads are warranted until expiration date. Other accessories include a 1 year warranty.

1 of 2 Based on FRx Price List Effective 06/29/09

HeartStart Event Review Software

861311 Option A01 – HeartStart Review Express Connect Software $57.20
ACT-IR Infrared Data Cable $87.10
M3834A HeartStart Event Review Software, Single PC $264.55
989803141811 HeartStart Event Review Software, Organization-wide License $666.25
989803143051 HeartStart CaseCapture Palm TM data download software $52.65
989803143041 HeartStart Configure PalmTM & Pocket PC configuration software $52.65
861431 Option A01 – HeartStart Event Review Pro Software, Single PC $1,670.50
861431 Option A03 – HeartStart Even Review Pro Software, Site License $4,013.75
861436 Option A01 – HeartStart Event Review Pro Upgrade, Single PC $666.25
861436 Option A03 – HeartStart Even Review Pro Upgrade, Site License $1,335.75

Customer Service: Phone: (800) 934-7372 Fax (800) 947-3299
Address: Philips Healthcare, 3000 Minuteman Rd, Andover, MA 01810
Pricing: The above prices do not include applicable sales taxes. Philips Terms and Conditions of Sale are available upon request.
Shipping: Shipping costs are included in all pricing – FOB destination. Supply only orders totaling less than $300 may be subject to a shipping and handling charge. Rush shipping is available for an additional fee.
Return Process: A Returned Goods Authorization (RGA) number is required for all returns and must be obtained prior to returning product to Philips. To obtain an RGA number, call Customer Service. The RGA number must appear on the outside of the box. All returns are subject to a restocking fee. For more details on Philips Return Policy, contact Customer Service.

2 of 2 Based on FRx Price List Effective 06/29/09