

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

March 15, 2011

CHANGE NOTICE NO. 2
TO
CONTRACT NO. 071B0200253
between
THE STATE OF MICHIGAN
and

NAME & ADDRESS OF CONTRACTOR Applied Biosystems (Part of Life Technologies) 850 Lincoln Centre Drive Foster City, CA 94404 Email: Phil.balough@lifetech.com / Michael.Jones@lifetech.com	TELEPHONE (650) 554-2491 Phillip G. Balough
	CONTRACTOR NUMBER/MAIL CODE
	BUYER/CA (517) 373-7396 Kristen Robel
Contract Compliance Inspector: Victoria Olivarez (Olivarez@michigan.gov) Lab Supplies - MSP	
CONTRACT PERIOD: 3 yrs. + 2 one-year options From: July 6, 2010 To: July 5, 2013	
TERMS Net 30 Days	SHIPMENT 5 Days After Receipt of Order (ARO)
F.O.B. FOB Shipping Point	SHIPPED FROM Frederick, MD
MINIMUM DELIVERY REQUIREMENTS There is no minimum order quantity for items purchased from this Contract	
MISCELLANEOUS INFORMATION:	

NATURE OF CHANGE(S):

Effective immediately, the buyer for this contract is changed to Kristen Robel. All other terms, conditions, specifications and pricing remain unchanged.

AUTHORITY/REASON:

Per DTMB Purchasing Operations.

TOTAL ESTIMATED CONTRACT VALUE REMAINS: \$1,404,095.34

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

August 18, 2010

CHANGE NOTICE NO. 1
TO
CONTRACT NO. 071B0200253
between
THE STATE OF MICHIGAN
and

NAME & ADDRESS OF CONTRACTOR Applied Biosystems (Part of Life Technologies) 850 Lincoln Centre Drive Foster City, CA 94404 Email: Phil.balough@lifetech.com / Michael.Jones@lifetech.com	TELEPHONE (650) 554-2491 Phillip G. Balough
	CONTRACTOR NUMBER/MAIL CODE
	BUYER/CA (517) 241 - 2619 Seleana Samuel, Buyer Manager
Contract Compliance Inspector: Victoria Olivarez (Olivarez@michigan.gov) Lab Supplies - MSP	
CONTRACT PERIOD: 3 yrs. + 2 one-year options From: July 6, 2010 To: July 5, 2013	
TERMS Net 30 Days	SHIPMENT 5 Days After Receipt of Order (ARO)
F.O.B. FOB Shipping Point	SHIPPED FROM Frederick, MD
MINIMUM DELIVERY REQUIREMENTS There is no minimum order quantity for items purchased from this Contract	
MISCELLANEOUS INFORMATION:	

NATURE OF CHANGE(S):

Effective August 26, 2010 the Delivery Term is changed to FOB Shipping Point.

All other Terms and Conditions, specifications; and pricing remain unchanged.

AUTHORITY/REASON:

Per Agency request and vendor agreement.

TOTAL ESTIMATED CONTRACT VALUE REMAINS: \$1,404,095.34

STATE OF MICHIGAN
 DEPARTMENT OF TECHNOLOGY, MANAGEMENT AND BUDGET August 18, 2010
 PURCHASING OPERATIONS
 P.O. BOX 30026, LANSING, MI 48909
 OR
 530 W. ALLEGAN, LANSING, MI 48933

**NOTICE
 OF
 CONTRACT NO. 071B0200253
 between
 THE STATE OF MICHIGAN
 and**

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	CONTRACTOR NUMBER/MAIL CODE
	BUYER/CA (517) 241 - 2619 Seleana Samuel, Buyer Manager
Contract Compliance Inspector: Victoria Olivarez (Olivarez@michigan.gov) Lab Supplies - MSP	
CONTRACT PERIOD: 3 yrs. + 2 one-year options From: July 6, 2010 To: July 5, 2013	
TERMS <p style="text-align: center;">Net 30 Days</p>	SHIPMENT <p style="text-align: center;">5 Days After Receipt of Order (ARO)</p>
F.O.B. FOB Destination – Delivery Charges pre-paid and added to the invoice	SHIPPED FROM <p style="text-align: center;">Frederick, MD</p>
MINIMUM DELIVERY REQUIREMENTS There is no minimum order quantity for items purchased from this Contract	
MISCELLANEOUS INFORMATION:	

The terms and conditions of this Contract are those of RFP #551R0200002, this Contract Agreement and the vendor's quote dated 04/15/10. 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: \$1,404,095.34

STATE OF MICHIGAN
DEPARTMENT OF TECHNOLOGY, MANAGEMENT AND BUDGET
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CONTRACT NO. 071B0200253
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THE STATE OF MICHIGAN
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NAME & ADDRESS OF CONTRACTOR Applied Biosystems (Part of Life Technologies) 850 Lincoln Centre Drive Foster City, CA 94404 Email: Phil.balough@lifetech.com / Michael.Jones@lifetech.com	TELEPHONE (650) 554-2491 Phillip G. Balough CONTRACTOR NUMBER/MAIL CODE BUYER/CA (517) 241 - 2619 Seleana Samuel, Buyer Manager
Contract Compliance Inspector: Victoria Olivarez (Olivarez@michigan.gov) Lab Supplies - MSP	
CONTRACT PERIOD: 3 yrs. + 2 one-year options From: July 6, 2010 To: July 5, 2013	
TERMS <p style="text-align: center;">Net 30 Days</p>	SHIPMENT <p style="text-align: center;">5 Days After Receipt of Order (ARO)</p>
F.O.B. FOB Destination – Delivery Charges pre-paid and added to the invoice	SHIPPED FROM <p style="text-align: center;">Frederick, MD</p>
MINIMUM DELIVERY REQUIREMENTS There is no minimum order quantity for items purchased from this Contract	
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Estimated Contract Value: \$1,404,095.34	

THIS IS NOT AN ORDER: This Contract Agreement is awarded on the basis of our inquiry bearing the RFP #551R0200002. Orders for delivery will be issued directly by the Department of State Police 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: _____ Applied Biosystem (Part of Life Technologies) Firm Name _____ Authorized Agent Signature _____ Authorized Agent (Print or Type) _____ Date	FOR THE STATE: _____ Signature Seleana Samuel, Buyer Manager Name/Title Commodities Division, Purchasing Operations _____ Division _____ Date
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Attachment A, Pricing

Attachment B, Applied Biosystems Limited Warranty Information

DEFINITIONS

Business Day - whether capitalized or not, means any day other than a Saturday, Sunday, State employee temporary layoff 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.

Buyer – the DTMB-Purchasing Operations employee identified on the cover page of this RFP.

Chronic Failure - as defined in any applicable Service Level Agreements.

Contract - this agreement once approved by the Contractor and the State, the Buyer, DTMB-Purchasing Operations Director, and the State Administrative Board.

Contractor – the awarded Contractor once this agreement is approved by the State.

Days - Business Days unless otherwise specified.

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

Deliverables - physical goods or commodities as required or identified by a Statement of Work.

DTMB - the Michigan Department of Technology, Management and Budget

Effective Date - the date that this agreement receives the final signature necessary to form a binding contract.

Final Acceptance - has the meaning provided in Section 2.257, Final Acceptance, unless otherwise stated in Article 1.

Key Personnel - any personnel designated in **Sections 1.031** and 2.062 as Key Personnel, subject to the restrictions of Section 2.062.

Post-Industrial Waste - 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.

Purchase Order - a written document issued by the State which requests full or partial performance of the Contract.

Request For Proposal (RFP) - a document designed to solicit proposals.

Service Level Agreement (SLA) - an agreement to provide an identified level of service in performing the Contract.

Statement of Work (SOW) – Article 1 of the Contract that defines the work to be performed.

State - the State of Michigan.

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

Stop Work Order - a notice requiring the Contractor to fully or partially stop work in accordance with the terms of the notice.

Subcontractor - a company Contractor delegates performance of a portion of the Deliverables to, but does not include independent contractors engaged by Contractor solely in a staff augmentation role.

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



Article 1 – Statement of Work

1.1 Project Identification

This Contract is for reagents and supplies for DNA testing to be used by Michigan State Police.

1.020 Scope of Work and Deliverables

1.021 In Scope

Reagents and supplies for DNA testing as follows:

- FG, Buffer (10X) with EDTA 25 mL Applied Biosystems p/n 402824
- FG, POP4 310 GA Applied Biosystems p/n 402838
- Genetic Analyzer Retainer Clip Applied Biosystems p/n 402866
- FG, Hi-Di Formamide 25 mL bottle Applied Biosystems p/n 4311320
- FG, Amplitaq Gold 5X1000U+Gold Buffer+MgCl Applied Biosystems p/n 4311818
- 96-well Splash free Support Base Applied Biosystems p/n 432063
- FG, Capillary Array 16 x 36cm Applied Biosystems p/n 4315931
- Septa Strip, Array 16 x 36cm Applied Biosystems p/n 4315932
- Plate, Base AB 96 well 3100 Applied Biosystems p/n 4317237
- Plate, Retainer 96 well 3100 Applied Biosystems p/n 4317241
- TF, Taq Gold 5x5x1000U&Gold Buffer MG12 Applied Biosystems p/n 4317742
- FG, 3130 POP-4, 3.5mL Applied Biosystems p/n 4363752
- Kit, Prism Genescan 500 ROX Applied Biosystems p/n 401734
- FG, 4mL Buffer Vials Applied Biosystems p/n 401955
- FG, Septa, 0.5mL Sample tubes 500-pack Applied Biosystems p/n 401956
- FG, Capillary, 310GA 47cmx50umid Applied Biosystems p/n 402839
- Assy, syringe 1mL w/seal Kloehn Applied Biosystems p/n 4304471
- Genetic Analyzer Septa Strips 20/bx Applied Biosystems p/n 4305547
- FG, Optical Adhesive Covers Applied Biosystems p/n 4311971
- Kit, Matrix Standard Set DS-32 Applied Biosystems p/n 4312131
- Septa Strip, 96 well tray Applied Biosystems p/n 4315933
- Bulkpack 96-well Txn Plates, 50xN8010560 Applied Biosystems p/n 4316813
- FG, Capillary array, 4 x 36 cm Applied Biosystems p/n 4333464
- FG, 7500 Spectral dye cal kit Applied Biosystems p/n 4349180
- Prepackaged Microamp reaction Applied Biosystems p/n N8011533
- Platinum Cathode Electrode Applied Biosystems p/n 5914
- AmpFLSTR Cofiler + Profiler Plus Kit Applied Biosystems p/n 4305979

Additional testing equipment may be added throughout the life of this Contract if there is a mutual Agreement between the State and the Contractor.

1.022 Deliverables

Definite specifications - All Deliverables must conform to the specified products listed in Section 1.021.

1.023 Quantity

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.



1.024 Ordering

The State will issue a Purchase Order, which must be approved by the Contract Administrator, to order any Deliverables.

1.030 Roles and Responsibilities

1.031 Contractor Staff, Roles, and Responsibilities

Contractor has ordering/customer service capabilities. This includes having the capacity to receive orders electronically, by phone, facsimile, and by written order. 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 have 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 Michigan State Police.

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.

1.040 Project Management

1.041 Project Management

The Contractor will carry out this project under the direction and control of the Michigan State Police who may request meetings and quarterly reports throughout the life of this Contract.

1.061 Pricing

Pricing is per Attachment A

1.062 Quick Payment Terms – Deleted Not Applicable

1.063 Price Term

The criteria for a re-determination of pricing are under Section 2.024, Contract Changes.

1.064 Tax Excluded from Price

(a) Sales Tax: The State is exempt from sales tax for direct purchases. The Contractor's prices must not include sales tax. DTMB will furnish exemption certificates for sales tax 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.

1.0703 Research and Development

The Contractor continuously invests in research and development of goods and services provided on this Contract.

1.0704 Quality Assurance Program

The Contractor is ISO:9001 Certified and uses a Manufacturing Execution System (MES) and Systems, Applications, and Products in Data Processing (SAP) to track performance and failures, and apply a set of internal metrics against which processes and products are measured.

1.0705 Warranty for Deliverables

Warranty information can be found on Attachment B, Applied Biosystems Limited Warranty Information

Contractor’s Return Policy:

REJECTION AND RETURN OF GOODS. Any claims for damaged, missing or defective Product must be reported in writing by buyer within 15 days from the date of buyer’s receipt of the Product. In addition, buyer must promptly return a rejected Product to Applied Biosystems (AB), C.O.D., unused and in a condition no worse than that delivered to buyer and in the Product’s original containers and packing material, accompanied by a valid return authorization number obtained from AB. AB may refuse any Product not timely rejected or sought to be returned without a valid return authorization number. For any valid claim timely made, AB, at its option, may repair the Product or replace the Product with an identical or substantially similar Product. Shipping charges will not be credited. **THESE ARE BUYER’S SOLE AND EXCLUSIVE REMEDIES FOR DAMAGED OR MISSING PRODUCT, AND, EXCEPT FOR EXPRESS WRITTEN WARRANTY RIGHTS, FOR DEFECTIVE PRODUCT.** AB may require that buyer sign and deliver a properly completed certificate of decontamination prior to returning any Product.

1.0706 Training

The Contractor offers full training on the use of all capital equipment used for human identity, with the exception of simple thermal cyclers (i.e., the 9700), and Automate DNA extraction system. Training does not accompany the purchase of consumables, but is available from the Contractor’s training department at an on-site daily rate of \$4,000.

1.0707 Special Incentives

The Contractor offers standard volume based discounts based on prior year purchases or committed amounts for the following year (if applicable). The Buyer would need to contact AB to receive information regarding any volume discounts.

1.0708 Security

The Contractor performs background checks on all employees. However, deliveries from this Contract will be made via Federal Express and additional employee background checks will not be necessary.



Delivery Capabilities

1.0709 Time Frames

All Deliverables must be delivered within 5 Days after receipt of order. The receipt of order date is governed in the same manner as notices sent under Section 2.025, Notices.

The Contractor will ship via federal Express, and shipments will include all related options provided by Federal Express which include but are not limited to Priority overnight and Dry Ice (where applicable).

1.0710 Minimum Order

There is no minimum order associated with this Contract.

1.0711 Packaging

Packaging and containers must meet the current requirements of state and federal law applicable to rail and motor carrier freight classifications, which will permit application of the lowest freight rate.

1.0712 Palletizing – Deleted Not Applicable

1.0713 Delivery Term

Deliveries from this Contract will be "F.O.B. Destination" with transportation charges prepaid and added to the invoice.

1.0714 Contract Performance

The Contractor is not in material default or breach of any contract or has had any contract terminated for default in the last three (3) years. Termination for default is defined as termination of a contract due to the Contractor's non-performance or poor performance.

1.0715 Place of Performance

The Contractor will perform work for this Contract at the below addresses:

Full address of place of performance	Owner/Operator of facility to be used	Percent (%) of Contract value to be performed at listed location
850 Lincoln Centre Drive Foster City, CA 94404	Applied Biosystems	30% (Contract Administration, Accounting)
7335 Executive Way Frederick, MD 21704	Applied Biosystems	30% (Warehousing/Shipping)
3175 Staley Rd. Grand Island, NY	Applied Biosystems	40% (Sales Administration)

1.0716 Energy Efficiency- Deleted Not Applicable

1.0717 Environmental Requirements

The State prefers to purchase products that impact the environment less than competing products. Environmental components that may be considered include: recycled content, recyclability, and the presence of undesirable materials in the products, especially persistent, bioaccumulative, and toxic chemicals.



The Contractor has a “design-for-environment” program, which re-engineers their product development processes, reducing packaging waste, energy usage, toxic materials and the company’s carbon footprint at every phase of development, from product ideation to end-of-life disposal.

1.0718 Recycled Content and Recyclability

A. Deliverables

Without compromising performance or quality, the State prefers Deliverables containing higher percentages of recycled materials. The Contractor must indicate an estimate of the percentage of recycled materials, if any, contained in each Deliverable:

NA % (total estimated percentage of recovered material)

NA % (estimated percentage of post-consumer material)

NA % (estimated percentage of Post-Industrial Waste)

B. Packaging

The State prefers packaging materials that:

- a. are made from recycled content that meets or exceeds all federal and state recycled content guidelines (currently 35% post-consumer for all corrugated cardboard);
- b. minimize or eliminate the use of polystyrene or other difficult to recycle materials;
- c. minimize or eliminate the use of packaging and containers and, in the alternative, minimize or eliminate the use of non-recyclable packaging and containers;
- d. provide for a return program where packaging can be returned to a specific location for recycling; and
- e. contain materials that are easily recyclable in Michigan.

The Contractor may use wood/paper products in packaging which contain a minimum of 10% post-consumer/recycled material.

1.0719 Materials Identification and Tracking

A. Hazardous Chemical Identification.

The Contractor will not provide any hazardous chemical, as defined in 40 CFR §370.2, to be delivered. Each hazardous chemical must be properly identified, including any applicable identification number, such as a National Stock Number or Special Item Number. Material Safety Data Sheets must be submitted in accordance with the federal Emergency Planning and Community Right-to-Know Act, 42 USC 11001 *et seq.*, as amended. This list must be updated whenever any other chemical to be delivered is hazardous.

B. Mercury Content.

No products containing mercury will be provided

C. Brominated Flame Retardants.

The State prefers to purchase products that do not contain brominated flame retardants (BFRs) whenever possible. The Contractor must disclose whether the products contain BFRs.



No BFR's are present in the products to be provided hereunder

D. Environmental Permits and Requirements

The Contractor must disclose whether any of its facilities are in violation of any environmental laws. The Contractor must immediately notify DTMB-Purchasing Operations of the receipt of any EPA, State, or local agency communication indicating that any of the Contractor's facilities are in violation of applicable environmental laws.

The Contractor will not use manufacturing facilities that are in violation of any environmental laws.

1.0720 Subcontractors

Subcontractors will not be used in the performance of this Contract.

1.0721 Reports Deleted Not Applicable

1.0722 Meetings

The State may request a kick-off meeting with the Contractor within thirty (30) days of the Effective Date.

1.0723 Samples Deleted Not Applicable

1.080 Additional Requirements – Deleted Not Applicable

1.081 MiDEAL



Article 2, Terms and Conditions

2.000 Contract Structure and Term

2.001 Contract Term

This Contract begins July 6, 2010 and expires July 5, 2013. All outstanding Purchase Orders will expire upon the termination of the Contract for any of the reasons listed in Section 2.150, Termination, unless otherwise agreed to in writing by DTMB-Purchasing Operations. Absent an early termination, Purchase Orders issued, but not expired, by the end of the Contract’s stated term will remain in effect until the next September 30.

2.002 Options to Renew

This Contract may be renewed for up to 2 additional 1 year period(s). Renewal must be by mutual agreement of the parties, communicated in writing, not less than 30 days before expiration of the Contract.

2.003 Reserved

2.004 Legal Effect

The Contractor must not begin performance of the Contract until the Contractor receives a request under Section 1.024 (Ordering). The State is not liable for costs incurred by the Contractor or for payment(s) under this Contract until a request has been issued under Section 1.024 (Ordering).

2.005 Entire Agreement

This Contract constitutes the entire agreement between the parties and supersedes all prior agreements, whether written or oral, with respect to the subject matter. All attachments referenced in this Contract are incorporated in their entirety and form part of this Contract.

2.006 Order of Precedence

Any inconsistency in the terms associated with this Contract will be resolved by giving precedence to the terms in the following descending order:

- (1) Mandatory sections (2.001, Contract Term, 2.004, Legal Effect, 2.042, Payment Deadlines, 2.130, Insurance, 2.140, Indemnification, 2.150, Termination, 2.200, Federal and State Contract Requirements, 2.210, Governing Law, 2.220, Limitation of Liability) from Article 2, Terms and Conditions
- (2) The most recent Statement of Work related to this Contract;
- (3) All sections from Article 2, Terms and Conditions, not listed in subsection (1);
- (4) Any attachment or exhibit to the Contract documents;
- (5) Any Purchase Order, Direct Voucher, or Procurement Card Order issued under the Contract; and
- (6) Contractor Responses contained in any of the Contract documents.

2.007 Headings

The captions and section headings used in this Contract are for convenience only and may not be used to interpret the scope and intent of this Contract.

2.008 Form, Function & Utility

If this Contract is for state-wide use, but the Deliverable(s) does not meet the form, function, and utility required by a State agency, that agency may, subject to State purchasing policies, procure the Deliverable(s) from another source.



2.009 Reformation and Severability

Each provision of the Contract is severable from all other provisions of the Contract. If any provision of this Contract is held unenforceable, then the Contract will be modified to reflect the parties' original intent. All remaining provisions of the Contract remain in full force and effect.

2.010 Approval

Unless otherwise provided in this Contract, approval(s) must be in writing and must not be unreasonably withheld or delayed.

2.011 No Waiver of Default

Failure by a party to insist upon strict adherence to any term of the Contract does not waive that party's right to later insist upon strict adherence to that term, or any other term, of the Contract.

2.012 Survival

The provisions of this Contract that impose continuing obligations on the parties, including the parties' warranties, duties to indemnify, and confidentiality obligations, will survive the expiration or termination of this Contract.

2.020 Contract Administration

2.021 Issuing Office

This Contract is issued by DTMB-Purchasing Operations on behalf of Michigan State Police (State). DTMB-Purchasing Operations **is the only entity authorized to modify the terms and conditions of this Contract, including the prices and specifications.** The Contract Administrator within DTMB-Purchasing Operations for this Contract is:

Seleana Samuel, Buyer Manager
 Purchasing Operations
 Department of Technology, Management and Budget
 Mason Bldg, 2nd Floor
 PO Box 30026
 Lansing, MI 48909
 Samuels1@michigan.gov
 517-241-2619

2.022 Contract Compliance Inspector

The Contract Compliance Inspector, named below, will monitor and coordinate Contract activities on a day-to-day basis. However, monitoring of this Contract implies **no authority to modify the terms and conditions of this Contract, including the prices and specifications.**

Victoria Olivarez
 Michigan State Police
 Budget & Financial Services Division
 714 S. Harrison Road
 Email Olivarez@michigan.gov
 Phone: 517-336-6366



2.023 Project Manager

The Project Manager, named below, will oversee the project. However, management of the project implies **no authority to modify the terms and conditions of this Contract, including the prices and specifications.**

Victoria Olivarez
 Michigan State Police
 Budget & Financial Services Division
 714 S. Harrison Road
 Email Olivarez@michigan.gov
 Phone: 517-336-6366

2.024 Changes

2.0241 Contract Changes

- (a) If the State requests or directs the Contractor to provide any Deliverables that the Contractor believes are outside the scope of the Contractor's responsibilities under the Contract, the Contractor must notify the State before performing the requested activities. If the Contractor fails to notify the State, any activities performed will be considered in-scope, and not entitled to additional compensation or time. If the Contractor begins work outside the scope of the Contract and then ceases performing that work, the Contractor must, at the request of the State, retract any out-of-scope work that would adversely affect the Contract.
- (b) The State or the Contractor may propose a change to the Contract. If the Contractor or the State requests a change to the Deliverables, or if the State requests additional Deliverables, the Contractor must provide a detailed outline of all work to be done, including tasks, timeframes, listing of key personnel assigned, estimated hours for each individual per Deliverable, and a complete and detailed cost justification. If the parties agree on the proposed change, DTMB-Purchasing Operations will prepare and issue a notice that describes the change, its effects on the Deliverables, and any affected components of the Contract (a "Contract Change Notice").
- (c) No proposed change may be performed until DTMB-Purchasing Operations issues a duly executed Contract Change Notice for the proposed change.

2.0242 Price Changes

The State and Contractor will complete a pricing review ("Review") every 365 days following Effective Date, to allow for changes based on actual costs incurred. Requested changes may include increases or decreases in price and must be accompanied by supporting information indicating market support of proposed modifications (such as the CPI and PPI, US City Average, as published by the US Department of Labor, Bureau of Labor Statistics). If provided, the documentation will be used to evaluate whether charges for substantially similar services remain competitive.

- (a) The State may request a Review upon thirty (30) days written notice that specifies what Deliverable is being reviewed. At the Review, each party may present supporting information including information created by, presented, or received from third parties.
- (b) Following the presentation of supporting information, both parties will have thirty (30) days to review the supporting information and prepare any written response.
- (c) In the event a Review indicates no need for modifications of any type, pricing will remain unchanged unless mutually agreed by the parties. However, if a Review indicates changes may be recommended, both parties will negotiate in good faith for thirty (30) days unless extended by mutual agreement of the parties.



- (d) If the supporting information indicates a reduction in prices is necessary and Contractor agrees to reduce rates accordingly, then the State may elect to exercise the next one (1) year option, if available.
- (e) Any changes based on the Review must be implemented through issuance of a Contract Change Notice.

2.025 Notices

All notices and other communications required or permitted under this Contract must be in writing and will be deemed given when delivered personally, by fax (if provided) or by electronic mail (if provided), or by registered mail, return receipt requested, addressed as follows (or any other address that is specified in writing by either party):

If to State:

Seleana Samuel, Buyer Manager
 Purchasing Operations
 Department of Technology, Management and Budget
 Mason Bldg, 2nd Floor
 PO Box 30026
 Lansing, MI 48909
 Samuels1@michigan.gov
 517-241-2619

If to Contractor:

Applied Biosystems
 A Part of Life Technologies, Inc.
 Michael.jones@lifetech.com

Delivery by a nationally recognized overnight express courier will be treated as personal delivery.

2.026 Reserved

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 the Contractor, or any of its subcontractors, is an employee, agent or servant of the State. The 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 otherwise provided in this Contract, the parties will not unreasonably delay, condition or withhold their consent, decision or approval any time it 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.

2.029 Assignments

(a) Neither party may assign the Contract, or assign or delegate any of its duties or obligations under the Contract, to another party (whether by operation of law or otherwise), without the prior approval of the other party; provided that the State may assign the Contract to any other State agency, department, or division without the prior approval of the Contractor.

(b) 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 and provide adequate information about the assignee at least ninety (90) days before the proposed assignment or as otherwise provided by law or court order . The State may withhold approval from proposed assignments, subcontracts, or novations if the State determines, in its sole discretion, that 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.

(c) If the State permits an assignment of the Contractor's right to receive payments, the Contractor is not relieved of its responsibility to perform any of its contractual duties. All payments must continue to be made to one entity.

2.030 General Provisions

2.031 Media Releases

News releases (including promotional literature and commercial advertisements) pertaining to the RFP and this Contract or the project to which it relates will not be made without prior approval, and only in accordance with the instructions from the State.

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 Contract.

2.034 Website Incorporation

The State is not bound by any content on the Contractor’s website unless incorporated directly into this Contract.

2.035 Future Bidding Preclusion -Deleted, Not Applicable



2.036 Freedom of Information

This Contract and all information submitted to the State by the Contractor is subject to the provisions of the Michigan Freedom of Information Act, 1976 PA 442, MCL 15.231, *et seq.*, as amended (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 mandated by Federal disaster response requirements, Contractor personnel dedicated to providing Deliverables under this Contract will provide the State with priority.

2.040 Financial Provisions

2.041 Fixed Prices for Deliverables

Prices are fixed for all Deliverables and for all of the associated payment milestones and amounts.

2.042 Payment Deadlines

Undisputed invoices will be due and payable by the State, in accordance with the State’s standard payment procedure as specified in 1984 PA 279, MCL 17.51 *et seq.*, within forty-five (45) days after receipt.

2.043 Reserved.

2.044 Invoicing and Payment – In General [Deleted, Not Applicable]

2.045 Pro-ration [Deleted, Not Applicable]

2.046 Antitrust Assignment

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

2.047 Final Payment and Waivers

Contractor’s acceptance of final payment by the State constitutes a waiver of all claims by Contractor against the State for payment under this Contract, other than those claims previously filed in writing on a timely basis and still disputed. For other claims, final payment by the State will not constitute a waiver by either party of any rights as to the other party’s continuing obligations, nor will it constitute a waiver of any claims under this Contract, including claims for Deliverables not reasonably known to be defective or substandard.

2.048 Electronic Payment Requirement

As required by 1984 PA 431, MCL 18.1283a Contractor must register with the State electronically at <http://www.michigan.gov/cpexpress> to receive electronic fund transfer (EFT) payments.

2.050 Taxes

2.051 Employment Taxes

Contractor must collect and pay all applicable federal, state, and local employment taxes.

2.052 Sales and Use Taxes

Contractor must register and remit sales and use taxes on taxable sales of tangible personal property or services delivered into the State. If Contractor lacks sufficient presence in Michigan to be required to register and pay taxes, it must do so on a voluntary basis. The requirement to register and remit sales and use taxes extends to (1) all members of a "controlled group of corporations" as defined in § 1563(a) of the Internal Revenue Code, 26 USC 1563(a), and applicable regulations; and (2) all organizations under



common control that make sales at retail for delivery into the State. Any United States Department of Treasury regulation that references “two or more trades or businesses under common control” includes organizations such as sole proprietorships, partnerships (as defined in § 7701(a)(2) of the Internal Revenue Code, 26 USC 7701(a)(2)), trusts, estates, corporations, or limited liability companies.

2.060 Contract Management [Deleted, Not Applicable]

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

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

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

The State reserves the right to require the removal from the Project of Contractor personnel found, in the judgment of the State, to be unacceptable. The State’s request must be written with reasonable detail outlining the reasons for the removal request. Additionally, the State’s request must be based on legitimate, good-faith reasons. Replacement personnel for the removed person must be fully qualified for



the position. If the State exercises this right, and the Contractor cannot immediately replace the removed personnel, the State agrees to an equitable adjustment in schedule or other terms that may be affected by the State’s required removal. If any incident with removed personnel results in delay not reasonably anticipatable under the circumstances and which is attributable to the State, the applicable SLAs for the affected Service will not be counted for a time as agreed to by the parties.

2.064 Contractor Personnel Location

All staff assigned by Contractor to work on the Contract 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 Responsible

Contractor is responsible for the completion of all Deliverables. The State will consider Contractor to be the sole point of contact with regard to all contractual matters, including payment of any charges for Deliverables. Contractor must make all payments to its Subcontractors or suppliers. Except as otherwise agreed in writing, the State is not obligated to direct payments for the Deliverables to any party other than Contractor.



2.072 State Approval of Subcontractor

(a) Contractor may not delegate any duties under this Contract to a Subcontractor unless DTMB-Purchasing Operations gives prior approval to such delegation. Attached as **Exhibit A** is a list of the Subcontractors, if any, approved by the State as of the execution of this Contract. The State is entitled to receive copies of and review all subcontracts. Contractor may delete or redact any proprietary information before providing them to the State.

(b) The State may require Contractor to terminate and replace any Subcontractor the State reasonably finds unacceptable. A request to terminate and replace a Subcontractor must be written and contain reasonable detail outlining the State's reasons for the request. If the State exercises this right, and the Contractor cannot immediately replace the Subcontractor, the State will agree to an equitable adjustment in the schedule or other terms that may be affected by the State's required replacement. If this request results in a delay, the delay will not be counted against any applicable SLA.

2.073 Subcontract Requirements

Except where specifically approved by the State, Contractor must include the obligations in **Sections 2.031, Media Releases, 2.060, Contract Management, 2.100, Confidentiality, 2.110, Records and Inspections, 2.120, Warranties, 2.130, Insurance, and 2.200, Federal and State Contract Requirements**, in all of its agreements with Subcontractors.

2.074 Competitive Selection

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

2.080 State Responsibilities

2.081 Equipment

The State will not provide equipment and resources unless specifically identified in the Statements of Work or other Contract Exhibits.

2.082 Facilities- Deleted Not Applicable

2.090 Security

2.091 Background Checks

The State may investigate Contractor's personnel before granting 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 eligibility for working within State facilities and systems. The investigations will include a Michigan State Police background check (ICHAT) and may include a Crime Justice Information Services (CJIS) fingerprint check. Proposed Contractor personnel may be required to complete and submit an RI-8 Fingerprint Card for the CJIS fingerprint check.

2.092 Compliance With State Policies

All Contractor personnel must comply with the State's security and acceptable use policies for State IT equipment and resources, available at <http://www.michigan.gov/pcpolicy>. Contractor personnel must agree to the State's security and acceptable use policies before the State grants access to its IT equipment and resources. Contractor must present these policies to prospective personnel before requesting authorization from the State. Contractor personnel must comply with all physical security procedures in State facilities.

2.100 Confidentiality

2.101 Confidential Information

As used in this Section, "Confidential Information" means all information of the parties, except information that is:

- (i) publicly available under the Michigan FOIA;



- (ii) now available or becomes available to the public without breach of this Contract;
- (iii) released in writing by the disclosing party;
- (iv) obtained from a third party or parties having no obligation of confidentiality with respect to such information; or
- (v) independently developed by the receiving party without reference to Confidential Information of the furnishing party.

2.102 Protection and Destruction of Confidential Information

(a) Each party must use the same care to prevent unauthorized disclosure of Confidential Information as it uses to prevent disclosure of its own information of a similar nature, but in no event less than a reasonable degree of 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 interest or license 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.

(b) Each party will limit disclosure of the other party's Confidential Information to employees, agents, and Subcontractors who must have access to fulfill the purposes of this Contract. Disclosure to, and use by, a Subcontractor is permissible where (i) use of a Subcontractor is authorized under this Contract, (ii) the disclosure is necessary or otherwise naturally occurs in connection with work that is within the Subcontractor's scope of responsibility, and (iii) 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 to the State's Confidential Information may be required to execute an agreement to be bound by the confidentiality requirements of this Section.

(c) Upon termination of the Contract, Contractor must promptly return the State's Confidential Information or certify to the State that Contractor has destroyed all of the State's Confidential Information.

2.103 Exclusions

The provisions of Section 2.100, Confidentiality, will not apply where the receiving party is required by law to disclose the other party's 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 Obligation to Disclose

Nothing contained in Section 2.100, Confidentiality, will be construed as obligating a party to disclose any particular Confidential Information to the other party.

2.105 Security Breach Notification

If Contractor breaches this Section, it must (i) promptly cure any deficiencies in Contractor's internal security controls; 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 notify the State of any unauthorized use or disclosure of Confidential Information, whether suspected or actual, within 10 days of becoming aware of the use or disclosure or a shorter time period as is reasonable under the circumstances. The State may require Contractor to purchase credit monitoring services for any individuals affected by the breach.

2.110 Records and Inspections



2.111 Inspection of Work Performed

The State’s authorized representatives, at reasonable times and with 10 days prior notice, have the right to enter the Contractor’s premises or any other places where work is being performed in relation to this Contract. The representatives may inspect, monitor, or evaluate the work being performed, to the extent the access will not reasonably interfere with or jeopardize the safety or operation of Contractor's systems or facilities. The Contractor must provide reasonable assistance for the State’s representatives during such visits.

2.112 Retention of Records

(a) The Contractor must retain all financial and accounting records related to this Contract for a period of seven (7) years after the Contractor performs any work under this Contract (Audit Period). Financial and accounting records must be made available to the State, upon request, at any time during the Audit Period.

(b) If an audit, litigation, or other action involving the Contractor’s records is initiated before the end of the Audit Period, the Contractor must retain the records 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.

2.113 Examination of Records

At any time during the Audit Period, the State, upon 20 days notice to the Contractor, may examine and copy any of the Contractor’s Documents that relate to this Contract. The State does not have the right to review any information deemed confidential by the Contractor if access would require the information to become publicly available. This provision also applies to the Documents of any parent, affiliate, or subsidiary organization of Contractor, or any Subcontractor that performs services in connection with this Contract.

2.114 Audit Resolution

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

2.115 Errors

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

(b) In addition to other available remedies, if the difference between the State's actual payment and the correct invoice amount, as determined by an audit, is greater than 10%, the Contractor must pay all reasonable audit costs.

2.120 Warranties

2.121 Warranties and Representations

The Contractor represents and warrants:

(a) It is capable 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 workmanlike manner and must meet the performance and operational standards required under this Contract.



- (b) The Contract appendices, attachments, and exhibits identify the equipment, software, and services necessary for the Deliverable(s) to perform in compliance with the Contract’s requirements.
- (c) It is the lawful owner or licensee of any Deliverable licensed or sold to the State by Contractor or developed by the Contractor for 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 Deliverable(s). None of the Deliverables provided by Contractor to the State, nor their use by the State, will infringe the patent, trademark, copyright, trade secret, or other proprietary rights of any third party.
- (d) If the Contractor procures any equipment, software, or other Deliverable(s) for the State (including equipment, software, and other Deliverable(s) manufactured, re-marketed or otherwise sold by the Contractor under the Contractor’s name), then the 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(s).
- (e) The Contract signatory has the power and authority to enter into this Contract on behalf of the 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, will have, or will acquire, any interest that would conflict in any manner with the Contractor’s performance of its duties and responsibilities to the State or otherwise create an appearance of impropriety with respect to the award or performance of this Contract. The Contractor must notify the State about the nature of any conflict or appearance of impropriety within two (2) days of learning about it.
- (h) Neither the Contractor nor any affiliates, nor any employee of either, has accepted or will 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. The Contractor must not attempt to influence any State employee by the direct or indirect offer of anything of value.
- (i) Neither the 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 the 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 Contractor arrived at the proposed prices independently, without communication or agreement with any other Contractor for the purpose of restricting competition. The Contractor did not knowingly disclose the quoted prices to any other Contractor. The Contractor made no attempt 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 the Contractor to the State in connection with the award of this Contract fairly and accurately represent the Contractor's business, properties, financial condition, and results of operations as of the respective dates covered by the financial statements, reports, or other information. There has been no material adverse change in the Contractor's business, properties, financial condition, or results of operation.
- (l) All written information furnished to the State by or for the Contractor in connection with the award of this Contract is true, accurate, and complete, and contains no false statement of material fact nor omits any material fact that would make the information misleading.
- (m) It will immediately notify DTMB-Purchasing Operations if any of the certifications, representations, or disclosures made in the Contractor’s original bid response change after the contract is awarded.



2.122 Warranty of Merchantability

The Deliverable(s) provided by the Contractor must be merchantable.

2.123 Warranty of Fitness for a Particular Purpose

The Deliverable(s) provided by the Contractor must be fit for the purpose(s) identified in this Contract.

2.124 Warranty of Title

The Contractor must convey good title to any Deliverable(s) provided to the State. All Deliverables provided by the Contractor must be delivered free from any security interest, lien, or encumbrance of which the State, at the time of contracting, has no knowledge. Deliverables provided by the Contractor must be delivered free of any rightful claim of infringement by any third person..

2.125 Equipment Warranty

(a) The Contractor represents and warrants that the equipment/system(s) are in good operating condition and perform to the requirements contained in this Contract at the time of Final Acceptance, and for a period of three years following Final Acceptance or within the manufacturers warranty time frame whichever is longer.

(b) To the extent the Contractor is responsible for maintaining equipment/system(s), the 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.

(c) The Contractor must provide a toll-free telephone number to allow the State to report equipment failures and problems.

(d) Within 30 business days of notification, 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.

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

(f) The Contractor is the sole point of contact for warranty service.

(g) All warranty work must be performed on the State of Michigan worksite(s).

2.126 New Deliverable(s)

The Contractor must provide new Deliverable(s) where Contractor knows or has the ability to select between new or like-new Unless specified in Article 1, Statement of Work, 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 the other.

2.127 Prohibited Products

Shipping of salvage, distressed, outdated, or discontinued goods to any State agency will be considered a material default by the Contractor. The brand and product number offered for all items will remain consistent for the term of the Contract, unless DTMB-Purchasing Operations has approved a change order under **Section 2.024, Contract Changes**.

2.128 Consequences For Breach

In addition to any remedies available in law, if the Contractor breaches any of the warranties contained in Section 2.120, Warranties, the breach may be considered a material default.



2.130 Insurance

2.131 Liability Insurance

(a) The Contractor must provide proof of the minimum levels of insurance coverage indicated. The insurance must protect the State from claims that may arise out of or result from the Contractor's or a Subcontractor's performance, including any person directly or indirectly employed by the Contractor or a Subcontractor, or any person for whose acts the Contractor or a Subcontractor may be liable.

(b) The Contractor waives all rights against the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees, and agents for the recovery of damages that are covered by the insurance policies the Contractor is required to maintain under this Section.

(c) All insurance coverage provided relative to this Contract is primary and non-contributing to any comparable liability insurance (including self-insurance) carried by the State.

(d) The Contractor's insurance coverage must be written for not less than any minimum coverage specified in this Section or required by law, whichever is greater.

(e) Unless the State approves, any insurer must have an A.M. Best rating of "A" or better, or if those ratings are not available, a comparable rating from an insurance rating agency approved by the State. All policies of insurance must be issued by companies that have been approved to do business in the State.

(f) Where specific coverage limits are listed in this Section, they represent the minimum acceptable limits. If the Contractor's policy contains higher limits, the State is entitled to coverage to the extent of the higher limits.

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

- i. Commercial General Liability Insurance 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; and
\$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.

- ii. If a motor vehicle is used in relation to the Contractor's performance, the Contractor must have vehicle liability insurance on the motor vehicle for bodily injury and property damage as required by law, including all owned, hired, and non-owned vehicles used by the Contractor.

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.



- iii. Workers' Compensation coverage must be provided according to applicable laws governing work activities in the state of the Contractor's domicile. If the applicable coverage is provided by a self-insurer, the Contractor must provide proof of an approved self-insured authority by the jurisdiction of domicile.

For employees working outside of the state of the Contractor's domicile, the Contractor must provide certificates of insurance proving mandated coverage levels for the jurisdictions where the employees' activities occur. The Contractor must provide the applicable certificates of insurance and a list of states where the coverage is applicable.

Contractor must provide proof that the Workers' Compensation insurance policies contain a waiver of subrogation by the insurance company, except where such a provision is prohibited or limited by the laws of the jurisdiction in which the work is to be performed.

- iv. Employers Liability Insurance with the following minimum limits:
 \$100,000 each accident;
 \$100,000 each employee by disease; and
 \$500,000 aggregate disease.
- v. Employee Fidelity Insurance naming the State as a loss payee and 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, including computer crimes, committed by the employees of the Contractor or a Subcontractor, 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).
- vi. 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 (i), Commercial General Liability.
- vii. 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.
- viii. Fire and Personal Property Insurance covering any loss or damage to the office space, equipment, software, and other contents of the office space used by the Contractor to perform work under this Contract, up to its replacement value, where the office space and its contents are under the Contractor's care, custody, and control. The policy must cover all risks of direct physical loss or damage, including 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 a subcontract with other insurance provisions, the Contractor must require any Subcontractor to purchase and maintain the insurance coverage required in Section 2.131, Liability Insurance. Alternatively, the Contractor may include a Subcontractor under the Contractor's insurance on the coverage required in that Section. The failure of a Subcontractor to comply with insurance requirements does not limit the Contractor's liability or responsibility.



2.133 Certificates of Insurance and Other Requirements

(a) The Contractor must provide DTMB-Purchasing Operations with all applicable certificates of insurance verifying insurance coverage or providing satisfactory evidence of self-insurance as required in Section 2.131, Liability Insurance. Each certificate must be on the standard “accord” form or equivalent and **MUST CONTAIN THE APPLICABLE CONTRACT OR PURCHASE ORDER NUMBER**. Each certificate must be prepared and submitted by the insurer and must contain a provision indicating that the coverage afforded will not be cancelled, materially changed, or not renewed without 30 days prior notice, except for 10 days for nonpayment of premium, to the Director of DTMB-Purchasing Operations. The notice to the Director of DTMB-Purchasing Operations must include the applicable Contract or Purchase Order number.

(b) 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.

(c) If the Contractor fails to pay any premium for a required insurance policy, or if any insurer cancels or significantly reduces any required insurance without the State’s approval, the State may, after giving the Contractor at least 30 days 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 require the Contractor to pay that cost upon demand.

(d) 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 Michigan Attorney General.

(e) The Contractor must maintain all required insurance coverage throughout the term of this Contract and any extensions. However, in the case of claims-made Commercial General Liability policies, the Contractor must secure tail coverage for at least three (3) years following the termination of this Contract.

(f) The minimum limits of coverage specified are not intended, and may not be construed, to limit any liability or indemnity of the Contractor to any indemnified party or other persons.

(g) The Contractor is responsible for the payment of all deductibles.

2.140 Indemnification

2.141 General Indemnification

To the extent permitted by law, the Contractor must indemnify, defend and hold the State harmless 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, any of its subcontractors, or by anyone else for whose acts any of them may be liable.

2.142 Code indemnification [Deleted, not applicable]

2.143 Employee Indemnification

In any claims against the State, its departments, divisions, agencies, sections, commissions, officers, employees and agents, by any employee of the Contractor or any of its subcontractors, the indemnification obligation will 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

(a) To the extent permitted by law, the Contractor must indemnify and hold the State harmless 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) resulting from any action threatened or brought against the State to the extent that the action is based on a claim that any piece of equipment, software, commodity or service supplied by the Contractor or its subcontractors, or its operation, use, or reproduction, infringes any United States patent, copyright, trademark or trade secret of any person or entity.

(b) If, in the State's or the Contractor's opinion, any piece of equipment, software, commodity or service supplied by the Contractor or its subcontractors, or its operation, use, or reproduction, is likely to become the subject of an infringement claim, the Contractor must, at its expense: (i) procure for the State the right to continue using the equipment, software, commodity or service or, if this 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 this 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.

(c) 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 infringement claim based upon (i) equipment, software, commodity or service developed based on written specifications of the State; (ii) use of the equipment, software, or commodity in a configuration other than implemented or approved by the Contractor, including any modification of the same by the State; or (iii) the combination, operation, or use of the equipment, software, or commodity with equipment, software, or commodities not supplied by the Contractor under this Contract.

2.145 Continuing Obligation

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

These procedures apply to all indemnity obligations.

(a) After the State receives notice of an action or proceeding involving a claim for which it will seek indemnification, the State must promptly notify the Contractor of the claim and take, or assist the Contractor in taking, any reasonable action to avoid a default judgment against the Contractor. Failure to notify the Contractor does not relieve 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 notice from the State relating to any claim, the Contractor must notify the State whether the Contractor agrees to assume control of the defense and settlement of that claim (a “Notice of Election”). After notifying the Contractor of a claim and before the State receives the 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 the 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 handling 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 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 prior 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. The State may retain control of the defense and settlement of a claim by notifying the Contractor within 10 days after the State’s receipt of the 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 the Contractor does not deliver a Notice of Election relating to any claim of which it is notified, the State may defend the claim in a manner it deems appropriate, at the cost and expense of the Contractor. If it is determined that the claim was one against which the Contractor was required to indemnify the State, upon request of the State, the Contractor must promptly reimburse the State for all reasonable costs and expenses.

2.150 Termination

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, the State will provide the Contractor notice of the breach and a period of at least 30 days to cure the breach. The State does not need to provide notice or an opportunity to cure for successive or repeated breaches or if the State determines, in its sole discretion, that a 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 fully or partially terminate this Contract for cause by notifying the Contractor if the Contractor (i) breaches any of its material duties or obligations (including a Chronic Failure to meet any SLA); or (ii) fails to cure a breach within the time period specified in a notice of breach provided by the State.

(b) The Contractor must pay all reasonable costs incurred by the State in terminating this Contract for cause, including administrative costs, attorneys’ fees and court costs, and any additional costs the State incurs to procure the Deliverable(s) 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 Deliverable(s).

(c) If the State partially terminates this Contract for cause, any charges payable to the Contractor will be equitably adjusted to reflect those Deliverables that are terminated. The State must pay for all Deliverables for which Final Acceptance has been granted before the termination date. Any services or 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 and it is determined, for any reason, that the Contractor was not in breach of the Contract, the termination will be deemed to have been a termination under Section 2.153, Termination for Convenience, effective as of the same date, and the rights and obligations of the parties will be limited to those provided in that Section.

2.153 Termination for Convenience

The State may fully or partially terminate this Contract for its convenience if the State determines that a termination is in the State’s best interest. Reasons for the termination are within the sole discretion of the State and may include (a) the State no longer needs the Deliverable(s) specified in this Contract; (b) a relocation of office, program changes, or changes in laws, rules, or regulations make the Deliverable(s) no



longer practical or feasible; (c) unacceptable prices for Contract changes 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 by giving Contractor notice at least 30 days before the date of termination. If the State chooses to terminate this Contract in part, any charges payable to the Contractor must be equitably adjusted to reflect those Deliverables that are terminated.

2.154 Termination for Non-Appropriation

- (a) If this Contract extends for more than one fiscal year, continuation of this Contract is subject to the appropriation or availability of funds. If sufficient funds to enable the State to continue payment are not appropriated or otherwise made available, the State must fully or partially terminate this Contract at the end of the last period for which funds have been appropriated or otherwise made available. The State must give the Contractor notice at least 30 days before the date of termination, unless the State receives notice of the non-appropriation or unavailability less than 30 days before the end of the last period for which funds have been appropriated or otherwise made available.
- (b) If funding for this Contract is reduced by law, or funds to pay the Contractor for the Deliverable(s) are not appropriated or are otherwise unavailable, the State may, upon 30 days notice to the Contractor, change the Deliverable(s) in the manner and for the periods of time the State may elect. The charges payable under this Contract will be equitably adjusted to reflect any Deliverable(s) not provided because of the reduction.
- (c) If the State fully or partially terminates this Contract for non-appropriation, the State must pay the Contractor for all Work-in-Process performed through the effective date of the termination to the extent funds are available.

2.155 Termination for Criminal Conviction

The State may terminate this Contract immediately and without further liability or penalty if the Contractor, an officer of the Contractor, or an owner of a 25% or greater share of the 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 all Work-in-Process performed through the effective date of the termination. The Contract may be fully or partially terminated and will be effective as of the date stated in the notice.

2.157 Rights and Obligations upon Termination

- (a) If the State terminates this Contract for any reason, the Contractor must:
 - (1) stop all work as specified in the notice of termination;
 - (2) take any action that may be necessary, or that the State may direct, to preserve and protect Deliverables or other State property in the Contractor's possession;
 - (3) return all materials and property provided directly or indirectly to the Contractor by any entity, agent, or employee of the State;
 - (4) 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 (which will be provided to the State on an "As-Is" basis except to the extent the State compensated the Contractor for warranty services related to the materials); and
 - (5) to the maximum practical extent, take any action to mitigate and limit potential damages , including terminating or limiting subcontracts and outstanding orders for materials and supplies.



(b) If the State terminates this Contract under Section 2.153, Termination for Convenience, the State must pay the Contractor all charges due for Deliverables provided before the date of termination and, if applicable, as a separate item of payment, for Work-in-Process, based on a percentage of completion determined by the State. All completed or partially completed Deliverables prepared by the Contractor, at the option of the State, become the State’s property, and the Contractor is entitled to receive equitable compensation for those Deliverables. Regardless of the basis for the termination, the State is not obligated to pay or otherwise compensate the Contractor for any lost expected future profits, costs, or expenses incurred with respect to Deliverables not actually completed.

(c) If the State terminates this Contract for any reason, the State may assume, at its option, any subcontracts and agreements for Deliverables, and may pursue completion of the Deliverables by replacement contract or as the State deems expedient.

2.158 Reservation of Rights

In the event of any full or partial termination of this Contract, each party reserves all rights or remedies otherwise available to the party.

2.160 Termination by the Contractor

2.161 Termination by the 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 notice of the breach and a time period (not less than 30 days) to cure the breach.

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

2.170 Transition Responsibilities

2.171 Contractor Transition Responsibilities

If this Contract terminates under Section 2.150, Termination, the Contractor must make reasonable efforts to transition the performance of the work, including all applicable equipment, services, software, and leases, to the State or a third party designated by the State within a reasonable period of time that does not exceed 30 days from the date of termination. The Contractor will provide any required reports and documentation.

2.172 Transition Payments

If the transition responsibilities outlined in Section 2.171 arise based on a termination of this Contract, reimbursement will be governed by the provisions of Section 2.150, Termination. If the transition results from expiration, the Contractor will be reimbursed for all reasonable transition costs (i.e. costs incurred after the expiration within the time period in Section 2.171 that result from transition operations) at the Contract rates. The Contractor will prepare an accurate accounting from which the State and the Contractor may reconcile all outstanding accounts.

2.180 Stop Work

2.181 Stop Work Order

The State may, by Stop Work Order, require that the Contractor fully or partially stop work for a period of up to 90 calendar days, and for any further period to which the parties agree. Upon receipt of the Stop Work Order, the Contractor must immediately take all reasonable steps to minimize incurring costs.



Within the period of the Stop Work Order, the State must either: (a) terminate the Stop Work Order; or (b) terminate the work covered by the Stop Work Order as provided in **Section 2.150, Termination**.

2.182 Termination of Stop Work Order

The Contractor must resume work if the State terminates 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, if: (a) the Stop Work Order results in an increase in the time required for, or in the Contractor’s costs properly allocable to, the performance of the Contract; and (b) the Contractor asserts its right to an equitable adjustment within 20 days after the end of the Stop Work Order; provided that, the State may receive and act upon the Contractor's proposal submitted at any time before final payment. Any adjustment will conform to the requirements of **Section 2.024, Contract Changes**.

2.183 Allowance of the Contractor's Costs

If the State fully or partially terminates the work covered by the Stop Work Order, for reasons other than material breach, the termination is a termination for convenience under **Section 2.150, Termination** by the State, and the State will pay reasonable costs resulting from the Stop Work Order in arriving at the termination settlement. The State is not liable to the Contractor for lost profits because of a Stop Work Order issued under **Section 2.180, Stop Work**.

2.190 Dispute Resolution

2.191 In General

- (a) The Contractor must submit any claim related to this Contract to the State in writing, together with all supporting documentation for the claim..
- (b) The representatives of the Contractor and the State must meet as often as the parties reasonably deem necessary to gather and furnish to each other all information related to the claim.
- (c) During the course of negotiations, each party will honor all reasonable requests made by the other for non-privileged information reasonably related to the claim.

2.192 Informal Dispute Resolution

- (a) If, after a reasonable time following submission of a claim under Section 2.191, the parties are unable to resolve the claim, the parties must meet with the Director of DTMB-Purchasing Operations, or his or her designee, for the purpose of attempting to resolve the dispute without the need for formal legal proceedings.
- (b) Within 60 calendar days of the meeting with the Director of DTMB-Purchasing Operations, or such other time as agreed to by the parties, the Director of DTMB-Purchasing Operations will issue a written opinion regarding the claim. The opinion will be considered the State’s final action and the exhaustion of administrative remedies.
- (c) Section 2.192, Informal Dispute Resolution, will not be construed to prevent either party from instituting formal proceedings to avoid the expiration of any applicable limitations period, to preserve a superior position with respect to other creditors, or under Section 2.193, Injunctive Relief.
- (d) DTMB-Purchasing Operations will not mediate disputes between the Contractor and any other entity, except State agencies, concerning responsibility for performance of work.

2.193 Injunctive Relief

A claim between the State and the Contractor is not subject to the provisions of Section 2.192, Informal Dispute Resolution, where a party makes a good faith determination that a breach of the Contract by the other party will result in damages so immediate, so large or severe, and so incapable of adequate redress that a temporary restraining order or other injunctive relief is the only adequate remedy.

2.194 Continued Performance

Each party will continue performing its obligations under the Contract while a claim is being resolved, except to the extent the claim precludes performance and without limiting either party’s right to terminate



the Contract as provided in Section 2.150, Termination. A claim involving payment does not preclude performance.

2.200 Federal and State Contract Requirements

2.201 Nondiscrimination

In the performance of the Contract, the Contractor agrees not to discriminate against any employee or applicant for employment, with respect to his or her hire, tenure, terms, conditions or privileges of employment, or any matter directly or indirectly related to employment, because of race, color, religion, national origin, ancestry, age, sex, height, weight, marital status, or physical or mental disability. The Contractor further agrees that every subcontract entered into for the performance of 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 MCL 423.322. 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 MCL 423.324, the State may void any Contract if, after award of the Contract, the name of the Contractor as an employer or the name of the Subcontractor, manufacturer or supplier of the Contractor appears in the register.

2.203 Reserved (Workplace Safety and Discriminatory Harassment)

2.210 Governing Law

2.211 Governing Law

This Contract is 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 another jurisdiction, to the extent not inconsistent with or preempted by federal law.

2.212 Compliance with Laws

The Contractor must comply with all applicable state, federal and local laws and ordinances in providing the Deliverable(s).

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, the Contractor consents to venue in Ingham County, Michigan, and irrevocably waives any objections to this venue that it may have, such as lack of personal jurisdiction or *forum non conveniens*. The Contractor must 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) Within 30 days after receiving notice of any litigation, investigation, arbitration, or other proceeding (collectively, "Proceeding") that arises during the term of this Contract, the Contractor must disclose the following to the Contract Administrator:
 - (i) A criminal Proceeding involving the Contractor (or any Subcontractor) or any of its officers or directors; or
 - (ii) A Proceeding involving the Contractor (or any Subcontractor) or any of its officers or directors under the Sarbanes-Oxley Act; or
 - (iii) A civil Proceeding to which the Contractor (or, if the Contractor is aware, any Subcontractor) is a party, and which involves (1) a claim that might reasonably be expected to adversely affect the viability or financial stability of the Contractor or any Subcontractor; or (2) a claim or written allegation of fraud against the Contractor (or, if the Contractor is aware, any Subcontractor) by a governmental or public entity arising out of the Contractor's business dealings with governmental or public entities.

- (b) Information provided to the State from the Contractor's publicly filed documents will satisfy the requirements of this Section.

- (c) If any Proceeding that is disclosed to the State 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 the Contractor (or a Subcontractor) to continue to perform this Contract; or (ii) whether the Contractor (or a Subcontractor) is engaged in conduct that is similar in nature to the conduct alleged in the Proceeding and 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 requested reasonable assurances that the Contractor and its Subcontractors will be able to continue to perform this Contract

2.232 Other Disclosures

The Contractor must notify DTMB-Purchasing Operations within 30 days of:

- (i) becoming aware that a change in the Contractor's ownership or officers has occurred or is certain to occur;
- (ii) any changes to company affiliations.

2.233 Call Center Disclosure

The Contractor and 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.

2.234 Bankruptcy

The State may, without prejudice to any other right or remedy, fully or partially terminate this Contract and, at its option, take possession of the Work-in-Process and finish the Work-in-Process by whatever method the State deems appropriate if:

- (a) the Contractor files for bankruptcy protection;
- (b) an involuntary petition is filed against the Contractor and not removed within 30 days;
- (c) the Contractor becomes insolvent or 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 provide the Deliverable(s) under this Contract.



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

2.240 Performance

2.241 Time of Performance

(a) The Contractor must immediately notify the State upon becoming aware of any circumstances that may reasonably be expected to jeopardize the completion of any Deliverable(s) by the scheduled due dates in the latest State-approved delivery schedule and must inform the State of the projected actual delivery date.

(b) 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 immediately notify the State and, to the extent practicable, continue to perform its obligations according to the Contract time periods. The Contractor will not be in default for a delay in performance to the extent the delay is caused by the State.

2.242 Deleted, not applicable (Service Level Agreements)

2.243 Liquidated Damages

The Contractor acknowledges that late or improper completion of the Deliverable(s) will cause loss and damage to the State, and that it would be impracticable and extremely difficult to determine the actual damage sustained by the State as a result. If there is late or improper completion of the Deliverable(s), the State is entitled to collect liquidated damages in the amount of \$50 and an additional \$50 per day for each day the Contractor fails to remedy the late or improper completion of the Deliverable(s). In the event the State terminates the Contract under Section 2.150, Termination, the State will be entitled to collect liquidated damages until the date of termination. These amounts are not intended to be a penalty.

2.244 Excusable Failure

Neither party will be liable for any default, damage or delay in the performance of its obligations that is caused by government regulations or requirements, power failure, electrical surges or current fluctuations, war, forces of nature or acts of God, delays or failures of transportation, equipment shortages, suppliers' failures, acts or omissions of common carriers (**research definition of common carrier**), fire, riots, civil disorders, 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 any 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, the non-performing party will be excused from any further performance of its affected obligation(s) for as long as the circumstances prevail. The non-performing party must promptly notify the other party immediately after the excusable failure occurs, and when it abates or ends. Both parties must use commercially reasonable efforts to recommence performance.

If any of the reasons listed substantially prevent, hinder, or delay the Contractor's performance of the Deliverable(s) for more than 10 Business Days, and the State reasonably determines that performance is not likely to be resumed within a period of time that is satisfactory to the State, the State may: (a) procure the affected Deliverable(s) from an alternate source without liability for payment so long as the delay in performance continues; or (b) terminate any portion of the Contract so affected and equitably adjust charges payable to the Contractor to reflect those Deliverables that are terminated. The State must pay for all Deliverables for which Final Acceptance has been granted before the termination date.



The Contractor will not have the right to any additional payments from the State as a result of any Excusable Failure or to payments for Deliverables not provided as a result of the Excusable Failure. The Contractor will not be relieved of a default or delay caused by acts or omissions of its Subcontractors except to the extent that a Subcontractor experiences an Excusable Failure and the Contractor cannot reasonably circumvent the effect of the Subcontractor’s default or delay in performance through the use of alternate sources, workaroud plans, or other means, including disaster recovery plans.

2.250 Acceptance of Deliverables

2.251 Quality Assurance

By tendering any Deliverable to the State, the Contractor certifies to the State that (i) it has performed reasonable quality assurance activities; (ii) it has performed any reasonable testing; and (iii) it has corrected all material deficiencies discovered during the quality assurance activities and testing.. To the extent that testing occurs at State Locations, the State is entitled to observe and otherwise participate in the testing.

2.252 Delivery Responsibilities

Unless otherwise specified by the State in Section 1.0713, Delivery Term, the following are applicable to all deliveries:

- (a) The Contractor is responsible for delivering the Deliverable(s) by the applicable delivery date to the location(s) specified in the SOW or individual Purchase Order.
- (b) The Contractor must ship the Deliverable(s) “F.O.B. Destination, within Government Premises.”
- (c) The State will examine all packages at the time of delivery. The quantity of packages delivered must be recorded and any obvious visible or suspected damage must be noted at the time of delivery using the shipper’s delivery document(s) and appropriate procedures to record the damage.

2.253 Process for Acceptance of Deliverable(s)

The State Review Period for acceptance of the Deliverable(s) is governed by the applicable Statement of Work (and if the Statement of Work does not specify the State Review Period, it is by default 30 Days for a Deliverable). The State will notify the Contractor by the end of the State Review Period that either:

- (1) the Deliverable is accepted in the form delivered by the Contractor;
- (2) the Deliverable is accepted, but noted deficiencies must be corrected; or
- (3) the Deliverable is rejected along with notation of any deficiencies that must be corrected before acceptance of the Deliverable.

If the State delivers to the Contractor a notice of deficiencies, the Contractor will correct the described deficiencies and within 30 Days resubmit the Deliverable(s) with an explanation that demonstrates all corrections have been made to the original Deliverable(s). 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 30 Days, to accept the corrected Deliverable.

2.254 Acceptance of Deliverable(s), In General

- (a) The State’s obligation to comply with any State Review Period is conditioned on the timely delivery of the Deliverable(s). The State Review Period will begin on the first Business Day following the State's receipt of the Deliverable(s).
- (b) The State may inspect the Deliverable to confirm that all components have been delivered without material deficiencies. If the State determines that the Deliverable or one of its components has material deficiencies, the State may reject the Deliverable without performing any further inspection or testing.



(c) The State will only approve a Deliverable after confirming that it conforms to and performs according to its specifications without material deficiency. The State may, in its discretion, conditionally approve a Deliverable that contains material deficiencies if the State elects to permit the Contractor to rectify those deficiencies post-approval. In any case, the Contractor is responsible for working diligently to correct, within a reasonable time at the Contractor’s expense, all deficiencies in the Deliverable that remain outstanding at the time of State approval.

(d) If, after three opportunities the Contractor is unable to correct all deficiencies, the State may: (i) demand that the Contractor cure the failure and give the Contractor additional time to do so at the sole expense of the Contractor; (ii) keep the Contract in force and perform, 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 State's cost to cure the deficiency; or (iii) fully or partially terminate the Contract for default by giving notice to the Contractor. 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.

(e) The State, at any time and in its reasonable discretion, may reject the Deliverable without notation of all deficiencies if the acceptance process reveals deficiencies in a sufficient quantity or of a sufficient severity that renders continuing the process unproductive or unworkable. In that event, the State may return the applicable Deliverable to the Contractor for correction and re-delivery before resuming the testing or acceptance process.

2.255 [Reserved] - Process for Approval of Written Deliverables

2.256 Process for Approval of Services – Deleted Not Applicable

2.257 Final Acceptance

Unless otherwise stated in the Statement of Work, "Final Acceptance" of a Deliverable occurs when that Deliverable has been accepted by the State following the applicable State Review Period.

2.260 Ownership - Deleted Not Applicable

2.270 State Standards - Deleted Not Applicable

2.280 Extended Purchasing – Deleted Not Applicable

2.290 Environmental Provision

2.291 Environmental Provision

For the purposes of this section, “Hazardous Materials” includes 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.

(a) The Contractor must use, handle, store, dispose of, process, transport, and transfer any Hazardous Material according to all federal, State, and local laws. The State must immediately advise the Contractor of the presence of any known Hazardous Material at the work site. If the Contractor encounters material reasonably believed to be Hazardous Material that may present a substantial danger, the Contractor must (1) immediately stop all affected work; (2) notify the State in accordance with Section 2.025, Notices; (3) notify any entities required by law; and (4) take appropriate health and safety precautions.



(b) The State may issue a Stop Work Order if the material is a Hazardous Material that may present a substantial danger and the Hazardous Material was not brought to the site by the Contractor, or does not wholly or partially result 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 may remove the Hazardous Material, render it harmless, or terminate the affected work for the State's convenience.

(c) If the Hazardous Material was brought to the site by the Contractor, or wholly or partially results 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.



Attachment A, Pricing

Product Description	Price
FG, Buffer (10X) with EDTA 25 mL Applied Biosystems p/n 402824	\$92.70
FG, POP4 310 GA Applied Biosystems p/n 402838	\$226.80
Genetic Analyzer Retainer Clip Applied Biosystems p/n 402866	\$56.02
FG, Hi-Di Formamide 25 mL bottle Applied Biosystems p/n 4311320	\$27.20
FG, Amplitaq Gold 5X1000U+Gold Buffer+MgCl Applied Biosystems p/n 4311818	\$2,269.50
96-well Splash free Support Base Applied Biosystems p/n 432063	\$49.92
FG, Capillary Array 16 x 36cm Applied Biosystems p/n 4315931	\$871.06
Septa Strip, Array 16 x 36cm Applied Biosystems p/n 4315932	\$178.48
Plate, Base AB 96 well 3100 Applied Biosystems p/n 4317237	\$46.46
Plate, Retainer 96 well 3100 Applied Biosystems p/n 4317241	\$46.46
TF, Taq Gold 5x5x1000U&Gold Buffer MG12 Applied Biosystems p/n 4317742	\$10,174.50
FG, 3130 POP-4, 3.5mL Applied Biosystems p/n 4363752	\$155.70
Kit, Prism Genescan 500 ROX Applied Biosystems p/n 401734	\$342.32
FG, 4mL Buffer Vials Applied Biosystems p/n 401955	\$78.57
FG, Septa, 0.5mL Sample tubes 500-pack Applied Biosystems p/n 401956	\$199.82
FG, Capillary, 310GA 47cmx50umid Applied Biosystems p/n 402839	\$364.72
Assy, syringe 1mL w/seal Kloehn Applied Biosystems p/n 4304471	\$84.63
Genetic Analyzer Septa Strips 20/bx Applied Biosystems p/n 4305547	\$123.19
FG, Optical Adhesive Covers Applied Biosystems p/n 4311971	\$145.08
Kit, Matrix Standard Set DS-32 Applied Biosystems p/n 4312131	\$80.74
Septa Strip, 96 well tray Applied Biosystems p/n 4315933	\$321.07
Bulkpack 96-well Txn Plates, 50xN8010560 Applied Biosystems p/n 4316813	\$1,825.20
FG, Capillary array, 4 x 36 cm Applied Biosystems p/n 4333464	\$698.40
FG, 7500 Spectral dye cal kit Applied Biosystems p/n 4349180	\$700.40
Prepackaged Microamp reaction Applied Biosystems p/n N8011533	\$747.24
Plantinum Cathode Electrode Applied Biosystems p/n 5914	\$238.00
AmpFLSTR Cofiler + Profiler Plus Kit Applied Biosystems p/n 4305979	\$3,868.60



Attachment: B, Applied Biosystems Limited Warranty Information

Applied Biosystems is committed to delivering superior product quality and performance, supported by industry-leading global service and technical support teams. Warranty information about our products is provided below. Please contact Applied Biosystems if you have any questions about our warranties or would like information about post-warranty support.

INSTRUMENT LIMITED WARRANTY INFORMATION

Applied Biosystems' limited warranty for instruments and related components is set forth in the instrument user manual, in the limited warranty statement that accompanies the instrument when it is shipped, and in certain jurisdictions outside of North America, in Applied Biosystems' terms of sale. Generally, Applied Biosystems warrants that all standard components of its instruments will be free of defects in materials and workmanship for a period of one (1) year from the date the warranty period begins, unless Applied Biosystems' quotation or accompanying documentation states that a different warranty period or no warranty is provided. All warranty periods begin on the earlier of the date of installation or ninety (90) days from the date of shipment for instruments installed by Applied Biosystems personnel. The warranty period begins on the date the instrument is delivered to customer for instruments installed by the customer or anyone other than Applied Biosystems. The limited instrument warranty is subject to certain exclusions, conditions, exceptions, and limitations. See those listed below and see the full limited warranty statement that accompanies products, or that is set forth in Applied Biosystems' terms of sale in certain jurisdictions outside of North America, for the full terms of the limited warranty, including applicable conditions, exclusions, exceptions, and limitations. You may also contact Applied Biosystems for a copy prior to purchase or at any other time. Unless otherwise expressly stated on Applied Biosystems' quotation, Applied Biosystems makes no warranty whatsoever in regard to computers, peripherals or other products furnished by third parties. Such products are subject to the warranties, if any, of their respective manufacturers to the extent they are transferable or otherwise available to Applied Biosystems' customers.

STAND-ALONE SOFTWARE LIMITED WARRANTY INFORMATION

Unless a different warranty period or no warranty is stated in Applied Biosystems' quotation or applicable end-user software license, Applied Biosystems warrants that for a period of 90 days from the beginning of the applicable software warranty period (see below), Applied Biosystems software will function substantially in accordance with the functions and features described in the documentation delivered with the software when properly installed and used as set forth in the software user manual. The applicable warranty period for software begins on the earlier of the date of installation or three (3) months from the date of shipment for software installed by Applied Biosystems' personnel. The warranty period begins on the date software is delivered for software installed by the customer or anyone other than Applied Biosystems. This limited software warranty is subject to certain exclusions, conditions, exceptions, and limitations. The full limited software warranty statement, which is part of the click-wrap end user license agreement, will be displayed during the course of software installation and contains the full terms of the software limited warranty, including applicable conditions, exclusions, exceptions, and limitations. You may also contact Applied Biosystems for a copy prior to purchase or at any other time.

LIMITED WARRANTIES FOR CONSUMABLES AND SPARE PARTS

Limited Warranty for Consumables

Applied Biosystems warrants that the accompanying consumable product ("Consumable") will be free of defects in materials and workmanship upon delivery to buyer. All Consumable warranty claims must be made within one year from the date of delivery, but in any event no later than the earlier or lesser, as the case may be, of any shelf life date, expiration date, "use by" date, "guaranty date" or other end of recommended use date, or the number of uses, stated on the Consumable label or in Consumable literature accompanying the Consumable (the "Consumables Warranty Period"). Applied Biosystems will replace free of charge or refund the purchase price of any Consumable not meeting the above warranty if the warranty claim for the defective Consumable is received by Applied Biosystems within the Consumables Warranty Period. If the defects in material and workmanship diminished but did not prevent performance of the Consumable, any amount refunded may be



apportioned according to Applied Biosystems' reasonable allocation of the value of the diminished performance. The decision of whether to replace the Consumable or refund the purchase price will be made by Applied Biosystems in its sole discretion. Notwithstanding the foregoing, custom Consumables made to specifications of the customer are sold "AS IS", without any warranty whatsoever, express or implied, except to the extent set forth in any separate express written limited warranty included in the documentation shipped with the Consumable or in Applied Biosystems' quotation. Except as set forth above, expiration dates, shelf life, "use by," guaranty or other end of recommended use dates are included for informational purposes only and shall not be deemed as a period of warranty. This limited warranty for Consumables is subject to the exclusions, conditions, exceptions, and limitations set forth below under the caption "EXCLUSIONS, CONDITIONS, EXCEPTIONS, AND LIMITATIONS."

Limited Warranty for Spare Parts (including Instrument Hardware Upgrades)
 Applied Biosystems warrants that spare, replacement or upgrade parts (collectively, "Service Parts") that are ordered and installed by an Applied Biosystems service engineer subsequent to instrument installation will be free of defects in materials and workmanship for a period of the earlier of ninety (90) days from the date installed or one hundred and twenty (120) days from the date of delivery. Service Parts that are not ordered and installed by an Applied Biosystems service engineer are sold "AS IS," without any warranty, express or implied, of any kind. Service Parts ordered or installed by a person other than an Applied Biosystems service engineer are not covered by Applied Biosystems' warranty or any Applied Biosystems service plan. If an instrument is upgraded, the installation of the instrument hardware upgrade does not extend or restart any instrument warranty, but the parts comprising the instrument upgrade are covered by the foregoing Applied Biosystems' Service Parts limited warranty to the extent applicable. This limited warranty for Service Parts is subject to the exclusions, conditions, exceptions, and limitations set forth below under the caption "EXCLUSIONS, CONDITIONS, EXCEPTIONS, AND LIMITATIONS."
EXCLUSIONS, CONDITIONS, EXCEPTIONS, AND LIMITATIONS

In addition to any exclusions, conditions, exceptions, or limitations set forth in any Applied Biosystems express written warranty statement, Applied Biosystems' warranties do not cover, and Applied Biosystems has no obligation to repair, replace or refund the purchase price of, any instrument, component, software, Consumable or Service Part if a defect or failure arises or is caused by: Externally caused short circuits, incorrect voltages or other improper external inputs; deinstallation or reinstallation by anyone other than an Applied Biosystems authorized service engineer; failure to store or use the product in accordance with Applied Biosystems' instructions; failure to use the product in accordance with good laboratory practices by technically qualified persons; other misuse or neglect, including but not limited to improper storage, maintenance, shipping, or handling, improper or abnormal use, including operation outside of the environmental or use specifications specified by Applied Biosystems; adulteration; unauthorized change or modification; use with chemicals, reagents or any other product not supplied or authorized in writing by Applied Biosystems for use with the product; accidents of any kind or nature; and any non-Applied Biosystems designated product, including without limitation software (including without limitation viruses, trojan horses or other malicious software) that is attached to, loaded on or otherwise connected with, or that accesses, the Applied Biosystems product. Applied Biosystems' warranties do not cover deinstallation, reinstallation, or transportation of products. Applied Biosystems' warranties also do not cover products that have been or that have been attempted to have been serviced or repaired by any person other than an Applied Biosystems authorized service engineer. Repair or service by a non-authorized person voids Applied Biosystems' warranties.

Any claims related to breach of warranty not made by the customer within the applicable warranty period will be forfeited. Warranties are limited to the buyer of the product from Applied Biosystems and are not transferable.

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