STATE OF MICHIGAN
ENTERPRISE PROCUREMENT

Department of Technology, Management, and Budget
525 W. ALLEGAN ST., LANSING, MICHIGAN 48913
P.O. BOX 30026 LANSING, MICHIGAN 48909

CONTRACT CHANGE NOTICE

Change Notice Number **5**
to
Contract Number **071B1300379**

CONTRACTOR	
	NATIONAL PATENT ANALYTICAL SYSTEMS INC
	2090 Harrington Memorial Road
	Mansfield, OH 44903
	Daniel Fusco
	419-526-6726
	djf@npas.com
	*******1192

STATE			
	Program Manager	Victoria Olivarez	MSP
		517-284-3304	
		OlivarezV1@Michigan.gov	
	Contract Administrator	Sue Cieciwa	DTMB
		517-284-7007	
		CieciwaS@michigan.gov	

CONTRACT SUMMARY

DESCRIPTION: BREATH TEST INSTRUMENTS, SUPPLIES, TRAINING & MAINTENANCE FOR THE MICHIGAN STATE POLICE

INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW
September 1, 2011	August 31, 2014	4 - 1 Year	August 31, 2016

PAYMENT TERMS	DELIVERY TIMEFRAME
Net 30 Days	DMT Instruments – Min. 45 Days ARO Supplies – Ship within 5 Business Days

ALTERNATE PAYMENT OPTIONS			EXTENDED PURCHASING	
☐ P-card	☐ Direct Voucher (DV)	☐ Other	☐ Yes	☒ No

MINIMUM DELIVERY REQUIREMENTS

Supplies: 200 Mouthpieces, 200 Tickets
Instruments: 1 each, 200 Mouthpieces, 200 Tickets

DESCRIPTION OF CHANGE NOTICE

OPTION	LENGTH OF OPTION	EXTENSION	LENGTH OF EXTENSION	REVISED EXP. DATE
☒	One Year	☐		August 31, 2017

CURRENT VALUE	VALUE OF CHANGE NOTICE	ESTIMATED AGGREGATE CONTRACT VALUE
$3,077,560.00	$ 0.00	$3,077,560.00

DESCRIPTION: Effective September 1, 2016, the third option year available on this Contract is hereby exercised. The revised Contract expiration date is August 31, 2017. All other terms, conditions, specifications and pricing remain the same. Per Contractor and agency agreement, and DTMB Procurement approval.

Form No. DTMB-3521 (Rev. 10/2015)
AUTHORITY: Act 431 of 1984
COMPLETION: Required
PENALTY: Contract change will not be executed unless form is filed

STATE OF MICHIGAN

DEPARTMENT OF TECHNOLOGY, MANAGEMENT & BUDGET

PROCUREMENT

525 W. ALLEGAN STREET
LANSING, MI 48933

P.O. BOX 30026
LANSING, MI 48909

CHANGE NOTICE NO. 4
to
CONTRACT NO. 071B1300379
between
THE STATE OF MICHIGAN
and

NAME & ADDRESS OF CONTRACTOR	PRIMARY CONTACT	EMAIL
National Patent Analytical Systems Inc	Daniel Fusco	djf@npas.com
2090 Harrington Memorial Road	PHONE	CONTRACTOR'S TAX ID NO. (LAST FOUR DIGITS ONLY)
Mansfield, OH 44903	419-526-6726	*******1192

STATE CONTACTS	AGENCY	NAME	PHONE	EMAIL
PROGRAM MANAGER / CCI	MSP	Vickie Olivarez	517-336-6336	OlivarezV1@Michigan.gov
CONTRACT ADMINISTRATOR	DTMB	Sue Cieciwa	517-284-7007	CieciwaS@michigan.gov

CONTRACT SUMMARY			
DESCRIPTION: Breath Test Instruments, Supplies, Training & Maintenance - Michigan State Police			
INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW
September 1, 2011	August 31, 2014	4 - 1 Year	March 31, 2016
PAYMENT TERMS		DELIVERY TIMEFRAME	
Net 30 Days		DMT Instruments – Min. 45 Days ARO Supplies – Ship within 5 Business Days	
ALTERNATE PAYMENT OPTIONS			EXTENDED PURCHASING
☐ P-card ☐ Direct Voucher (DV) ☐ Other			☐ Yes ☒No
MINIMUM DELIVERY REQUIREMENTS			
Supplies: 200 Mouthpieces, 200 Tickets Instrument: 1 each, 200 Mouthpieces, 200 Tickets			

DESCRIPTION OF CHANGE NOTICE				
EXERCISE OPTION?	LENGTH OF OPTION	EXERCISE EXTENSION?	LENGTH OF EXTENSION	REVISED EXP. DATE
☒	Five months	☐		August 31, 2016
CURRENT VALUE	VALUE OF CHANGE NOTICE	ESTIMATED AGGREGATE CONTRACT VALUE		
$3,077,560.00	$ 0.00	$3,077,560.00		

DESCRIPTION: Effective April 1, 2016, five months of the second option year available on this Contract is hereby exercised. The revised contract expiration date is August 31, 2016. All other terms, conditions, specifications, and pricing remain the same. Per contractor and agency agreement, and DTMB Procurement approval.

Form No. DTMB-3521 (Rev. 7/2015)
AUTHORITY: Act 431 of 1984
COMPLETION: Required
PENALTY: Contract change will not be executed unless form is filed

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

CHANGE NOTICE NO. 3

to

CONTRACT NO. 071B1300379

between

THE STATE OF MICHIGAN

and

NAME & ADDRESS OF CONTRACTOR	PRIMARY CONTACT	EMAIL
National Patent Analytical Systems, Inc.	Daniel J. Fusco	djf@npas.com
2090 Harrington Memorial Road	**PHONE**	**CONTRACTOR'S TAX ID NO. (LAST FOUR DIGITS ONLY)**
Mansfield, OH 44903	(419) 526-6727	1192

STATE CONTACTS	AGENCY	NAME	PHONE	EMAIL
PROGRAM MANAGER / CCI	MSP	Vickie Olivarez	(517) 241-1064	olivarezv1@michigan.gov
CONTRACT ADMINISTRATOR	DTMB	Sue Cieciwa	(517) 284-7007	cieciwas@michigan.gov

CONTRACT SUMMARY

DESCRIPTION: Breath Test Instruments, Supplies, training and Maintenance – Michigan State Police

INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW
September 1, 2011	August 31, 2014	4, 1 year options	August 31, 2015

PAYMENT TERMS	DELIVERY TIMEFRAME
Net 30 Days	DMT Instruments – Min. 45 Days ARO Supplies – Ship within 5 Business Days

ALTERNATE PAYMENT OPTIONS	EXTENDED PURCHASING
☐ P-card ☐ Direct Voucher (DV) ☐ Other	☐ Yes ☒ No

MINIMUM DELIVERY REQUIREMENTS

Supplies: 200 Mouthpieces, 200 Tickets
Instrument: 1 each, 200 Mouthpieces, 200 Tickets

DESCRIPTION OF CHANGE NOTICE

EXERCISE OPTION?	LENGTH OF OPTION	EXERCISE EXTENSION?	LENGTH OF EXTENSION	REVISED EXP. DATE
☒	Seven months	☐		March 31, 2016

CURRENT VALUE	VALUE OF CHANGE NOTICE	ESTIMATED AGGREGATE CONTRACT VALUE
$3,077,560.00	$0.00	$3,077,560.00

DESCRIPTION: Effective September 1, 2015, seven months of the second option year available on this contract is hereby exercised. The revised contract expiration date is March 31, 2016. All other terms, conditions, specifications, and pricing remain the same. Per contractor and agency agreement, and DTMB Procurement approval.

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

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

CHANGE NOTICE NO. 2

to

CONTRACT NO. 071B1300379

between

THE STATE OF MICHIGAN

and

NAME & ADDRESS OF CONTRACTOR:	PRIMARY CONTACT	EMAIL
National Patent Analytical Systems, Inc.	Daniel J. Fusco	djf@npas.com
2090 Harrington Memorial Road	TELEPHONE	CONTRACTOR #, MAIL CODE
Mansfield, OH 44903	(419) 526-6727	

STATE CONTACTS	AGENCY	NAME	PHONE	EMAIL
CONTRACT COMPLIANCE INSPECTOR	MSP	Vickie Olivarez	(517) 241-1064	olivarezv1@michigan.gov
BUYER	DTMB	Sue Cieciwa	(517) 284-7007	cieciwas@michigan.gov

CONTRACT SUMMARY:

DESCRIPTION: Breath Test Instruments, Supplies, Training and Maintenance – Michigan State Police

INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW
September 1, 2011	August 31, 2014	Four One-Year Options	August 31, 2014
PAYMENT TERMS	**F.O.B**	**SHIPPED**	**SHIPPED FROM**
Net 30 Days	Delivered	DMT Instruments – Min. 45 Days ARO Supplies - Ship within 5 business days	N/A

ALTERNATE PAYMENT OPTIONS:	AVAILABLE TO MiDEAL PARTICIPANTS
☐ P-card ☐ Direct Voucher (DV) ☐ Other	☐ Yes ☒ No

MINIMUM DELIVERY REQUIREMENTS:

Supplies: 200 Mouthpieces, 200 Tickets
Instrument: 1 each, 200 Mouthpieces, 200 Tickets

DESCRIPTION OF CHANGE NOTICE:

EXTEND CONTRACT EXPIRATION DATE	EXERCISE CONTRACT OPTION YEAR(S)	EXTENSION BEYOND CONTRACT OPTION YEARS	LENGTH OF OPTION/EXTENSION	EXPIRATION DATE AFTER CHANGE
☐ No ☒ Yes	☒	☐	One Year	August 31, 2015

VALUE/COST OF CHANGE NOTICE:	ESTIMATED REVISED AGGREGATE CONTRACT VALUE:
$0.00	$3,077,560.00

Effective September 1, 2014, the first option year available on this contract is hereby exercised. The revised contract expiration date is August 31, 2015.

Effective September 1, 2014 pricing on this contract is hereby updated, per revised Attachment A.
In addition, Section 1.4.1 Timeframes is hereby changed to read:

“All Deliverable(s) must be delivered as follows:

DMT Instruments – a minimum of 45 Days after receipt of order
Supplies - ship within 5 Days after receipt of order

The receipt of order date is governed in the same manner as notices sent under Section 2.3.6, Notices.”

Section 1.3.2 Reports is hereby changed to read:

“The Contractor must submit the following periodic reports to the State: usage reports, including quantity and dollars for State.”

The following Sections are hereby deleted from this Contract:
Section 1.7.1 MiDEAL
Section 2.22.1 MiDEAL Requirements
Section 2.22.2 State Administrative Fee

All other terms, conditions, specifications, and pricing remain the same.

Per agency request, contractor agreement, and DTMB Procurement approval.

Attachment A, Price Proposal

Item No.	Unit of Issue	Description	Eff. 9/1/14 Unit Price
1.	Ea	Repairs, Maintenance & Certification of Breath Alcohol Detecting Devices, maintenance of the detecting devices per the specifications.	$1,040.00
2.	Ea	Mouthpiece #1, Guth “Ultrap” per the specifications.	$.34 (qty of 200)
			$.31 (qty of 400)
			$.29 (qty of 1000)
3.	Ea	Mouthpiece #2, RepCo "Ultrap" per the specifications	Discontinued
4.	Ea	Evidence Tickets per the specifications	$.21 (qty of 200)
			$.20 (qty of 400)
			$.19 (qty of 1000)
5.	Ea	BAC Datamaster Instrument DMT with dry gas option and printer.	$7,227.80
6.	Hour	Person to assist with “Operator” Training	$60.00
7.	Hour	Technician, Hourly Rate	$72.50

Per order discounts on mouthpiece #1 Guth “Ultrap” are specified above.

Per order discounts on Evidence Tickets are specified above.

Lead Time for Delivery:
DMT instruments only – a minimum of 45 Days after receipt of order.
Supplies - ship within 5 Days after receipt of order.

All items FOB Destination.

All orders must be F.O.B. Destination with transportation charged prepaid on the order. Other F.O.B. terms will not be accepted. **Contractor meets said requirements as provided above, without exception.**

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

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

CHANGE NOTICE NO. 1
TO
CONTRACT NO. 071B1300379
between
THE STATE OF MICHIGAN
and

NAME & ADDRESS OF CONTRACTOR **National Patent Analytical Systems, Inc.** **2090 Harrington Memorial Road** **Mansfield, OH 44903** **Email: djf@npas.com**	TELEPHONE (419) 526-6726 **Daniel J. Fusco** CONTRACTOR NUMBER/MAIL CODE BUYER/CA (517) 373-7396 **Kristen Robel**
Contract Compliance Inspector: Victoria Olivarez **Breath Test Instruments, Supplies, Training and Maintenance for the Michigan State Police**	
CONTRACT PERIOD: 3 yrs. + 4 one-year options From: **September 1, 2011** To: **August 31, 2014**	
TERMS **Net 30**	SHIPMENT **N/A**
F.O.B. **Destination**	SHIPPED FROM **N/A**
ALTERNATE PAYMENT OPTIONS: ☐ P-card ☐ Direct Voucher (DV) ☐ Other	
MINIMUM DELIVERY REQUIREMENTS **N/A**	
MISCELLANEOUS INFORMATION:	

This Contract has been extended to local units of government.

NATURE OF CHANGE (S):

Effective February 14, 2012 the Buyer for this Contract has been changed to:

Kristen Robel
Phone: (517) 373-7396
RobelK@michigan.gov

All other terms, conditions, specifications and pricing remain the same.

AUTHORITY/REASON:

Per DTMB-Procurement's approval.

TOTAL ESTIMATED CONTRACT VALUE: $3,077,560.00

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

STATE OF MICHIGAN
DEPARTMENT OF TECHNOLOGY, MANAGEMENT AND BUDGET **September 8, 2011**
PURCHASING OPERATIONS
P.O. BOX 30026, LANSING, MI 48909
OR
530 W. ALLEGAN, LANSING, MI 48933

NOTICE
OF
CONTRACT NO. 071B1300379
between
THE STATE OF MICHIGAN
and

NAME & ADDRESS OF CONTRACTOR **National Patent Analytical Systems, Inc.** **2090 Harrington Memorial Road** **Mansfield, OH 44903** **Email: djf@npas.com**	TELEPHONE (419) 526-6726 **Daniel J. Fusco** CONTRACTOR NUMBER/MAIL CODE BUYER/CA (517) 373-9776 **Paula Hurst**
Contract Compliance Inspector: Victoria Olivarez **Breath Test Instruments, Supplies, Training and Maintenance for the Michigan State Police**	
CONTRACT PERIOD: 3 yrs. + 4 one-year options From: **September 1, 2011** To: **August 31, 2014**	
TERMS **Net 30**	SHIPMENT **N/A**
F.O.B. **Destination**	SHIPPED FROM **N/A**
ALTERNATE PAYMENT OPTIONS: ☐ P-card ☐ Direct Voucher (DV) ☐ Other	
MINIMUM DELIVERY REQUIREMENTS **N/A**	
MISCELLANEOUS INFORMATION:	

TOTAL ESTIMATED CONTRACT VALUE: $3,077,560.00

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

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

CONTRACT NO. 071B1300379
between
THE STATE OF MICHIGAN
and

NAME & ADDRESS OF CONTRACTOR **National Patent Analytical Systems, Inc.** **2090 Harrington Memorial Road** **Mansfield, OH 44903** **Email: djf@npas.com**	TELEPHONE (419) 526-6726 **Daniel J. Fusco** CONTRACTOR NUMBER/MAIL CODE BUYER/CA (517) 373-9776 **Paula Hurst**
Contract Compliance Inspector: Victoria Olivarez **Breath Test Instruments, Supplies, Training and Maintenance for the Michigan State Police**	
CONTRACT PERIOD: 3 yrs. + 4 one-year options From: **September 1, 2011** To: **August 31, 2014**	
TERMS **Net 30**	SHIPMENT **N/A**
F.O.B. **Destination**	SHIPPED FROM **N/A**
ALTERNATE PAYMENT OPTIONS: ☐ P-card ☐ Direct Voucher (DV) ☐ Other	
MINIMUM DELIVERY REQUIREMENTS **N/A**	
MISCELLANEOUS INFORMATION: **The terms and conditions of this Contract are those of ITB #071I1300198, this Contract Agreement and the vendor's quote. 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: $3,077,560.00**	

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

FOR THE CONTRACTOR:	**FOR THE STATE:**
National Patent Analytical Systems, Inc. Firm Name	Signature
Authorized Agent Signature	Jeff Brownlee, Chief Procurement Officer Name/Title
Authorized Agent (Print or Type)	DTMB, Purchasing Operations Division
Date	Date

STATE OF MICHIGAN
Department of Technology, Management and Budget
Purchasing Operations

Contract #071B1300379
Breath Test Instruments, Supplies, Training, and Maintenance

Buyer Name: Paula Hurst
Telephone Number: (517) 373-9776
E-Mail Address: hurstp2@michigan.gov

Table of Contents

Definitions **15**
Article 1 – Statement of Work ***16***
1.1 Project Identification **16**
1.1.1 Project Request 16
1.1.2 Background 16
1.2 Scope of Work and Deliverable(s) **16**
1.2.1 In Scope – [Deleted, Not Applicable] 16
1.2.2 Deliverable(s) 16
1.2.3 Quantity 19
1.2.4 Ordering 20
1.2.5 Alternate Bids – Deleted, Not Applicable 20
1.3 Management and Staffing **20**
1.3.1 Project Management 20
1.3.2 Reports 20
1.3.3 Staff, Duties, and Responsibilities 20
1.3.4 Meetings 20
1.3.5 Place of Performance 21
1.3.6 Reserved 21
1.3.7 Binding Commitments 21
1.3.8 Training 21
1.3.9 Security 21
1.4 Delivery and Acceptance **21**
1.4.1 Time Frames 21
1.4.2 Minimum Order 21
1.4.3 Packaging 21
1.4.4 Palletizing 21
1.4.5 Delivery Term 21
1.4.6 Acceptance Process 21
1.4.7 Criteria 22
1.5 Proposal Pricing **22**
1.5.1 Pricing 22
1.5.2 Quick Payment Terms – Deleted, Not Applicable 22
1.5.3 Price Term 22
1.5.4 Tax Excluded from Price 22
1.5.5 Invoices 22
1.6 Commodity Requirements **22**
1.6.1 Customer Service 26
1.6.2 Research and Development 26
1.6.3 Quality Assurance Program 26
1.6.4 Warranty for Deliverable(s) 26
1.6.5 Special Incentives – Deleted, Not Applicable 26
1.6.6 Energy Efficiency – Deleted, Not Applicable 26
1.6.7 Environmental Requirements – Deleted, Not Applicable 26
1.6.8 Recycled Content and Recyclability 27
1.6.9 Materials Identification and Tracking 27
1.7 Extended Purchasing **28**
1.7.1 MiDEAL 28
1.7.2 State Employee Purchases – Deleted, Not Applicable 28
Article 2 – Terms and Conditions ***29***
2.1 Contract Term **29**
2.1.1 Contract Term 29
2.1.2 Options to Renew 29
2.2 Payments and Taxes **29**

2.2.1 Fixed Prices for Deliverable(s) 29
2.2.2 Payment Deadlines 29
2.2.3 Invoicing and Payment – In General [Deleted, Not Applicable] 29
2.2.4 Pro-ration [Deleted, Not Applicable] 29
2.2.5 Final Payment and Waivers 29
2.2.6 Electronic Payment Requirement 29
2.2.7 Employment Taxes 29
2.2.8 Sales and Use Taxes 29
2.3 Contract Administration 30
2.3.1 Issuing Office 30
2.3.2 Contract Compliance Inspector 30
2.3.3 Project Manager 30
2.3.4 Contract Changes 30
2.3.5 Price Changes 31
2.3.6 Notices 31
2.3.7 Covenant of Good Faith 32
2.3.8 Assignments 32
2.3.9 Equipment 32
2.3.10 Facilities [Deleted, Not Applicable] 32
2.4 Contract Management 32
2.4.1 Contractor Personnel Qualifications 32
2.4.2 Contractor Key Personnel 32
2.4.3 Removal or Reassignment of Personnel at the State's Request 32
2.4.4 Contractor Personnel Location 32
2.4.5 Contractor Identification 32
2.4.6 Cooperation with Third Parties 32
2.4.7 Relationship of the Parties 33
2.4.8 Contractor Return of State Equipment/Resources 33
2.4.9 Background Checks 33
2.4.10 Compliance With State Policies 33
2.5 Subcontracting by Contractor 33
2.5.1 Contractor Responsible 33
2.5.2 State Approval of Subcontractor 33
2.5.3 Subcontract Requirements 33
2.5.4 Competitive Selection 34
2.6 Reserved 34
2.7 Performance 34
2.7.1 Time of Performance 34
2.7.2 Service Level Agreements -Deleted, Not Applicable 34
2.7.3 Liquidated Damages – Deleted, Not Applicable 34
2.7.4 Excusable Failure 34
2.8 Acceptance of Deliverable(s) 34
2.8.1 Quality Assurance 35
2.8.2 Delivery Responsibilities 35
2.8.3 Process for Acceptance of Deliverable(s) 35
2.8.4 Acceptance of Deliverable(s) 35
2.8.5 Process for Approval of Written Deliverable(s) -Deleted, Not Applicable 36
2.8.6 Process for Approval of Services 36
2.8.7 Final Acceptance 36
2.9 Ownership - Deleted, Not Applicable 36
2.10 State Standards - Deleted, Not Applicable 36
2.11 Confidentiality 36
2.11.1 Confidential Information 36
2.11.2 Protection and Destruction of Confidential Information 36

2.11.3 Exclusions 37
2.11.4 No Obligation to Disclose 37
2.11.5 Security Breach Notification 37
2.12 Records and Inspections 37
2.12.1 Inspection of Work Performed 37
2.12.2 Retention of Records 37
2.12.3 Examination of Records 37
2.12.4 Audit Resolution 37
2.12.5 Errors 38
2.13 Warranties 38
2.13.1 Warranties and Representations 38
2.13.2 Warranty of Merchantability 39
2.13.3 Warranty of Fitness for a Particular Purpose 39
2.13.4 Warranty of Title 39
2.13.5 Equipment Warranty 39
2.13.6 New Deliverable(s) 39
2.13.7 Prohibited Products 39
2.13.8 Consequences For Breach 39
2.14 Insurance 39
2.14.1 Liability Insurance 40
2.14.2 Subcontractor Insurance Coverage 42
2.14.3 Certificates of Insurance and Other Requirements 42
2.15 Indemnification 42
2.15.1 General Indemnification 42
2.15.2 Code Indemnification [Deleted, Not Applicable] 42
2.15.3 Employee Indemnification 42
2.15.4 Patent/Copyright Infringement Indemnification 42
2.15.5 Continuing Obligation 43
2.15.6 Indemnification Procedures 43
2.15.7 Limitation of Liability 43
2.16 Termination by the State 44
2.16.1 Notice and Right to Cure 44
2.16.2 Termination for Cause 44
2.16.3 Termination for Convenience 44
2.16.4 Termination for Non-Appropriation 44
2.16.5 Termination for Criminal Conviction 45
2.16.6 Termination for Approvals Rescinded 45
2.16.7 Rights and Obligations upon Termination 45
2.16.8 Reservation of Rights 45
2.16.9 Contractor Transition Responsibilities 45
2.16.10 Transition Payments 46
2.17 Termination by the Contractor 46
2.17.1 Termination 46
2.18 Stop Work – Deleted, Not Applicable 46
2.19 Reserved 46
2.20 Dispute Resolution 46
2.20.1 General 46
2.20.2 Informal Dispute Resolution 46
2.20.3 Injunctive Relief 47
2.20.4 Continued Performance 47
2.21 Disclosure Responsibilities 47
2.21.1 Disclosure of Litigation 47
2.21.2 Other Disclosures 47
2.21.3 Call Center Disclosure – Deleted, Not Applicable 47

2.22 Extended Purchasing 47
2.22.1 MiDEAL Requirements 47
2.22.2 State Administrative Fee 48
2.22.3 State Employee Purchase Requirements – Deleted, Not Applicable 48
2.23 Laws 48
2.23.1 Governing Law 48
2.23.2 Compliance with Laws 48
2.23.3 Jurisdiction 48
2.23.4 Nondiscrimination 48
2.23.5 Unfair Labor Practices 49
2.23.6 Environmental Provision 49
2.23.7 Freedom of Information 49
2.23.8 Workplace Safety and Discriminatory Harassment [Deleted, Not Applicable] 49
2.23.9 Prevailing Wage [Deleted, Not Applicable] 49
2.23.10 Abusive Labor Practices 49
2.24 General Provisions 49
2.24.1 Bankruptcy and Insolvency 49
2.24.2 Media Releases 50
2.24.3 Contract Distribution 50
2.24.4 Permits 50
2.24.5 Website Incorporation 50
2.24.6 Future Bidding Preclusion [Deleted, Not Applicable] 50
2.24.7 Antitrust Assignment 50
2.24.8 Disaster Recovery 50
2.24.9 Legal Effect 50
2.24.10 Entire Agreement 50
2.24.11 Order of Precedence 50
2.24.12 Headings 51
2.24.13 Form, Function and Utility – Deleted, Not Applicable 51
2.24.14 Reformation and Severability 51
2.24.15 Approval 51
2.24.16 No Waiver of Default 51
2.24.17 Survival 51
Attachment A, Price Proposal 52
Attachment B - Sample Invoice 45
Attachment C - Organizational Chart 46

Definitions

This section provides definitions for terms used throughout this document.

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 through 5:00pm Eastern Time unless otherwise stated.

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

Chronic Failure - as defined in applicable Service Level Agreements.

Contract – based on this RFP, an agreement that has been approved and executed by the awarded bidder, the DTMB-Purchasing Operations Director, and the State Administrative Board.

Contractor – the awarded bidder after the Effective Date.

Days - Business Days unless otherwise specified.

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

Deliverable(s) - physical goods or commodities as required or identified in a Statement of Work.

Eastern Time – either Eastern Standard Time or Eastern Daylight Time, whichever is prevailing in Lansing, Michigan.

Effective Date - the date that a binding contract is executed by the final party.

Final Acceptance - has the meaning provided in Section 2.8.7, Final Acceptance, unless otherwise stated in Article 1.

Key Personnel - any personnel designated as Key Personnel in Sections 1.3.3, Staff, Duties, and Responsibilities, and 2.4.2, Contractor Key Personnel, subject to the restrictions of Section 2.4.2.

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 that requests full or partial performance of this Contract.

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 or person that the Contractor delegates performance of a portion of the Deliverable(s) to, but does not include independent contractors engaged by the 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 maintenance on Blood Alcohol Content (BAC) Data Master Transportable (DMT) Breath Testers, repairs, as needed, and the purchase of instruments and supplies, including mouthpieces, evidence tickets, and training for current and future instruments.

1.1.1 Project Request

This Contract is for the purchase of DataMaster Transportables (DMT), repairs, equipment to be certified every 120 days, training, and supplies including mouthpieces, and evidence tickets, for current and future instruments.

1.1.2 Background

The Michigan State Police (MSP) is mandated by law (257.625h) to oversee the statewide breath test program in Michigan.

1.2 Scope of Work and Deliverable(s)

1.2.1 In Scope – [Deleted, Not Applicable]

1.2.2 Deliverable(s)

Contractor must provide the following Deliverable(s):

Definite specifications - All Deliverable(s) must conform to the specifications.

Breath Alcohol Detecting Devices

A. Shall conform to the USDOT "Standards for Devices to Measure Breath Alcohol". F.R., Vol. 49, No. 242, p.48854, December 14, 1984. The instrument shall be approved by the USDOT. A letter from USDOT confirming acceptability of the instrument or appearance of the instrument on the "Conforming Products List of Evidential Breath Measurement Devices" published in the Federal Register by the United States Department of Transportation (USDOT) are both considered as acceptable documentation of approval by USDOT.

B. Shall pass accuracy, precision, and reliability testing as performed by the State Police. Ten (10) tests each at 0.005%, 0.010%, 0.040%, 0.100%, 0.200%, and 0.300% alcohol concentrations shall conform to the federal testing guidelines indicated above. The accuracy range shall be +/- 5%, or .004, whichever is greater. The instrument shall also conform to any other tests as performed by State Police in accordance with the federal testing guidelines indicated above.

C. The Contractor shall guarantee that the instruments will adhere to all Frye-Davis requirements and criteria, providing the reliability and accuracy of the instrument technology in order to be scientifically acceptable within the State of Michigan.

D. Shall be specific for alcohol.

E. Shall be a stand-alone instruments requiring no physical modifications of current facilities in order to accommodate the instrument.

F. Shall provide a printed hard copy test report (evidence record). A minimum of three copies of each subject test shall be printed. Each printout of a subject test shall display the following:

Date;
Time;
Location of instrument;
Instrument serial number;
Operator signature blank;

Subject's name;
Subject's date of birth;
Subject's driver's license number;
Indication that an internal standard was performed;
Test result (shall be expressed as 2 digits for a subject test and three digits for accuracy tests).

G. Shall operate on a standard 110 volts AC at 60Hz and shall be grounded.

H. Shall detect non-alcohol interfering substances (including radio frequency interference), which may interfere with the accuracy of a test, indicate such interference, and abort the test. An incorrect operational procedure or improper conditions shall also cause the instrument to automatically abort a breath test.

I. For entering data, the instruments shall include a keyboard. The keyboard can be either a sealed keyboard with raised keys, or a standard keyboard with raised keys and a plastic cover.

J. As the subject exhales, the instrument shall continuously monitor the breath sample and automatically sense when it has obtained an alveolar (deep lung) sample, regardless of the subject's lung capacity and without operator instruction. The instrument shall also:

Reject an insufficient breath sample;
Reject a series of shallow breath samples, such as may be blown to avoid providing a deep lung sample.
Reject a breath sample characterized by the presence of mouth alcohol.

If the subject is unable to complete a satisfactory breath test, the instrument shall display a message indicating the subject did not provide an adequate breath sample. After five (5) unsatisfactory attempts by the subject, the instrument shall automatically abort the test and indicate a refusal.

K. Shall provide an internal accuracy verification check before and after each subject test.
Blank;
Internal standard;
Blank;
Subject test;
Blank;
Subject test;
Blank;
Internal standard;
Blank.

The instruments shall also provide for a third subject test if the first two tests do not agree within +/- 10%.

L. Shall have a battery back-up ram module for storing a minimum of 100 total tests, subject and simulator.

M. Each instruments serial number shall be permanently stored in the circuitry.

N. The operator shall be able to initiate a breath test sequence by activating only one button.

O. Shall be menu driven, prompting the operator with regards to the information and steps needed to run a complete test. An alphanumeric display utilizing a series of messages and commands shall communicate to and instruct the operator.

P. The breath tube shall be heated to prevent condensation.

Q. Shall have a date/time clock, which is observable, and has a battery back-up in case of power failure.

R. All software modifications, clock/date settings, calibration adjustments, or program changes shall be made using special keyboard commands. Some type of security protection (pass code, lock, etc.) shall be provided on the instrument in order to allow for only certain people to make these modifications and to restrict any unauthorized persons from being able to make these modifications.

S. The instruments shall perform diagnostic checks on its components, display the nature of a malfunction if one exists, and automatically shut down until the malfunction is corrected.

T. Shall accept a wet bath simulator for performing calibration checks against a standard alcohol solution.

U. Shall express the subject test result in percent of weight by volume. The subject test result shall be displayed on the instrument in two (2) digits, while the accuracy verification shall be displayed on the instrument in three (3) digits.

V. Each instrument shall be supplied with an operator's training manual and all related software. The operator's training manual shall indicate all displays that may appear on the panel and evidence record with an explanation of what each means. The manual shall also show a step-by-step procedure on how the instrument is programmed to perform.

W. All software and hardware upgrades developed by the Contractor for technological advances of the instrument shall be made available to the State. If upgrades become available that will allow the instrument to operate differently or perform different tasks as required by the State, the State may elect to purchase these upgrades and have them installed into the instruments. However, if upgrades become available that will allow the Contractor to more easily maintain the instruments or will allow the instruments to operate more efficiently and effectively, thus reducing the Maintenance Program demands on the Contractor, these software upgrades may be installed into the instruments with prior approval from the State and at **NO** additional cost to the State.

X. Two hundred (200) individually packaged mouthpieces and two hundred (200) evidence tickets shall be provided with each instrument upon delivery and installation at no additional cost to the State.

All supplies required after the initial supplies delivered with each instrument have been used will be purchased by the State.

Y. The instruments shall conform to all existing State Police operating protocol and administrative rules. (See Attachment B)

Mouthpieces #1, Guth "Ultrap

A. Shall be crystal clear, made from unused virgin plastic.

B. Shall be one-piece, elliptical, solid construction with ultrasonically sealed seams and internal surfaces.

C. There shall be a minimum of three (3) internal baffles within the main body chamber to filter and inhibit the flow of saliva or small solids.

D. Shall not restrict gas flow or leak into atmosphere when connected to the instrument.

E. Inlet tube and outlet tube shall be part of the total mouthpieces.

F. The mouthpieces shall have tapered ends. The tape shall be no less than 0.255 of an inch from the end.

G. The general shape of the unit shall be round with elliptical cross section with an axial (in-line) inlet and outlet tubes to conform to the human mouth and shall have a minimum diameter of 1.5 inches.

H. The overall length shall not exceed 2.8 inches. This dimension includes the inlet and outlet tubes.

I. The length of the inlet and outlet tubes shall be no longer than 0.625 of an inch and shall maintain a wall thickness (typical) of 0.050 of an inch.

J. The outside diameter of the inlet and outlet tubes shall be no more than 0.263 of an inch and no less than 0.0258 of an inch.

K. The inside diameter of the inlet and outlet tubes shall be uniform throughout with no more than 0.160 of an inch or less than 0.150 of an inch.

L. Each mouthpiece shall be sealed individually in a plastic bag.

Evidence Tickets

A. Three (3) part NCR form.
   Part One – White, prints black on one side.
   Part Two – Canary, prints black on one side.
   Part Three – Pink, prints black on two sides

B. 4½" x 8½ " upright with 7/32" notch die cut on left side of form 5 1/16" from the top of the form.

C. Form to be edge glued at top.

D. Forms to be shrink wrapped in quantities of 200.

Training
Contractor shall, provide a knowledgeable person approved by the Alcohol Enforcement Unit to assist with "Operator" training for all Michigan law enforcement officers, (state, county, city and township officers) for the new DataMaster DMT, as requested

1.2.3 Quantity

The State is not obligated to purchase in any specific quantity.

1.2.4 Ordering

The State will issue a Purchase Order, which must be approved by the Contract Compliance Inspector, to order any Deliverable(s). The Contractor is not authorized to begin performance until receipt of a Purchase Order.

1.2.5 Alternate Bids – Deleted, Not Applicable

1.3 Management and Staffing

1.3.1 Project Management

The Contractor will carry out this project under the direction and control of the MSP.

The project manager will meet monthly with the Contractor's project manager to review progress and provide necessary guidance when needed.

The Contractor will submit monthly written progress reports that: outline the work accomplished during the reporting period and work to be done during the next reporting period; identify actual and anticipated problems that should be brought to the attention of the project manager; and provide notice of any significant deviation from previously agreed upon project plans. The Contractor will provide these reports to the Buyer.

Within 30 Days of the Effective Date, the Contractor will submit a project plan to the project manager for final approval. The plan must include:

(a) The Contractor's organizational chart (see Attachment D) provides names and title of personnel assigned to this project.
(b) The project breakdown showing sub-projects, tasks, and resources required.

1.3.2 Reports

The Contractor must submit the following periodic reports to the State: usage reports, including quantity and dollars for State and MiDEAL members.

1.3.3 Staff, Duties, and Responsibilities

The contractor must be able to provide appropriate staff to properly service this contract. Key personnel at the company include John D. Fusco, President. John has oversight responsibility. Daniel J. Fusco, Vice President. Dan has operational and manufacturing oversight responsibility. David Radomski, Vice President. David supervises quality control, final testing and service of instruments for the company. J. Scott Marhefka, Director of Engineering. Scott writes the software coding and oversees engineering for the company. Glen Campbell, Director of Sales is another point of contact to coordinate activities. All company personnel are located in Mansfield, Ohio.

List all subcontractors, including firm name, address, contact person, and a complete description of the work to be contracted. Include descriptive information concerning subcontractor's organization and abilities.

Subcontractors shall perform repairs, maintenance, certification of breath alcohol testing devices, maintenance of the detecting devices per the specifications, and operator training. They do not have a known firm name. Their names are as follows:

Marv Gier, Grass Lake, Michigan
Dale Haverdink, Hamilton, Michigan
John D. Flood, Iron City, Michigan.

1.3.4 Meetings

The State may request meetings as it deems appropriate.

1.3.5 Place of Performance

The Contractor must list the location of all facilities that will be involved in performing the Contract:

Full address of place of performance	Owner/operator of facility to be used	Percent (%) of Contract value to be performed at listed location
2090 Harrington Memorial Rd. Mansfield, Ohio 44903	National Patent Analytical Systems, Inc., John D. Fusco	71.9%

1.3.6 Reserved

1.3.7 Binding Commitments

John D. Fusco, President, has overall authority without specific limitations. Daniel J. Fusco and Glen Campbell also have authority to bind the company limited to bidding for this contract.

1.3.8 Training

Contractor has the capacity to provide training necessary to meet the requirements of the contract, which training can be done on-site or at the factory.

1.3.9 Security

Contractor does not anticipate any unsupervised deliveries to State facilities. It will comply with all security measures required by the State for any particular visit or with regard to subcontractors. Deliveries are made to the State facilities by FedEx. Contractor understands that all provisions for security dealing with subcontractors have already been made, but as to any additional measures, said subcontractors deal directly with Sgt. Perry Curtis, director of the Alcohol Enforcement Unit in order to achieve compliance.

1.4 Delivery and Acceptance

1.4.1 Time Frames

All Deliverable(s) must be delivered within 30 Days after receipt of order. The receipt of order date is governed in the same manner as notices sent under Section 2.3.6, Notices.

1.4.2 Minimum Order

Supplies: 200 Mouthpieces, 200 Tickets
Instrument: 1 each, 200 mouthpieces, 200 Tickets

1.4.3 Packaging

The Contractor must explain the details of its proposed packaging sizes for the Deliverable(s).

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.

1.4.4 Palletizing

Shipments must be palletized whenever possible. Manufacturer's standard 4-way shipping pallets must be used. The Contractor must explain if it cannot meet these standards.

1.4.5 Delivery Term

See Attachment A – Pricing

1.4.6 Acceptance Process

The acceptance process is defined in Section 2.8, Acceptance of Deliverable(s), unless otherwise defined in this section.

1.4.7 Criteria

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

The criteria outlined in 1.2.2 Deliverables will be used to evaluate acceptability of the delivered services and deliverables.

1.5 Proposal Pricing

1.5.1 Pricing

See Attachment A – Pricing

If applicable, the Contractor must include the administrative fee in Section 2.22.2, State Administrative Fee, in its proposed prices.

1.5.2 Quick Payment Terms – Deleted, Not Applicable

1.5.3 Price Term

Prices in **Attachment A** are firm for the term of this Contract and will be re-evaluated after first three (3) years.

1.5.4 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-Purchasing Operations 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, the Contractor's prices must not include the Federal Excise Tax.

1.5.5 Invoices

The Contractor will provide a sample invoice that, at a minimum, includes:

(a) Date
(b) PO #
(c) Quantity
(d) Deliverable
(e) Unit Price
(f) Shipping Cost (if any)
(g) Total Price

1.6 Commodity Requirements

INSTALLATION

All instruments ordered shall be delivered, installed (including all parts, supplies, etc., as outlined in the specifications), and fully operational, in accordance with these terms, conditions, and specifications.

SITE REQUIREMENTS

Site preparation specifications shall be furnished by the Contractor promptly upon request of the State. The specifications shall be detailed in order to ensure that the instruments to be installed will operate in accordance with all requirements outlined in this Contract and the specifications.

The State will have the sites prepared as specified by the Contractor. Subsequent alterations or modifications in site preparation required by the Contractor which are attributable to the Contractor's requirements and which would involve additional expense to the State shall be made at the expense of the contractor.

STATE POLICE NOTIFICATION

If an instrument is purchased for law enforcement purposes by any organization in the State of Michigan other than State Police, the Contractor shall notify State Police immediately in order to have the instrument and location certified to be used in conjunction with the State Police program.

PERFORMANCE EVALUATION PERIOD

Step 1

A pre-installation check shall be performed by the Contractor to insure that the instruments delivered are in compliance with the terms, conditions, and specifications of the Contract. In the event that it is determined that any component or feature of the delivered instrument does not comply with the terms, conditions, or specifications, the Contractor is allowed three (3) calendar days for rectification of the problem. Should the Contractor be unable to rectify the deficiency, the State reserves the right to cancel the order or to have the instrument in question replaced with a new instrument.

Step 2

After the instruments are installed, the Contractor shall perform a check in order to ensure that the instruments are fully operational. When this check is completed (and in compliance with Step 1 above), a thirty (30) calendar day Performance Evaluation Period shall commence for each instrument delivered. If an instrument operates properly at least 98% of the time for the entire thirty (30) day period, based on how many times an operator actually attempts to use the instrument, it shall be deemed to have met the State's Performance Evaluation Period. The Performance Evaluation Period will be complete only when the instrument has attained this requirement.

If successful completion of the performance period is not attained within ninety (90) days of the installation date, the State reserves the right to terminate this Contract, continue with performance evaluation period, or have the instrument in question replaced with a new instrument.

Instruments will not be accepted by the State and no charges will be paid by the State until each instrument passes the Performance Evaluation Period.

The Contractor shall provide the State Police with copies of all forms that have been completed with regards to the various checks. Some forms to be completed by the Contractor are official forms developed by State Police.

INVOICING AND PAYMENT

Charges are to begin on each instrument from the first day after successful completion of the Performance Evaluation Period.

EXPERT COURT TESTIMONY

The Contractor shall provide expert court testimony in order to guarantee the accuracy of the instrument and scientifically prove the reliability and accuracy of the instrument and its technology. This shall be performed in order to meet Frye/Davis criteria and requirements.

The Contractor shall also agree to provide expert court testimony in order to guarantee that the maintenance and service performed on any instrument has been performed properly and in a timely manner.

There are **NO** additional charges for any expert court testimony that may be required throughout this Contract period.

CERTIFICATE OF OPERATIONS AND SERVICE PERSONNEL
All operators of the instruments are to be trained exclusively by representatives of State Police prior to operation of the instrument. After training, the State Police will issue certification to all those that will be authorized as an operator.

All Maintenance Program work, as well as certification of the instruments, shall be performed by factory trained and authorized personnel. State Police reserves the right to disapprove any service personnel if there is just cause to do so.

TECHNICAL SERVICE
A technical representative of the Contractor shall be available to the State by telephone at (800) 800-8143.

MAINTENANCE PROGRAM
This Contract requires that a Maintenance Program be in effect to cover each instrument purchased throughout the Contract period. Service shall be performed by the Contractor as part of this Contract. All requests for repairs and/or service must be performed within 48 hours of request. A yearly price for the Maintenance Program to apply to each instrument is to be indicated on the attached Item Listing. All costs associated with the Maintenance Program, including parts, labor, etc., are included in the price. No additional charges will be accepted.

The Maintenance Program includes the following two (2) components:

1. 120-Day Service – Requires that each instrument be looked at every 120 days (maximum) throughout the entire length of this Contract, as a form of preventative maintenance, in order to keep all instruments operating properly. When the 120-Day Service is performed on a particular instrument, all work shall be completed within one (1) calendar day after the 120-Day Service has begun on that instrument. Indicated below are the tasks that shall be included and performed, at a minimum, as part of the 120-Day Service requirement. However this list may be modified by the State throughout this Contract period.

    A. Certification of accuracy in accordance with existing statutes and administrative rules relating to blood/breath alcohol testing. This shall be accomplished by using a 0.040, 0.080, and 0.200 wet bath. The Contractor shall provide all solutions required to perform these tests. An independent laboratory report shall be submitted to State Police to verify that each batch of solutions is acceptable.

        a. Calibrate the instrument if needed.
        b. Check for interfering substances such as acetone, radio, etc.
        c. Check internal standard.
        d. Perform a diagnostic check on the instrument.
        e. Check and clean printer (lubricate if needed). Replace ink jet cartridge, ribbon, and any other accessories associated with the printer except evidence cards or tape, if necessary.
        f. Clean instrument and accessories as needed, including the fan.
        g. Check breath tube and replace, if needed.
        h. Check the computer battery voltage.
        i. Perform routine maintenance in order to keep all State of Michigan owned simulators operational. State Police will verify that all simulators are kept in proper working condition prior to establishment of this Contract. Each instrument will be assigned on simulator that will require this maintenance.
        j. Certification of compliance with State Police guidelines, procedures, policies, and official orders.
        k. After the above tasks have been completed on a particular instrument as part of the 120-Day Service, the Contractor shall guarantee the accuracy and precision of the instrument at the location where the instrument will be used.

2. General Service Work – requires that the Contractor perform whatever service is necessary in order to keep the instruments fully operational. If an instrument breaks down and is not operating properly, the Contractor has two (2) calendar days, after notification by the user, to have the instrument operational or have an operational instrument at that location. This shall be accomplished by doing one of the following:

a. The service personnel can visit the location and fix the instrument on-site whenever possible.

b. If the service personnel arrives to make repairs and discovers that the instrument cannot be fixed on-site, the service personnel may leave a temporary replacement instrument (loaner) to use while the other instrument is being repaired.

c. If the service personnel arrives to make repairs and discovers that the instrument cannot be fixed on-site and the service personnel does not have a replacement available, the service personnel may telephone the factory and have a loaner shipped to the user overnight.

d. If the State determines that the original instrument "persistently fails", the Contractor will be required to replace the original instrument with a new instrument at no additional charge to the State. "Persistently fails" refers to an "unreliable instrument". If it is suspected that an instrument is unreliable, a review of the service reports will be done, and a decision will be made as to whether the instrument is actually unreliable and has seriously impaired the productivity of the program. If a component of an instrument is considered unacceptable, just the component may be replaced. However, if the same component "persistently fails" and is considered unreliable, the entire instrument shall be replaced with a new instrument.

e. After any General Service Work has been completed on a particular instrument, The Contractor shall guarantee the accuracy and precision of the instrument at the location where the instrument will be used.

The Contractor shall agree to have an adequate number of replacement units available in order to comply with the requirements described above.

The Contractor is responsible for maintaining the official maintenance record for each instrument. Upon completion of any Maintenance Program work, that work shall be recorded by the Contractor at the location and on forms to be developed and provided by the State Police. Copies of all maintenance records shall be provided to the State when requested. The forms developed by the State Police will consist of the following information at a minimum:

Serial/Model number of the instrument being serviced;
Location of the instrument being serviced;
Date of service performed; and
Type of service performed, including explanation of the parts replaced.

The Contractor shall not utilize or employ any persons presently employed by State Police to perform any Maintenance Program work on the instruments.

The Contractor shall agree to continue to provide the Maintenance Program for each instrument after this Contract expires. Upon expiration of this Contract, a separate Contract will be developed to cover the Maintenance Program. The most recent price, the escalation clause, and all terms and conditions and other requirements applying to the Maintenance Program from this Contract will be carried into the new Contract.

ORDERING PROCESS

When the Contractor's representative performs 120-day service on an instrument, they will check that particular location's stock of mouthpieces, evidence tickets, and alcohol solutions. The Contractor's representative will determine how many mouthpieces, evidence tickets, and alcohol solutions are needed and will notify someone at that location. The location will fill out an order form for the quantity specified for each of the three (3) items by the Contractor's representative. The Contractor's representative will then call the order in to the Contractor's office. A copy of the order form should be forwarded to the State Police Alcohol Enforcement Unit, a copy should be retained at the location, and the Contractor shall retain a copy. The Contractor's office will ship all the items needed directly to the ordering location.

If a location needs any of the three (3) items prior to their scheduled 120-day service, that location can either send an order to the contractor's office or call the office and place an order over the phone. If the order is placed by phone, a written order should also be sent to the Contractor's office. All items ordered will then be shipped directly to the ordering location.

The minimum order for each item is as follows:

Mouthpieces – 200 each
Evidence Tickets – 200 each
Alcohol – 50 each

On the first Monday of each month, the Contractor will submit an invoice to the State Police Alcohol Enforcement Unit for all mouthpieces delivered to all locations in the previous month. Included with the invoice shall be a copy of each individual order form filled out by each location in the previous month. State Police will then issue a confirming purchase order for the total number of mouthpieces ordered in the previous month for all locations. Payment will be made based on this purchase order and the Contractor's invoice.

1.6.1 Customer Service

Customer service is available during normal business hours. The company will receive orders by facsimile to (419) 526-90446, telephone at (800) 800-8143, or by written purchase order.

The Contractor must have internal controls, approved by DTMB-Purchasing Operations, to: (a) ensure that only authorized individuals place orders; and (b) verify any orders that appear to be abnormal.

The Contractor must have: (a) one or more knowledgeable individual(s) specifically assigned to State of Michigan accounts that will respond to State agency inquiries promptly; and (b) a statewide toll-free number for customer service calls.

1.6.2 Research and Development

The Contractor is always improving products, and investing in research and development as capital is available to do so.

1.6.3 Quality Assurance Program

The Company operates under MIL STD 790F Quality Assurance Program.

1.6.4 Warranty for Deliverable(s)

The Contractor agrees to the Warranty terms contained in Section 2.13.

1.6.5 Special Incentives – Deleted, Not Applicable

1.6.6 Energy Efficiency – Deleted, Not Applicable

1.6.7 Environmental Requirements – Deleted, Not Applicable

1.6.8 Recycled Content and Recyclability

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

___0__ % (total estimated percentage of recovered material)

___35__% (estimated percentage of post-consumer material)

___0___ % (estimated percentage of post-industrial waste)

(b) **Packaging**. The State prefers packaging materials that:

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

1.6.9 Materials Identification and Tracking

(a) **Hazardous Chemical Identification**. The Contractor must list 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.

Chemical (if none, enter 'None')	Identification Number
None	

(b) **Mercury Content**. Under MCL 18.1261d, the Contractor must offer mercury-free products whenever possible. The Contractor must explain if it intends to provide products containing mercury and whether cost competitive alternatives exist. If cost competitive alternatives do not exist, the Contractor must disclose the amount or concentration of mercury and justification as to why this particular product is essential. All products containing mercury must be labeled as containing mercury.

(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.

(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.

1.7 Extended Purchasing

1.7.1 MiDEAL

The Management and Budget Act, MCL 18.1263, permits the State to provide purchasing services to any city, village, county, township, school district, intermediate school district, non-profit hospital, institution of higher education, or community or junior college (MiDEAL Members). A current listing of approved MiDEAL Members is available at: www.michigan.gov/mideal. Estimated requirements for MiDEAL Members are not included in the quantities shown in this Contract.

The Contractor must check one box below:

[X] Deliverable(s) will be supplied to the State and MiDEAL Members according to the terms and prices quoted, subject to Section 2.22.1, MiDEAL Requirements.

[___] Deliverable(s) will not be supplied to MiDEAL Members.

1.7.2 State Employee Purchases – Deleted, Not Applicable

Article 2 – Terms and Conditions

2.1 Contract Term

2.1.1 Contract Term

This Contract term begins September 1, 2011, and expires August 31, 2014. All outstanding Purchase Orders will expire upon the termination of the Contract for any of the reasons listed in Section 2.16, Termination by the State, 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 term will remain in effect until the next September 30.

2.1.2 Options to Renew

This Contract may be renewed for up to four (4) additional one (1) year period(s). Renewal must be by mutual written agreement of the parties, not less than 30 days before expiration of this Contract.

2.2 Payments and Taxes

2.2.1 Fixed Prices for Deliverable(s)

Prices are fixed for all Deliverable(s) and for all of the associated payment milestones and amounts.

2.2.2 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 45 days after receipt.

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

2.2.4 Pro-ration [Deleted, Not Applicable]

2.2.5 Final Payment and Waivers

The Contractor's acceptance of final payment by the State constitutes a waiver of all claims by the 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 Deliverable(s) not reasonably known to be defective or substandard.

2.2.6 Electronic Payment Requirement

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

2.2.7 Employment Taxes

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

2.2.8 Sales and Use Taxes

The Contractor must register and remit sales and use taxes on taxable sales of tangible personal property or services delivered into the State. If the 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 (a) 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 (b) 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.

2.3 Contract Administration

2.3.1 Issuing Office

This Contract is issued by DTMB-Purchasing Operations on behalf of MSP (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:

Paula Hurst, Buyer
Purchasing Operations
Department of Technology, Management and Budget
Mason Bldg, 2nd Floor
PO Box 30026
Lansing, MI 48909
hurstp2@michigan.gov
(517) 373-9776

2.3.2 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
Department of State Police
333 S. Grand Ave.
PO Box 30634
Lansing, MI 48909
E-mail: Olivarev1@michigan.gov
Phone: 517-241-1064
Fax: 517-241-1080

2.3.3 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.**

Sgt. Perry Curtis
Department of State Police
333 S. Grand Ave.
PO Box 30634
Lansing, MI 48909
E-mail: CurtisPD@michigan.gov
Phone: 517-241-0562
Fax: 517-241-0501

2.3.4 Contract Changes

(a) If the State requests or directs the Contractor to provide any Deliverable(s) 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 changes to this Contract. If the Contractor or the State requests a change to the Deliverable(s) or if the State requests additional Deliverable(s), 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 Deliverable(s), and any affected components of this Contract (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.

2.3.5 Price Changes

If allowed by Section 1.5.3, Price Term, the State and the Contractor will complete a pricing review three years following the Effective Date of this Contract, to allow for changes based on actual costs incurred, and every 365 days thereafter. 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).

(a) The State may request a Review upon 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 30 days to review the supporting information and prepare any written response.

(c) In the event the Review reveals no need for modifications of any type, pricing will remain unchanged unless mutually agreed to by the parties. However, if the Review reveals that changes may be recommended, both parties will negotiate in good faith for 30 days unless extended by mutual agreement of the parties.

(d) If the supporting information reveals a reduction in prices is necessary and Contractor agrees to reduce rates accordingly, then the State may elect to exercise the next one year option, if available.

(e) If the supporting information reveals a reduction in prices is necessary and the parties are unable to reach agreement, then the State may eliminate all remaining Contract renewal options.

(f) Any changes based on the Review must be implemented through the issuance of a Contract Change Notice.

2.3.6 Notices

All notices and other communications required or permitted under this Contract must be in writing and will be considered given when delivered personally, by fax (if provided) or by e-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:

State of Michigan
DTMB-Purchasing Operations
Attention: Paula Hurst, Buyer
PO Box 30026
530 West Allegan
Lansing, MI 48909
hurstp2@michigan.gov
FAX: (517) 335-0046

If to Contractor:

National Patent Analytical Systems, Inc
2090 Harrington Memorial Rd.
Mansfield, OH 44903
djf@npas.com
fax 419-526-9446, phone

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

2.3.7 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 requested or reasonably required in order for the other party to perform its responsibilities under the Contract.

2.3.8 Assignments

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

(b) If the Contractor intends to assign this Contract or any of the Contractor's rights or duties under this Contract, the Contractor must notify the State and provide adequate information about the assignee at least 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 decrease the State's likelihood of receiving performance on this 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.

2.3.9 Equipment

The State will not provide equipment and resources unless specifically identified in the Statement(s) of Work or other Contract exhibits.

2.3.10 Facilities [Deleted, Not Applicable]

2.4 Contract Management

2.4.1 Contractor Personnel Qualifications

See Attachment C – Organizational Chart

2.4.2 Contractor Key Personnel

(a) The Contractor must provide the Contract Compliance Inspector with the names of Key Personnel. (Customer Service, Training, Accounts Receivable, Sales, Services, etc.)

(b) The Contractor must dedicate Key Personnel to perform work for the duration of this Contract as provided in Section 1.3.3, Staff, Duties, and Responsibilities..

2.4.3 Removal or Reassignment of Personnel at the State's Request

The State may require the Contractor to remove or reassign personnel if the State has legitimate, good-faith reasons articulated in a notice to the Contractor. Replacement personnel 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.

2.4.4 Contractor Personnel Location

Subject to availability, the State may allow selected Contractor personnel to use State office space.

2.4.5 Contractor Identification

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

2.4.6 Cooperation with Third Parties

The Contractor and its Subcontractors must cooperate with the State and its agents and other contractors, including the State's quality assurance personnel. The Contractor must provide reasonable access to its personnel, systems, and facilities related to this Contract to the extent that access will not interfere with or jeopardize the safety or operation of the systems or facilities.

2.4.7 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 this Contract.

2.4.8 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 this Contract in the same condition as when provided by the State, reasonable wear and tear excepted.

2.4.9 Background Checks

The State may investigate the 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 Criminal 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.

2.4.10 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. The Contractor must provide these policies to prospective personnel before requesting access from the State. Contractor personnel must comply with all physical security procedures in State facilities.

2.5 Subcontracting by Contractor

2.5.1 Contractor Responsible

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

2.5.2 State Approval of Subcontractor

(a) The Contractor may not delegate any duties under this Contract to a Subcontractor unless DTMB-Purchasing Operations gives prior approval to the delegation. Subcontractors approved by the State as of the Effective Date of this Contract are listed in Section 1.3.3 Staff, Duties, and Responsibilities. The State is entitled to receive copies of and review all subcontracts. The Contractor may delete or redact any proprietary information before providing it to the State.

(b) The State may require the Contractor to terminate and replace any Subcontractor the State reasonably finds unacceptable. The required replacement of a Subcontractor must be written and contain reasonable detail outlining the State's reasons. 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 requirement results in a delay, the delay will not be counted against any applicable Service Level Agreement (SLA).

2.5.3 Subcontract Requirements

Except where specifically approved by the State, Contractor must include the obligations in Sections 2.24.2, Media Releases, 2.4, Contract Management, 2.11, Confidentiality, 2.12, Records and Inspections, 2.13, Warranties, 2.14, Insurance, and 2.23, Laws, in all of its agreements with Subcontractors.

2.5.4 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.

2.6 Reserved

2.7 Performance

2.7.1 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.

2.7.2 Service Level Agreements -Deleted, Not Applicable

2.7.3 Liquidated Damages – Deleted, Not Applicable

2.7.4 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, 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 resume performance.

If any of the reasons listed substantially prevent, hinder, or delay the Contractor's performance of the Deliverable(s) for more than 10 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 this Contract so affected and equitably adjust charges payable to the Contractor to reflect those Deliverable(s) that are terminated. The State must pay for all Deliverable(s) 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 Deliverable(s) 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, workaround plans, or other means, including disaster recovery plans.

2.8 Acceptance of Deliverable(s)

2.8.1 Quality Assurance

By tendering any Deliverable to the State, the Contractor certifies to the State that (a) it has performed reasonable quality assurance activities; (b) it has performed any reasonable testing; and (c) 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.

2.8.2 Delivery Responsibilities

Unless otherwise specified by the State in Section 1.4.5, 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 Contract 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.

2.8.3 Process for Acceptance of Deliverable(s)

The State's 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's review period, it is by default 30 Days for a Deliverable (State Review Period). The State will notify the Contractor by the end of the State Review Period that either:

(a) the Deliverable is accepted in the form delivered by the Contractor;

(b) the Deliverable is accepted, but noted deficiencies must be corrected; or

(c) 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.

2.8.4 Acceptance of Deliverable(s)

(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 correct those deficiencies post-approval. The Contractor remains 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 amount equal to 10% of the State's cost to cure the deficiency; or (iii) fully or partially terminate this 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.

2.8.5 Process for Approval of Written Deliverable(s) -Deleted, Not Applicable

2.8.6 Process for Approval of Services

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

2.8.7 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.

2.9 Ownership - Deleted, Not Applicable

2.10 State Standards - Deleted, Not Applicable

2.11 Confidentiality

2.11.1 Confidential Information

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

(a) disclosable under the Michigan Freedom Of Information Act (FOIA);
(b) now available or becomes available to the public without breach of this Contract;
(c) released in writing by the disclosing party;
(d) obtained from a third party or parties having no obligation of confidentiality with respect to such information;
(e) publicly disclosed pursuant to federal or state law; or
(f) independently developed by the receiving party without reference to Confidential Information of the furnishing party.

2.11.2 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 the 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 a separate agreement to be bound by the confidentiality requirements of this Section.

(c) Upon termination of this 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.

2.11.3 Exclusions

The provisions of Section 2.11, 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.

2.11.4 No Obligation to Disclose

Nothing contained in Section 2.11, Confidentiality, will be construed as obligating a party to disclose any particular Confidential Information to the other party.

2.11.5 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 access, 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.

2.12 Records and Inspections

2.12.1 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 inspections.

2.12.2 Retention of Records

(a) The Contractor must retain all financial and accounting records related to this Contract for a period of seven years after the Contractor performs any work under this Contract (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.

2.12.3 Examination of Records

The State, upon 10 days' notice to the Contractor, may examine and copy any of the Contractor's records 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 requirement also applies to the records of any parent, affiliate, or subsidiary organization of the Contractor, or any Subcontractor that performs services in connection with this Contract.

2.12.4 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.

2.12.5 Errors

(a) If an audit reveals any financial errors in the records 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 forward for more than four invoices or beyond the termination of this Contract. If a balance remains after four 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.

2.13 Warranties

2.13.1 Warranties and Representations

The Contractor represents and warrants:

(a) It is capable of fulfilling and will 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 comply with this 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 Deliverable(s) 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 or 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 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 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, its affiliates, or its employees 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 this award or making of this Contract.

(j) The Contractor arrived at its proposed prices independently, without communication or agreement with any other Contractor for the purpose of restricting competition. The Contractor did not knowingly disclose its quoted prices for this Contract to any other Contractor before the award of this Contract. The Contractor made no attempt to induce any other person or entity 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 submitted 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 this Contract is awarded.

2.13.2 Warranty of Merchantability

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

2.13.3 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.

2.13.4 Warranty of Title

The Contractor must convey good title to any Deliverable(s) provided to the State. All Deliverable(s) 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. Deliverable(s) provided by the Contractor must be delivered free of any rightful claim of infringement by any third person.

2.13.5 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 one year following Final Acceptance.

(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 for the State to report equipment failures and problems.

(d) Within 48 hours 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 at State locations.

2.13.6 New Deliverable(s)

The Contractor must provide new Deliverable(s) where the 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 only where the Contractor does not have knowledge or the ability to select one or the other.

2.13.7 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 this Contract, unless DTMB-Purchasing Operations has approved a change order under Section 2.3.4, Contract Changes.

2.13.8 Consequences For Breach

In addition to any remedies available in law, if the Contractor breaches any of the warranties contained in Section 2.13, Warranties, the breach may be considered a material default.

2.14 Insurance

2.14.1 Liability Insurance

For the purpose of this Section, "State" includes its departments, divisions, agencies, offices, commissions, officers, employees, and agents.

(a) The following apply to all insurance requirements:

(i) The State, in its sole discretion, may approve the use of a fully-funded self-insurance program in place of any specified insurance identified in this Section.

(ii) 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. 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.

(iii) 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.

(iv) 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.

(b) The Contractor must:

(i) provide proof that it has obtained the minimum levels of insurance coverage indicated or required by law, whichever is greater. The insurance must protect the State from claims that are alleged or may arise 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.

(ii) waive all rights against the State for the recovery of damages that are covered by the insurance policies the Contractor is required to maintain under this Section. The Contractor's failure to obtain and maintain the required insurance will not limit this waiver.

(iii) ensure that 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.

(iv) obtain insurance, unless the State approves otherwise, from any insurer that has an A.M. Best rating of "A" or better and a financial size of VII 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.

(v) 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 years following the termination of this Contract.

(vi) pay all deductibles.

(vii) pay for and provide the type and amount of insurance checked ☑ below:

☑ **(A) Commercial General Liability Insurance**

Minimal Limits:

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

Deductable maximum:

$50,000 Each Occurrence

Additional Requirements:

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.

☐ **(B) Umbrella or Excess Liability Insurance**

Minimal Limits:

$10,000,000 General Aggregate

Additional Requirements:

Umbrella or Excess Liability limits must at least apply to the insurance required in (A), General Commercial Liability. The Contractor must list the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees, and agents as additional insureds on the certificate. The Contractor also agrees to provide evidence that insurance policies contain a waiver of subrogation by the insurance company.

☑ **(C) Motor Vehicle Insurance**

Minimal Limits:

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.

☐ **(D) Hired and Non-Owned Motor Vehicle Coverage**

Minimal Limits:

$1,000,000 Per Accident

Additional Requirements:

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 must also provide evidence that insurance policies contain a waiver of subrogation by the insurance company.

☑ **(E) Workers' Compensation Insurance**

Minimal Limits:

The Contractor must provide Workers' Compensation coverage 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.

Additional Requirements:

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.

☐ **(F) Employers Liability Insurance**

Minimal Limits:

$100,000 Each Accident;
$100,000 Each Employee by Disease
$500,000 Aggregate Disease

Additional Requirements:

The Contractor must list the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees, and agents as additional insureds on the certificate.

2.14.2 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 2.14.1, 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.

2.14.3 Certificates of Insurance and Other Requirements

Before this 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. 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 2.14.1, 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.

2.15 Indemnification

2.15.1 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.

2.15.2 Code Indemnification [Deleted, Not Applicable]

2.15.3 Employee Indemnification

In any claims against the State, its departments, agencies, 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.

2.15.4 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.

2.15.5 Continuing Obligation

The Contractor's duty to indemnify under Section 2.15, Indemnification, continues in full force and effect, notwithstanding the expiration or early cancellation of this Contract, with respect to any claims based on facts or conditions that occurred before expiration or cancellation.

2.15.6 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 notification 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, including attorney fees, 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.

2.15.7 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 attorneys' fees awarded by a court in addition to damages after litigation based on this Contract.

2.16 Termination by the State

2.16.1 Notice and Right to Cure

If the Contractor breaches this Contract, and the State, in its sole discretion, determines that this 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.

2.16.2 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 Deliverable(s) that are terminated. The State must pay for all Deliverable(s) 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 this Contract, the termination will be deemed to have been a termination under Section 2.16.3, 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.

2.16.3 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 for the State; (c) unacceptable prices for Contract changes; 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 Deliverable(s) that are terminated.

2.16.4 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-progress performed through the effective date of the termination to the extent funds are available.

2.16.5 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.

2.16.6 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-progress 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.

2.16.7 Rights and Obligations upon Termination

(a) If the State terminates this Contract for any reason, the Contractor must:

(i) stop all work as specified in the notice of termination;

(ii) take any action that may be necessary, or that the State may direct, to preserve and protect Deliverable(s) or other State property in the Contractor's possession;

(iii) return all materials and property provided directly or indirectly to the Contractor by any entity, agent, or employee of the State;

(iv) transfer title in and deliver to the State, unless otherwise directed, all Deliverable(s) intended to be transferred to the State at the termination of this 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);

(v) 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; and

(vi) take all appropriate action to secure and maintain State information confidentially in accordance with Section 2.11, Confidentiality.

(b) If the State terminates this Contract under Section 2.16.3, Termination for Convenience, the State must pay the Contractor all charges due for Deliverable(s) provided before the date of termination and, if applicable, as a separate item of payment, for work-in-progress, based on a percentage of completion determined by the State. All completed or partially completed Deliverable(s) 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 Deliverable(s). 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 Deliverable(s) 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 Deliverable(s), and may pursue completion of the Deliverable(s) by replacement contract or as the State deems expedient.

2.16.8 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.

2.16.9 Contractor Transition Responsibilities

If this Contract terminates under Section 2.16, Termination by the State, 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 120 days from the date of termination. The Contractor must provide any required reports and documentation.

2.16.10 Transition Payments

If the transition responsibilities outlined in Section 2.16.9, Contractor Transition Responsibilities, arise based on a termination of this Contract, reimbursement will be governed by the provisions of Section 2.16, Termination by the State. 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 2.16.9 that result from transition operations) at the Contract rates. The Contractor must prepare an accurate accounting from which the State and the Contractor may reconcile all outstanding accounts.

2.17 Termination by the Contractor

2.17.1 Termination

If the State breaches this 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: (a) materially breaches its obligation to pay the Contractor undisputed amounts due; (b) breaches its other obligations to an extent that makes it impossible or commercially impractical for the Contractor to complete the Deliverable(s); or (c) does not cure the breach within the time period specified in a notice of breach. The Contractor must discharge its obligations under Section 2.20, Dispute Resolution, before it terminates the Contract.

2.18 Stop Work – Deleted, Not Applicable

2.19 Reserved

2.20 Dispute Resolution

2.20.1 General

(a) The Contractor must submit any claim related to this Contract to the State under Section 2.3.6, Notices, 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.

2.20.2 Informal Dispute Resolution

(a) If, after a reasonable time following submission of a claim under Section 2.20.1, General, 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 recommendation regarding settlement of the claim. The Contractor must notify DTMB-Purchasing Operations within 21 days after the recommendation is issued whether the Contractor accepts or rejects the recommendation. Acceptance by the Contractor constitutes the final resolution of the claim addressed in the recommendation, and the Contractor may not assert that claim in any future litigation or other proceeding between the parties.

(c) The recommendation of the Director of DTMB-Purchasing Operations is not admissible in any future litigation or other proceeding between the parties. The conduct and statements made during the course of negotiations or dispute resolution under Section 2.20, Dispute Resolution, are subject to Michigan Rule of Evidence 408 and are not admissible in any future litigation or other proceeding between the parties.

(d) This section will not be construed to prohibit 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 2.20.3, Injunctive Relief.

(e) DTMB-Purchasing Operations will not mediate disputes between the Contractor and any other entity, except State agencies, concerning responsibility for performance of work.

2.20.3 Injunctive Relief

A claim between the State and the Contractor is not subject to the provisions of Section 2.20.2, Informal Dispute Resolution, where a party makes a good faith determination that a breach of this 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.

2.20.4 Continued Performance

Each party will continue performing its obligations under this Contract while a claim is being resolved, except to the extent the claim precludes performance and without limiting either party's right to terminate this Contract as provided in Section 2.16, Termination by the State or Section 2.17, Termination by the Contractor. A claim involving payment does not preclude performance.

2.21 Disclosure Responsibilities

2.21.1 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;

(ii) A parole or probation Proceeding;

(iii) A Proceeding involving the Contractor (or any Subcontractor) or any of its officers or directors under the Sarbanes-Oxley Act; and

(iv) A civil Proceeding to which the Contractor (or, if the Contractor is aware, any Subcontractor) is a party, and which involves (A) a claim that might reasonably be expected to adversely affect the viability or financial stability of the Contractor or any Subcontractor; or (B) 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 federal or state 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.

2.21.2 Other Disclosures

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

(a) becoming aware that a change in the Contractor's ownership or officers has occurred or is certain to occur; or

(b) any changes to company affiliations.

2.21.3 Call Center Disclosure – Deleted, Not Applicable

2.22 Extended Purchasing

2.22.1 MiDEAL Requirements

(a) The Contractor must ensure that all purchasers are MiDEAL Members before extending the Contract pricing.

(b) The Contractor must submit quarterly reports of MiDEAL purchasing activities to DTMB-Purchasing Operations.

(c) To the extent that MiDEAL Members purchase Deliverable(s) under this Contract, the quantities of Deliverable(s) purchased will be included in determining the appropriate rate wherever tiered pricing based on quantity is provided.

(d) The Contractor must submit invoices to and receive payment from MiDEAL Members on a direct and individual basis.

2.22.2 State Administrative Fee

The Contractor must collect an administrative fee on all sales transacted by MiDeal members only under this Contract, and remit the fee within 30 days after the end of each quarter. The administrative fee equals 2 percent of the total quarterly sales reported.

The Contractor must pay the administrative fee by check payable to the State of Michigan. The Contractor must identify the check as an "Administrative Fee" and include the following information with the payment: the applicable Contract Number, the total quarterly sales by volume and dollar amount, and the quarter covered.

The Contractor must send the check to the following address:

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

2.22.3 State Employee Purchase Requirements – Deleted, Not Applicable

2.23 Laws

2.23.1 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.

2.23.2 Compliance with Laws

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

2.23.3 Jurisdiction

Any dispute arising from this 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.

2.23.4 Nondiscrimination

In the performance of this 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 Elliott-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 this Contract.

2.23.5 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 this 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 this 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.

2.23.6 Environmental Provision

For the purposes of this section, "Hazardous Materials" include 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: (i) immediately stop all affected work; (ii) notify the State in accordance with Section 2.3.6, Notices; (iii) notify any entities required by law; and (iv) 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.

2.23.7 Freedom of Information

This Contract and all information submitted to the State by the Contractor is subject to the Michigan Freedom of Information Act (FOIA), 1976 PA 442, MCL 15.231, *et seq*.

2.23.8 Workplace Safety and Discriminatory Harassment [Deleted, Not Applicable]

2.23.9 Prevailing Wage [Deleted, Not Applicable]

2.23.10 Abusive Labor Practices

The Contractor may not furnish any Deliverable(s) that were produced fully or partially by forced labor, convict labor, forced or indentured child labor, or indentured servitude.

“Forced or indentured child labor” means all work or service (1) exacted from any person under the age of 18 under the menace of any penalty for its nonperformance and for which the worker does not offer himself voluntarily; or (2) performed by any person under the age of 18 under a contract the enforcement of which can be accomplished by process or penalties.

2.24 General Provisions

2.24.1 Bankruptcy and Insolvency

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-progress and finish the work-in-progress 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 dismissed 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-progress to indicate ownership by the State. To the extent reasonably possible, work-in-progress must be stored separately from other stock and marked conspicuously with labels indicating State ownership.

2.24.2 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 by the State, and only in accordance with the instructions from the State.

2.24.3 Contract Distribution

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

2.24.4 Permits

Contractor must obtain and pay any associated costs for all required governmental permits, licenses, and approvals for the delivery, installation, and performance of this Contract.

2.24.5 Website Incorporation

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

2.24.6 Future Bidding Preclusion [Deleted, Not Applicable]

2.24.7 Antitrust Assignment

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

2.24.8 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 Deliverable(s) under this Contract will provide the State with priority.

2.24.9 Legal Effect

The State is not liable for costs incurred by the Contractor or for payment(s) under this Contract until the Contractor is authorized to perform under Section 1.2.4, Ordering.

2.24.10 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.

2.24.11 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:

(a) Mandatory sections (2.1.1, Contract Term, 2.24.9, Legal Effect, 2.2.2, Payment Deadlines, 2.14, Insurance, 2.15, Indemnification, 2.16, Termination, 2.23, Governing Law, 2.15.7, Limitation of Liability);
(b) The most recent Statement of Work related to this Contract;
(c) All sections from Article 2 - Terms and Conditions, not listed in subsection (a);
(d) Any attachment or exhibit to this Contract document(s);
(e) Any Purchase Order, Direct Voucher, or Procurement Card Order issued under this Contract; and
(f) Contractor Responses contained in any of the RFP documents.

2.24.12 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.

2.24.13 Form, Function and Utility – Deleted, Not Applicable

2.24.14 Reformation and Severability

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

2.24.15 Approval

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

2.24.16 No Waiver of Default

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

2.24.17 Survival

The provisions of this Contract that impose continuing obligations, including warranties, indemnification, and confidentiality, will survive the expiration or termination of this Contract.

Attachment A, Price Proposal

Item No.	Est. 3 year usage	Unit of Issue	Description	Unit Price	Total pricing for 3 years
1.	700	Ea	Repairs, Maintenance & Certification of Breath Alcohol Detecting Devices, maintenance of the detecting devices per the specifications.	$985.00	$689,500.00
2.	210,000	Ea	Mouthpiece #1, Guth “Ultrap” per the specifications.	(*) $.31	$65,100.00
3.	210,000	Ea	Mouthpiece #2, RepCo "Ultrap" per the specifications	Discontinued	
4.	276,000	Ea	Evidence Tickets per the specifications	(**) $.21	$57,960.00
5.	300	Ea	BAC Datamaster Instrument DMT with dry gas option and printer.	$6,890.00	$2,067,000.00
6.	3,600	Hrs	Person to assist with “Operator” Training	$55.00	$198,000.00
			Total Bid Amount:		$3,077,560.00

(*) Per order discounts on mouthpiece #1 Guth “Ultrap”: For quantity of 200, price is $.31 each; qty of 400 price is $.28 each, qty. of 1000 price is $.26 each

(**) Per order discounts on Evidence Tickets: For quantity of 200, price is $.21 each; qty of 400 price is $.20 each, qty. of 1000 price is $.19 each

Lead Time for Delivery: 45 days ARO, DataMaster DMT instruments only. Remaining items ship within 1-5 business days. All items FOB Destination.

All bids must be F.O.B. Destination with transportation charged prepaid on the order. Other F.O.B. terms will not be accepted. **Contractor meets said requirements as provided above, without exception.**

Attachment B

Sample Invoice

Invoice from and remit to:
National Patent Analytical Systems, Inc.
Po Box 1435, 2090 Harrington Mem. Rd.
Mansfield, Ohio 44901
419-526-6727

Sales Ord No 44447
RMA No. N/A

Invoice No. 68574 Page 1
Invoice Date 7/19/11
Cust. No. MI2073W
Your PO No: Kalamazoo Coiunty Sheriff's
Fob Mfd
Shipped Via FedEx
Terms Net 30 Days

Sold To:
Michigan State Police
Traffic Safety Division
PO Box 30634
Lansing Mi 48913

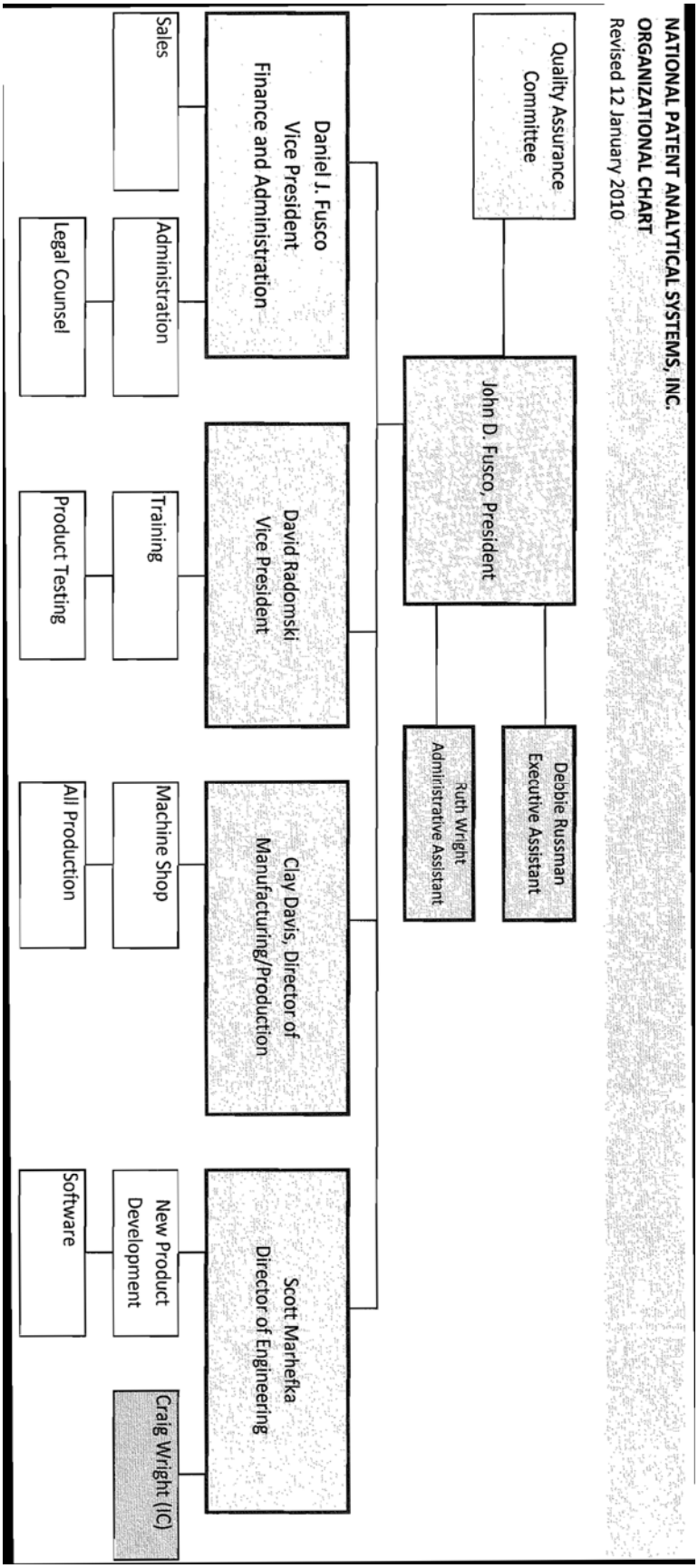
Shipped To:
Kalamazoo Coiunty Sheriff's Office
Sgt.Donald Ester
1500 Lamont Street
Kalamazoo MI 49048

Qty Ship	Qty B/O	U/M	Part No	Description	Date Ship	Price Ea	Extension

Please cite invoice No. on Payment

Total This Invoice 166.47

Attachment C – Organizational Chart


NATIONAL PATENT ANALYTICAL SYSTEMS, INC.
ORGANIZATIONAL CHART
Revised 12 January 2010
Quality Assurance Committee
John D. Fusco, President
Debbie Russman Executive Assistant
Ruth Wright Administrative Assistant
Daniel J. Fusco Vice President Finance and Administration
Sales
Administration
Legal Counsel
David Radomski Vice President
Training
Product Testing
Clay Davis, Director of Manufacturing/Production
Machine Shop
All Production
Scott Marhefka Director of Engineering
New Product Development
Software
Craig Wright (IC)