

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

November 7, 2012

CHANGE NOTICE NO. 071B2200040

to

CONTRACT NO. 1

between

THE STATE OF MICHIGAN

and

NAME & ADDRESS OF CONTRACTOR:	PRIMARY CONTACT	EMAIL
Gordon Food Service, Inc. PO Box 1787 Grand Rapids, MI 49501	Marla Troutman	Marla.Troutman@gfs.com
	TELEPHONE	CONTRACTOR #, MAIL CODE
	(800) 968-7500 vm 5601	

STATE CONTACTS	AGENCY	NAME	PHONE	EMAIL
CONTRACT COMPLIANCE INSPECTOR	DTMB	Sue Cieciva	(517) 373-0301	ciecivas@michigan.gov
BUYER	DTMB	Sue Cieciva	(517) 373-0301	ciecivas@michigan.gov

CONTRACT SUMMARY:			
DESCRIPTION: Prime Vendor Food and Supplies-Statewide (HPS#51 Food Purchasing Program)			
INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW
December 7, 2011	December 6, 2012	None	December 6, 2012
PAYMENT TERMS	F.O.B	SHIPPED	SHIPPED FROM
Refer to Section 1.5.2 Quick Payment Terms	Delivered	Refer to Section 1.4.1 Time Frames	N/A
ALTERNATE PAYMENT OPTIONS:			AVAILABLE TO MiDEAL PARTICIPANTS
<input type="checkbox"/> P-card <input type="checkbox"/> Direct Voucher (DV) <input type="checkbox"/> Other			<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
MINIMUM DELIVERY REQUIREMENTS:			
\$500.00			

DESCRIPTION OF CHANGE NOTICE:				
EXTEND CONTRACT EXPIRATION DATE	EXERCISE CONTRACT OPTION YEAR(S)	EXTENSION BEYOND CONTRACT OPTION YEARS	LENGTH OF OPTION/EXTENSION	EXPIRATION DATE AFTER CHANGE
<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	<input type="checkbox"/>	<input type="checkbox"/>		
VALUE/COST OF CHANGE NOTICE:		ESTIMATED REVISED AGGREGATE CONTRACT VALUE:		
\$124,000.00		\$3,838,209.00		
This Contract is hereby INCREASED by \$124,000.00.				
All other terms, conditions, specifications and pricing remain unchanged.				
Per agency request dated October 24, 2012 and DTMB, Procurement approval.				

STATE OF MICHIGAN
 DEPARTMENT OF TECHNOLOGY, MANAGEMENT AND BUDGET December 15, 2011
 PROCUREMENT
 P.O. BOX 30026, LANSING, MI 48909
 OR
 530 W. ALLEGAN, LANSING, MI 48933

**NOTICE
 OF
 CONTRACT NO. 071B2200040**
 (Supercedes Contract No. 071B9200017)
 between
THE STATE OF MICHIGAN
 and

NAME & ADDRESS OF CONTRACTOR Gordon Food Service, Inc. PO Box 1787 Grand Rapids, MI 49501 Email: Marla.Troutman@gfs.com	TELEPHONE (800) 968-7500 vm 5601 Marla Troutman CONTRACTOR NUMBER/MAIL CODE BUYER/CA (517) 373-0301 Sue Cieciva, Buyer Specialist
Contract Compliance Inspector: Sue Cieciva (517) 373-0301 Email: cieciwas@michigan.gov Prime Vendor Food and Supplies-Statewide (HPS#51 Food Purchasing Program)	
CONTRACT PERIOD: One Year From: December 7, 2011 To: December 6, 2012	
TERMS Refer to Section 1.5.2 Quick Payment Terms	SHIPMENT Refer to Section 1.4.1 Time Frames
F.O.B. Delivered	SHIPPED FROM N/A
ALTERNATE PAYMENT OPTIONS: <input type="checkbox"/> P-card <input type="checkbox"/> Direct Voucher (DV) <input type="checkbox"/> Other	
MINIMUM DELIVERY REQUIREMENTS \$500.00	
MISCELLANEOUS INFORMATION:	

The terms and conditions of this Contract are attached.

Estimated Contract Value: \$3,714,209.00

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. 071B2200040
 (Supercedes Contract No. 071B9200017)

between
THE STATE OF MICHIGAN
 and

NAME & ADDRESS OF CONTRACTOR Gordon Food Service, Inc. PO Box 1787 Grand Rapids, MI 49501 Email: Marla.Troutman@gfs.com	TELEPHONE (800) 968-7500 vm 5601 Marla Troutman CONTRACTOR NUMBER/MAIL CODE BUYER/CA (517) 373-0301 Sue Cieciva, Buyer Specialist
Contract Compliance Inspector: Sue Cieciva (517) 373-0301 Email: ciecivas@michigan.gov Prime Vendor Food and Supplies-Statewide (HPS#51 Food Purchasing Program)	
CONTRACT PERIOD: One Year From: December 7, 2011 To: December 6, 2012	
TERMS Refer to Section 1.5.2 Quick Payment Terms	SHIPMENT Refer to Section 1.4.1 Time Frames
F.O.B. Delivered	SHIPPED FROM N/A
ALTERNATE PAYMENT OPTIONS: <input type="checkbox"/> P-card <input type="checkbox"/> Direct Voucher (DV) <input type="checkbox"/> Other	
MINIMUM DELIVERY REQUIREMENTS \$500.00	
MISCELLANEOUS INFORMATION: <p>The terms and conditions of this Contract are attached. In the event of any conflicts between the specifications, and terms and conditions, indicated by the State and those indicated by the vendor, those of the State take precedence.</p> <p>Estimated Contract Value: \$3,714,209.00</p>	

FOR THE CONTRACTOR:

Click to type name of firm here

 Firm Name

 Authorized Agent Signature

Click to type name of agent; or, delete this box

 Authorized Agent (Print or Type)

 Date

FOR THE STATE:

 Signature

Click to type buyer's name, Buyer

 Name/Title

Click to type buyer's division name Division

 Division

 Date



Table of Contents

Definitions.....8

Article 1 – Statement of Work9

1.1 Project Identification.....9

1.1.1 Project Request.....9

1.1.2 Background – Deleted, Not Applicable.....9

1.2 Scope of Work and Deliverable(s).....9

1.2.1 In Scope – [Deleted, Not Applicable].....9

1.2.2 Deliverable(s)9

1.2.3 Quantity9

1.2.4 Ordering.....9

1.2.5 Alternate Bids - Deleted, Not Applicable..... 11

1.3 Management and Staffing11

1.3.1 Project Management..... 11

1.3.2 Reports..... 11

1.3.3 Staff, Duties, and Responsibilities- Deleted, Not Applicable..... 11

1.3.4 Meetings- Deleted, Not Applicable 11

1.3.5 Place of Performance..... 11

1.3.6 Reserved 11

1.3.7 Binding Commitments – Deleted, Not Applicable 11

1.3.8 Training – Deleted, Not Applicable..... 11

1.3.9 Security – Deleted, Not Applicable 11

1.4 Delivery and Acceptance11

1.4.1 Time Frames..... 11

1.4.2 Minimum Order..... 12

1.4.3 Packaging 12

1.4.4 Palletizing..... 12

1.4.5 Delivery Term 12

1.4.6 Acceptance Process 12

1.4.7 Criteria..... 12

1.5 Pricing.....12

1.5.1 Pricing 12

1.5.2 Quick Payment Terms 13

1.5.3 Price Term 13

1.5.4 Tax Excluded from Price..... 13

1.5.5 Invoices 14

1.6 Commodity Requirements14

1.6.1 Customer Service..... 14

1.6.2 Research and Development 14

1.6.3 Quality Assurance Program..... 14

1.6.4 Warranty for Deliverable(s)..... 15

1.6.5 Special Incentives..... 15

1.6.6 Energy Efficiency 19

1.6.7 Environmental Requirements 19

1.6.8 Recycled Content and Recyclability..... 19

1.6.9 Materials Identification and Tracking 19

1.7 Extended Purchasing – Deleted, Not Applicable20

1.7.1 MiDEAL- Deleted, Not Applicable..... 20

1.7.2 State Employee Purchases – Deleted, Not Applicable 20

1.8 Additional Requirements20

1.8.1 Fuel Surcharge..... 20

Article 2 – Terms and Conditions.....20



2.1 Contract Term21

2.1.1 Contract Term..... 21

2.1.2 Options to Renew – Deleted, Not Applicable..... 21

2.2 Payments and Taxes21

2.2.1 Fixed Prices for Deliverable(s) 21

2.2.2 Payment Deadlines 21

2.2.3 Invoicing and Payment – In General [Deleted, Not Applicable]..... 21

2.2.4 Pro-ration [Deleted, Not Applicable] 21

2.2.5 Final Payment and Waivers 21

2.2.6 Electronic Payment Requirement 21

2.2.7 Employment Taxes..... 21

2.2.8 Sales and Use Taxes 21

2.3 Contract Administration22

2.3.1 Issuing Office 22

2.3.2 Contract Compliance Inspector 22

2.3.3 Project Manager – Deleted, Not Applicable..... 22

2.3.4 Contract Changes..... 22

2.3.5 Price Changes 23

2.3.6 Notices..... 23

2.3.7 Covenant of Good Faith 23

2.3.8 Assignments 23

2.3.9 Equipment 23

2.3.10 Facilities [Deleted, Not Applicable] 23

2.4 Contract Management.....24

2.4.1 Contractor Personnel Qualifications..... 24

2.4.2 Contractor Key Personnel..... 24

2.4.3 Removal or Reassignment of Personnel at the State's Request 24

2.4.4 Contractor Personnel Location 24

2.4.5 Contractor Identification..... 24

2.4.6 Cooperation with Third Parties..... 24

2.4.7 Relationship of the Parties 24

2.4.8 Contractor Return of State Equipment/Resources 25

2.4.9 Background Checks 25

2.4.10 Compliance With State Policies..... 25

2.5 Subcontracting by Contractor25

2.5.1 Contractor Responsible 25

2.5.2 State Approval of Subcontractor 25

2.5.3 Subcontract Requirements 25

2.5.4 Competitive Selection 25

2.6 Reserved.....26

2.7 Performance26

2.7.1 Time of Performance 26

2.7.2 Service Level Agreements [Deleted, Not Applicable] 26

2.7.3 Liquidated Damages – Deleted, Not Applicable 26

2.7.4 Excusable Failure 26

2.8 Acceptance of Deliverable(s).....26

2.8.1 Quality Assurance 26

2.8.2 Delivery Responsibilities..... 27

2.8.3 Process for Acceptance of Deliverable(s)..... 27

2.8.4 Acceptance of Deliverable(s) 27

2.8.5 Process for Approval of Written Deliverable(s) [Deleted, Not Applicable]..... 27

2.8.6 Process for Approval of Services [Deleted, Not Applicable] 28

2.8.7 Final Acceptance 28

2.9 Ownership [Deleted, Not Applicable]28

2.10 State Standards [Deleted, Not Applicable]28



2.11 Confidentiality.....28

2.11.1 Confidential Information 28

2.11.2 Protection and Destruction of Confidential Information 28

2.11.3 Exclusions..... 28

2.11.4 No Obligation to Disclose..... 28

2.11.5 Security Breach Notification 28

2.12 Records and Inspections.....29

2.12.1 Inspection of Work Performed..... 29

2.12.2 Retention of Records 29

2.12.3 Examination of Records..... 29

2.12.4 Audit Resolution..... 29

2.12.5 Errors 29

2.13 Warranties.....29

2.13.1 Warranties and Representations..... 29

2.13.2 Warranty of Merchantability 30

2.13.3 Warranty of Fitness for a Particular Purpose 30

2.13.4 Warranty of Title 30

2.13.5 Equipment Warranty – Deleted, Not Applicable 30

2.13.6 New Deliverable(s)..... 31

2.13.7 Prohibited Products..... 31

2.13.8 Consequences For Breach..... 31

2.14 Insurance31

2.14.1 Liability Insurance 31

2.14.2 Subcontractor Insurance Coverage 33

2.14.3 Certificates of Insurance and Other Requirements 33

2.15 Indemnification33

2.15.1 General Indemnification 33

2.15.2 Code Indemnification [Deleted, Not Applicable]..... 33

2.15.3 Employee Indemnification..... 33

2.15.4 Patent/Copyright Infringement Indemnification 34

2.15.5 Continuing Obligation 34

2.15.6 Indemnification Procedures 34

2.15.7 Limitation of Liability 35

2.16 Termination by the State.....35

2.16.1 Notice and Right to Cure 35

2.16.2 Termination for Cause 35

2.16.3 Termination for Convenience 36

2.16.4 Termination for Non-Appropriation 36

2.16.5 Termination for Criminal Conviction 36

2.16.6 Termination for Approvals Rescinded..... 36

2.16.7 Rights and Obligations upon Termination 36

2.16.8 Reservation of Rights 37

2.16.9 Contractor Transition Responsibilities 37

2.16.10 Transition Payments 37

2.17 Termination by the Contractor37

2.17.1 Termination 37

2.18 Stop Work.....37

2.18.1 Stop Work Order..... 37

2.18.2 Termination of Stop Work Order..... 37

2.18.3 Allowance of the Contractor's Costs..... 38

2.19 Reserved.....38



2.20 Dispute Resolution.....38

2.20.1 General.....38

2.20.2 Informal Dispute Resolution.....38

2.20.3 Injunctive Relief38

2.20.4 Continued Performance39

2.21 Disclosure Responsibilities.....39

2.21.1 Disclosure of Litigation39

2.21.2 Other Disclosures.....39

2.21.3 Call Center Disclosure – Deleted, Not Applicable39

2.22 Extended Purchasing – Deleted, Not Applicable39

2.22.1 MiDEAL Requirements - – Deleted, Not Applicable.....39

2.22.2 State Administrative Fee - – Deleted, Not Applicable.....39

2.22.3 State Employee Purchase Requirements - – Deleted, Not Applicable.....39

2.23 Laws.....39

2.23.1 Governing Law39

2.23.2 Compliance with Laws40

2.23.3 Jurisdiction.....40

2.23.4 Nondiscrimination40

2.23.5 Unfair Labor Practices40

2.23.6 Environmental Provision40

2.23.7 Freedom of Information.....41

2.23.8 Workplace Safety and Discriminatory Harassment [Deleted, Not Applicable].....41

2.23.9 Prevailing Wage [Deleted, Not Applicable]41

2.23.10 Abusive Labor Practices41

2.24 General Provisions.....41

2.24.1 Bankruptcy and Insolvency41

2.24.2 Media Releases41

2.24.3 Contract Distribution41

2.24.4 Permits41

2.24.5 Website Incorporation41

2.24.6 Future Bidding Preclusion [Deleted, Not Applicable].....41

2.24.7 Antitrust Assignment42

2.24.8 Disaster Recovery42

2.24.9 Legal Effect42

2.24.10 Entire Agreement.....42

2.24.11 Order of Precedence42

2.24.12 Headings42

2.24.13 Form, Function and Utility42

2.24.14 Reformation and Severability42

2.24.15 Approval42

2.24.16 No Waiver of Default42

2.24.17 Survival.....42

Attachments

- Systems Advantage Program Form
- GFS/HPS Contract #51 Volume/Commitment Form



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 the RFP.

Chronic Failure - as defined in applicable Service Level Agreements.

Contract – based on the 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 the 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

1.1.1 Project Request

This is a Prime Vendor Food Contract. The purpose of this Contract is to provide various food, disposable paper products, and other supplies to various state agencies, primarily the Department of Military and Veterans Affairs, Grand Rapids Home for Veterans and the Department of Community Health. This contract is based on the Hospital Purchasing Service (HPS) Food Purchasing Program (HPS Agreement #51).

1.1.2 Background - Deleted, Not Applicable

1.2 Scope of Work and Deliverable(s)

1.2.1 In Scope – [Deleted, Not Applicable]

1.2.2 Deliverable(s)

The State of Michigan requires a contract for various food and disposable paper products and supplies. The Contractor shall provide the food and disposable paper products and supplies as specified and deliver in the time frame specified below.

1.2.3 Quantity

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

1.2.4 Ordering

The State Agency will issue a Purchase Order to order any Deliverable(s). The Contractor is not authorized to begin performance until receipt of a Purchase Order.

All orders should be place through your GFS Customer Development Specialist or GFS Experience at gfs.com.

Gordon Food Service
PO Box 1787
Grand Rapids, MI 49501
800-968-7500 - Main Office
800-968-4164 - Customer Service
Contact: Matt Schichtel, National Accounts Healthcare Manager

Please indicate on your purchase order, "Prices per HPS #51."

Additions to Your Order

To ensure that your delivery reaches you in a timely manner, we request that you limit additions to your order when possible. Any add-on orders must be phoned in by 11:00 AM Eastern Time on the day prior to the day that the order is delivered. We will make every effort to accommodate your request; however, additions cannot always be accepted because of limited space on our trucks. If our truck is filled to capacity, the GFS Representative will alert you at the time of the call, or will notify you as soon as they are informed of the issue by our transportation department.

Substitutions

Per GFS policy, we will not make any substitution or back order without the approval of our customer. Our electronic order entry system and/or your GFS Representative will notify the HPS member in the event that an item is temporarily out-of-stock. Together, they can take the necessary steps toward approval of a substitution. With member consent, the substitution will be ordered in place of the regular item.



ELECTRONIC CAPABILITIES:

GFS Experience

For your convenience, Gordon Food Service has designed an Internet-based ordering system called GFS Experience. With just a few clicks, you'll be able to:

- Place an order
- View an order
- Check an account balance
- Pay invoices

User friendly GFS Experience allows you to manage your account online while simultaneously providing access to other useful resources. Additional features include e-Zines, Daily Tips, Cookbooks, a Resource Library, a Calendar of Events, and Articles on Practical Business Solutions.

HPS members also have a "contract icon" available to them on GFS Experience. This icon highlights the HPS negotiated savings at the item level and helps direct the member to utilize the manufacturer's contract to bring additional savings to their bottom line. This feature is only available on GFS Experience.

EDI

Our Electronic Data Interchange (EDI) capabilities allow for inter-company computer-to-computer exchange of business documents in standard formats. We are able to produce reports in a customized file layout to be transferred electronically to you. Transactions available through EDI include invoices, payment/remittance advice, price/sales catalog, purchase orders, purchase order acknowledgement, and daily invoice feeds. Use of EDI:

- Improves the efficiency and accuracy of ordering
- Allows more control over invoices and credit memos
- Increases timeliness and accuracy of payment application
- Reduces non-value-added activities
- Enhances business relationships
- Removes excess paperwork and clerical costs
- Helps you gain a competitive advantage
- Simplifies business processes

GFS Plus

Twenty-four-hour access to all products, pricing, and nutrition information is available through our GFS Plus software. With this program, you can access the entire GFS catalog and place orders. GFS Plus lets you create your own recipes and develop full menu concepts using the Recipe and Menu Manager.

GFS' proprietary Inventory Manager, another GFS Plus module, tracks inventory and monitors usage to facilitate accurate ordering decisions. The Catering Manager helps develop customized catering menus and determine consistent pricing.

Gordon Food Service will provide training for both GFS Plus and GFS Experience upon installation of computer software.

GFS Trans Pro

Our Sales Service Team is equipped with our GFS Trans Pro mobile technology. This hand-held system goes everywhere our drivers go, speeding the check-in process and improving accuracy.

Each product is scanned as it comes off the truck at your site to assure that HPS members receive a complete order. If any adjustments need to be made to the invoice, your Sales Serviceman can make them quickly and easily. GFS Trans Pro electronically captures a signature to confirm that you have received the delivery, generating less paperwork and increasing accuracy. Your members spend less time checking in orders and tracking down products, allowing them to spend more time on their business.



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 Department of Technology, Management and Budget, Purchasing Operations.

1.3.2 *Reports*

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

1.3.3 *Staff, Duties, and Responsibilities – Deleted, Not Applicable*

1.3.4 *Meetings- Deleted, Not Applicable*

1.3.5 *Place of Performance – Deleted, Not Applicable*

1.3.6 *Reserved*

1.3.7 *Binding Commitments- Deleted, Not Applicable*

1.3.8 *Training- Deleted, Not Applicable*

1.3.9 *Security- Deleted, Not Applicable*

1.4 *Delivery and Acceptance*

1.4.1 *Time Frames*

GFS will offer the following ordering and delivery schedules to the HPS members.

Skip Day Deliveries

There will be one (1) working day between the day you place the order and the day the order is delivered. Each individual member will work with GFS Sales and Sales Service to put together the most efficient and effective delivery schedule for each location.

The following schedule outlines Skip Day ordering:

Order Day	Delivery Day
Monday	Wednesday
Tuesday	Thursday
Wednesday	Friday
Thursday	Monday
Friday	Tuesday

Two Day Lead (TDL) Delivery Items

Certain slower moving items are only available only on a skip day basis. These are referred to as TDL items. These items are not available to add to your order and will be listed on the front page of your GFS order guide for quick reference.

Additions to Your Order

To ensure that your delivery reaches you in a timely manner, we request that you limit additions to your order when possible. Any add-on orders must be phoned in by 11:00 AM Eastern Time on the day prior to the day that the order is delivered. We will make every effort to accommodate your request; however, additions cannot always be accepted because of limited space on our trucks. If our truck is filled to



capacity, the GFS Representative will alert you at the time of the call, or will notify you as soon as they are informed of the issue by our transportation department.

Substitutions

Per GFS policy, we will not make any substitution or back order without the approval of our customer. Our electronic order entry system and/or your GFS Representative will notify the HPS member in the event that an item is temporarily out-of-stock. Together, they can take the necessary steps toward approval of a substitution. With member consent, the substitution will be ordered in place of the regular item.

1.4.2 Minimum Order

The minimum order is \$500.00.

1.4.3 Packaging

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

1.4.4 Palletizing

Shipments must be palletized whenever possible. Manufacturer's standard 4-way shipping pallets must be used.

1.4.5 Delivery Term

Delivery is governed by Section 2.8.2, Delivery Responsibilities.

Prices are "F.O.B. Delivered" with transportation charges prepaid on all orders that meet the minimum order requirement specified in Section 1.4.2, Minimum Order.

1.4.6 Acceptance Process

The acceptance process is defined in Section 2.8.4, Acceptance of Deliverable(s), unless otherwise defined in this section.

1.4.7 Criteria

The State will use the following criteria to determine acceptance of Deliverable(s):

- Each order placed shall be delivered in the quantities ordered and within the timeframe outlined in this Contract.
- The Agency representative, or their designee, will inspect the food and supplies and approve acceptance of goods.

1.5 Pricing

1.5.1 Pricing

Pricing is per the following pricing formulas. GFS will maintain the overall markup of the product category. Cost is defined as manufacturer's invoice price to GFS, plus incoming freight charges and labeling cost, less all off-invoice allowances. Incoming cash discounts to GFS do not reduce cost. HPS will perform quarterly audits, specifically on the cost plus mechanism. (See special commitment offerings for further incentives).

Product Category	Markup
Grocery	10.9%
Frozen	12.9%
Protein	9.25%
*Meat**	9.25%
*Poultry**	9.25%
*Seafood**	9.25%
Disposables	14.5%
*Dairy	11.7%
*Produce	Cost Plus \$1.00 on Top 20 items



Tabletop	13.0%
Clean Power***	Agreed Upon Contractual Pricing
Beverage Systems***	Agreed Upon Contractual Pricing
Ready-to-Drink Beverages	10.9%
Supplements – Dry GFS Subgroup 10110	8%
Supplements – Frozen GFS Subgroup 14180	8%

Prices are applicable to full cases. Outlined below is some additional information relating to specific categories of product and cost management guidelines to ensure the most value.

*Prices subject to weekly market changes are price guaranteed for seven days- Monday through Sunday. These include all Meat, Seafood, Poultry, Produce, Dairy and several Shortening and Oil items. All other product categories are considered to be "monthly" and pricing may change at the beginning of the GFS fiscal month.

**Commodity meat pricing, if lower, will override the cost-plus formula.

***These categories provide reduced pricing for items not included in other HPS agreements.

****Cost plus \$1.00 or less is for the top 20 volume produce items, all other produce products will be priced to HPS members at the competitive "C" bracket.

The pricing for this agreement is based on Gordon Food Service’s cost of product. Our cost is defined as:

Manufacturer's invoice cost to Gordon Food Service plus freight, plus up to an additional 1% for all GFS label products, minus customer specific off invoice allowances from the manufacturer. Cash discounts do not reduce cost.

Gordon Food Service "BACKHAULS" some products distributed. In these situations, Gordon Food Service assigns a freight rate based on a competitive rate negotiated through common carriers.

Gordon Food Service receives additional moneys, including but not limited to, promotional allowances, volume incentives, and additional marketing funds that are not part of customer cost calculations

1.5.2 Quick Payment Terms

Terms will be determined on an individual basis. GFS is offering a 1% 10 day early pay incentive. Advanced notification to your GFS sales person of your intent to participate in this incentive must be made. After GFS has been notified, you may deduct 1% off your payment of invoices, if the mailing is post marked within 10 days of the invoice.

1.5.3 Price Term

Pricing for the Cost Plus Program is firm for one (1) fiscal month. Exceptions include meat, poultry, seafood, produce, dairy, and some oils. These items will be quoted on a weekly basis. Uncontrollable market conditions may necessitate price adjustments mid-week. HPS will be notified of those occasions if they occur.

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's invoice, 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

1.6.1 Customer Service

The Contractor has the capacity to receive orders electronically, by phone, facsimile, and by written 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.

All orders should be place through your GFS Customer Development Specialist or GFS Experience at gfs.com.

Gordon Food Service
 PO Box 1787
 Grand Rapids, MI 49501
 800-968-7500 - Main Office
 800-968-4164 - Customer Service
 Contact: Matt Schichtel, National Accounts Healthcare Manager

Please indicate on your purchase order, "Prices per HPS #51."

1.6.2 Research and Development

Contractor shall invest in new product development and research to stay current with ongoing demands.

1.6.3 Quality Assurance Program

At Gordon Food Service, we take pride in our work. Our dedication to quality has allowed us to become one of the most reputable distributors in our industry; you can depend on GFS for consistent quality products.

Hazard Analysis Critical Control Point (HACCP)

Due to our HACCP procedures, and in the desire to protect our customers, Gordon Food Service cannot accept any of the following products for return to our Distribution Centers. However, where appropriate, credits will be issued.

- Produce (fresh cut potatoes, mushrooms, Markon/Redi-Cut vegetables, head lettuce, Markon/Fresh Express salads, wet salads, herbs, grapes, and fresh soups)
- Fresh juices
- Dairy products (milk, eggs, yogurt, cream cheese, cottage cheese)
- Fresh chicken products
- Fresh ground beef, fresh steaks, boxed beef products
- Frozen buttermilk biscuit dough
- Refrigerated dressings



- Ice cream
- Any cooler items that have been out of GFS' possession (Ex: the date of return does not match the date on the pick sticker)
- Cooler products that are no longer cold (above 45° F)
- Products that are excessively damaged
- Frozen items with excessive evidence of thaw/refreeze
- Frozen items with excessively damaged packaging

Everything else that is returned must meet stringent guidelines before it can be returned to our inventory. Each HPS member should contact their GFS representative to facilitate this activity.

Recall Procedures

In the event that an HPS member purchases a product that is involved in a manufacturer recall, the member's GFS Customer Service/Chain Account Representative will contact them by phone or fax with an urgent product recall notice. A subsequent mailing detailing the recall and the steps to follow regarding the recalled product will follow this notice.

For everyone's protection, Gordon Food Service requests that any HPS member call their representative for clarification if they hear of a product recall and suspect that their inventory may be involved.

Quality Assurance Lab

Our on-site Quality Assurance Lab is a rarity in the Foodservice Distribution Industry. The products we ship to your door have undergone rigorous tests. Our dedication to quality allows us to offer you a consistent product with a competitive advantage.

Nutrition Resource Center (NRC)

The Nutrition Resource Center at Gordon Food Service is your foremost source for nutrition awareness as well as general food safety and ingredient information. The NRC offers customer education from a team of highly qualified nutrition experts, including four registered dietitians. The team at the NRC will be a practical resource for addressing the HPS member's nutrition and food safety issues.

1.6.4 Warranty for Deliverable(s)- Deleted, Not Applicable

1.6.5 Special Incentives

VENDOR REBATE SYSTEM:

GFS will enroll HPS members in all vendors rebate and coupon programs set up by our vendors. They will receive a usage report and original coupon that they must send to the vendor at the end of the rebate period highlighting appropriate vendors. Monies will be refunded to HPS Members in the form of a check from the vendor sponsor. Manufacturers that have contracts and/or allowances already in place with HPS may decline to reimburse a rebate or coupon redemption at their discretion per the criteria on the original coupon.

PERFORMANCE INCENTIVES:

Gordon Food Service is pleased to offer the following weekly volume incentive program to committed* Healthcare Foodservice members for the contract period of October 1, 2011 through September 30, 2014. Committed members will receive their rebate semi annually (July and January). They are based on average weekly purchases during each six-month measurement period. This volume does not include the commodity Boxed Beef category. As an option, rebate checks will be available for those customers purchasing over \$5,000.00 per week.

VOLUME COMMITMENT INCENTIVE PROGRAM:

PURCHASING LEVEL	% SEMI ANNUAL REBATE
\$25,000 weekly average	4.0%
\$22,500 weekly average	3.75%



\$20,000 weekly average	3.5%
\$17,500 weekly average	3.25%
\$15,000 weekly average	3.0%
\$12,500 weekly average	2.75%
\$10,000 weekly average	2.5%
\$ 7,500 weekly average	2.0%
\$ 5,000 weekly average	1.5%
\$ 4,000 weekly average	1.0%
\$ 3,000 weekly average	.75%
Below \$3,000/ wk avg	.50%

Gordon Food Service reserves the right to deduct any and all finance charges that may accrue on an individual 9 digit customer number before issuing a volume commitment incentive or any other HPS rebate.

*** A committed member is defined as a single nine-digit customer number that has signed a GFS / HPS Contract #51 Commitment Form and is complying with the terms of that form. See attached Contract #51 Commitment Form.**

SYSTEMS ADVANTAGE PROGRAM:

Systems Advantage is an additional program available to contract #51 committed* Healthcare HPS members. **In addition to the Volume Commitment Incentive Program, Gordon Food Service will extend an additional 1% (one percent) rebate on all purchases (excluding Boxed Beef) to System Advantage customers.** Participation in the Systems Advantage rebate is accessed by committing to the purchase of GFS Cleanpower and Beverage Systems, Tyco Liners, GFS Disposables, Produce and Tabletop Items. These product categories represent numerous HPS agreements in addition to contract #51.

This program will provide the benefit of an additional rebate of 1% to the basic HPS program regardless of purchasing level.

HPS members who utilize this program are effectively committing 95% of their available purchases to this contract. Therefore, additional incentives for participating in Systems Advantage will include:

An accelerated rebate timetable of 90 days (Quarterly Calendar)

and

GFS Marketplace five percent (5%) Discounts Cards
for all **Systems Advantage** Facility Employees

HPS members will enjoy the benefits of the Systems Advantage (SA) program by committing in writing and complying with the requirements of the program. A signed commitment form must be in the GFS Agreements Department (Attn: Ted James, Mail code 10021-4836) **before** the additional 1% rebate can be accrued toward the HPS member’s account. Systems Advantage becomes effective on receipt of the signed commitment form in the GFS Agreements Department. Each 9-digit account number must have a signed form on file for the rebate to be paid out. The Conditions of Volume Commitment Incentive Program apply to the Systems Advantage program.

GORDON FOOD SERVICE BRAND LABEL INCENTIVE PROGRAM:

GFS is excited to be offering the Hospital Purchasing Service the following allowance on its entire line of “GFS” Branded Products. If any additional GFS Brand Products are added, they will automatically be valid under the terms of this agreement. GFS’ Private Label Rebate is designed to embrace Efficient Foodservice Response (EFR) initiatives by eliminating unnecessary costs and passing the savings onto the Committed HPS members. Participation in the GFS Private Label Rebate Program simplifies the way GFS can do business and allows GFS



to deliver the right products, at the right time in the proper condition, at the right price for the appropriate application.

Gordon Food Service will pay the GFS Brand Private Label Rebate on the percent of GFS Brand Product purchases made by the Committed HPS Member in accordance with the GFS Private Label Rebate Matrix. This allowance is calculated and rebated directly by GFS to the Committed HPS Member.

Gordon Food Service is offering the following allowance on “GFS” Brand Products. This rebate is based on quarterly volume and will be paid out in credit memo format on a quarterly basis starting with volume generated in October – December, 2011 (and paid out in January 2012). **The baseline to receive the rebate is 46% GFS Branded product mix.**

When an individual facility hits that 46% target level for the quarter plus meets the minimum volume requirement, they will become eligible to receive the commensurate rebate percent to their volume of GFS Branded products.

All GFS Branded products are included and there are no exceptions where an allowance may already be in place. GFS Core Brands include the Gordon Signature, GFS, and Kitchen Essentials. Gordon Food Service Exclusive Brands include Markon, Cleanpower, Primo Gusto, Natural Choice (Fruits and Juices), Mosaic (Coffee), Black Angus Beef, Brickman’s, Cattleman’s Reserve, Hearthstone Classics, Pepper Mill, Trade East, and Triumph.

<u>GFS Brand %</u>	<u>Rebate %</u>
46.00-48.99%	.25%
49.00-51.99%	.50%
52.00-54.99%	.75%
55% -up	1.00%

Example: HPS member purchases \$100,000 total volume from GFS through HPS program. Of that volume, 50% is GFS label product. The rebate for 50% is a half percent (.50%). The member would receive a credit memo for \$250.00. (\$100,000 X 50% [GFS label %] = \$50,000 [eligible for the half percent credit] = \$250.00

MARKETPLACE STORES:

At GFS, we want to ensure that you have access to our products on a daily basis. In the event that you run out of something before your next delivery, you can visit any of our GFS Marketplace Stores. With over 100 locations and more on the way, we’re sure to have a location near you. To view a map of our store locations, visit our web site at <http://gfs.know-where.com/gfs/>.

Our stores offer fast, easy access to the items you use most, while allowing you to obtain the same consistent products that come off our trucks. Your GFS Representative will help you secure a Continuing Service Card to use at our stores. This card will accurately identify your account, and provide you and your card bearers access to utilize your account. Your card allows you to choose security preferences and select your invoice delivery option such as FAX or e-mail.

Each store stocks over 3,000 items that arrive straight from our warehouse, ensuring product integrity and quality. You will find friendly and knowledgeable store associates waiting to serve you. We guarantee you’ll enjoy your shopping experience in our GFS Marketplace Stores.

HPS members will receive their HPS contractual pricing when purchasing “full case” lots at any Marketplace outlet. Any product purchased in “less case” quantities will revert to the GFS Marketplace shelf pricing. Any purchase made at a Marketplace store is eligible for the HPS/GFS volume incentives and the quick pay incentive previously outlined.

HEALTHCARE MARKETING SERVICES:

The following marketing services are available to HPS customers at a free or reduced cost. Contact the Nutrition Resource Center at 1-800-968-4426 for current price when applicable.



Nutrition Resource Center - The NRC is your source for nutrition and food safety information. Our group of Registered Dietitians is available to you, Monday through Friday, 8am-5pm EST by calling 1-800-968-4426.

Food Safety Awareness Program – Prevention starts with education. This program offers you the services and tools needed to effectively train employees in food safety.

- ServSafe® Classes: 8 or 16 hour course that allows you to gain a nationally recognized certification.
- Food Safety E-bulletin: Stay tuned to the latest food safety trends and regulations. This email newsletter will highlight the latest food safety news in your area, communicate the ServSafe schedule and advertise new tools to help manage food safety in your operation
- GFS Experience Food Safety
 - Food Safety Inservices – Designed to save you time and money while effectively training your employees, this collection of in-services is complete with pre and post test, attendance sheets, outlines, activity ideas, certificates of completion and connections to additional resources.
 - Food Safety and Sanitation Logs and Forms – A collection of forms and logs to help your organize and document your efforts toward securing the safety of your operation. Available on CD.

NUTRITION GUIDE Your Health and Wellness Product Resource – This annual guide, designed for healthcare accounts, categorizes GFS products in groupings such as low fat, low sodium, etc.

GFS Experience Cycle Menu Management - Designed for the Healthcare segment, this on-line menu system program is your answer to an economically priced, user-friendly complete menu system.

Features of the CMM include:

- Recipe management (1500+ recipes included)
- Menu Management (GFS Menu Template included)
- Cycle Menu Reporting
- Inventory
- Production
- Ordering
- Tray Card
- Menu Ticket

GFS Menu Templates include:

- 5 Weeks Long Term Care with Alternates
- 5 Weeks Assisted Living Selective Menu
- Spring/Summer and Fall/Winter Cycles
- Regular Carbohydrate Controlled Diet and Therapeutic or Consistency Modified Diet Types for non-selective menus
- Standardized Recipes w/HACCP guidelines
- Sample Emergency Menus

GFS Experience Healthcare In-Services: Designed to save you time and money while effectively training your employees, each training includes pre and post test, attendance sheets, outlines, activity ideas, certificates of completion and connections to additional resources.

MeasureIT – This financial management software program will provide you with the tools you need to record, monitor, and analyze your expenses on a monthly basis. Allowing you to confidently present to administration your operational success story!

Winning Themes – Creative theme meal concepts that can be used to generate excitement in your dining area.



Healthcare Advantage - Monthly permission based e-mail and 4 times per year newsletter specific to hot topics in the healthcare industry.

GFS Food Show with healthcare specific seminars

Operational Expertise for revenue generating ideas, cost-control, menu concepts, and other industry concepts.

Nationally recognized seminar leaders available for conferences.

GFS Technology is available for electronic ordering.

Services are subject to change.

*Negotiated and approved for HPS Member/Participants by the Food Service Administrators Advisory Committee.

1.6.6 Energy Efficiency – Deleted, Not Applicable

1.6.7 Environmental Requirements

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

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.

(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.

(b) **Mercury Content**. Under MCL 18.1261d, the Contractor must offer mercury-free products whenever possible. 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 the Contractor's facilities are in violation of applicable environmental laws.

1.7 Extended Purchasing- Deleted, Not Applicable

1.7.1 MiDEAL- Deleted, Not Applicable

1.7.2 State Employee Purchases - Deleted, Not Applicable

1.8 Additional Requirements

1.8.1 Fuel Surcharge

Rising energy costs will necessitate that a fuel surcharge be implemented. Gordon Food Service will adhere to the industry standards of a monthly assessment. The surcharge will be adjusted based upon weekly reporting, reviewed monthly, for “Retail Diesel Prices” as published by the Energy Information Administration (EIA), a division of the United States Department of Energy.

The diesel cost will be based on the U.S. Average for Retail On-Highway Diesel Price per Gallon for the continental United States as published by the United States Energy Information Agency (website <http://tonto.eia.doe.gov/oog/info/wohdp/diesel.asp>), or another similar index reasonably chosen by us. The average of the diesel cost for the last week of a calendar month and the first three weeks of the following calendar month will apply to the next month. When the cost of diesel fuel falls under \$3.00 per U.S. gallon, no surcharge will be implemented. The following scale details the surcharge per delivery.

EIA Average	Flat Rate
less than \$3.25	\$.NONE
\$3.251.....\$3.500	\$3.00
\$3.501.....\$4.000	\$4.00
\$4.001.....\$4.500	\$5.00
\$4.501.....\$5.000	\$6.00
\$5.001.....above	\$6.00

Subject to monthly review.



Article 2 – Terms and Conditions

2.1 Contract Term

2.1.1 Contract Term

The Contract term begins December 7, 2011 and expires December 6, 2012. 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 – Deleted, Not Applicable

2.2 Payments and Taxes

2.2.1 Fixed Prices for Deliverable(s)

Prices are fixed for all Deliverable(s).

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 Department of Technology, Management and Budget (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:

Sue Cieciva, Buyer Specialist
Purchasing Operations
Department of Technology, Management and Budget
Mason Bldg, 2nd Floor
PO Box 30026
Lansing, MI 48909
E-mail: ciecivas@michigan.gov
Phone: (517) 373-0301

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.**

Sue Cieciva, Buyer Specialist
Purchasing Operations
Department of Technology, Management and Budget
Mason Bldg, 2nd Floor
PO Box 30026
Lansing, MI 48909
E-mail: ciecivas@michigan.gov
Phone: (517) 373-0301

2.3.3 Project Manager- Deleted, Not Applicable

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 the 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 the 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

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: Sue Cieciva
 PO Box 30026
 530 West Allegan
 Lansing, MI 48909
 E-mail: ciecivas@michigan.gov
 Fax: (517) 335-0046

If to Contractor:

Gordon Food Service
 Attention: Marla Troutman
 PO Box 1787
 Grand Rapids, MI 49501
 E-mail: Marla.Troutman@gfs.com
 Fax: (616) 717-9142

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 the 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 the 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 the Contract or the State's ability to recover damages.

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

2.3.9 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

All persons assigned by the Contractor to perform work must be employees of the Contractor or its majority-owned subsidiaries, or a State-approved Subcontractor, and must be fully qualified to perform the work assigned to them. The Contractor must include this requirement in any subcontract.

2.4.2 Contractor Key Personnel

(a) The Contractor must provide the Contract Compliance Inspector with the names of Key Personnel.

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

(c) Before assigning a new individual to any Key Personnel position, the Contractor must notify the State of the proposed assignment, introduce the individual to the appropriate State representatives, and provide the State with a resume and any other reasonably requested information. The State must approve or disapprove the assignment, reassignment, or replacement of any Key Personnel. The State may interview the individual before making its decision. If the State disapproves an individual, the State will provide a written explanation outlining the reasons for the rejection.

(d) The Contractor may not remove any Key Personnel from their assigned roles without the prior consent of the State. The Contractor's removal of Key Personnel without the prior consent of the State constitutes Unauthorized Removal. Unauthorized Removal does not include replacing Key Personnel for reasons beyond the Contractor's reasonable control, including illness, disability, death, leave of absence, personal emergency circumstances, resignation, or termination for cause. Unauthorized Removal does not include replacing Key Personnel because of promotions or other job movements allowed by the Contractor's personnel policies or Collective Bargaining Agreement(s), as long as the Contractor assigns the proposed replacement to train the outgoing Key Personnel for 30 days. Any Unauthorized Removal will be considered a material breach of the Contract.

(e) The Contractor must notify the Contract Compliance Inspector and the Contract Administrator at least 10 Days before redeploying non-Key Personnel to other projects.

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 the 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 the 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 the 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. Attached as **Exhibit A** is a list of the Subcontractors, if any, approved by the State as of the Effective Date. 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 the 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 SOW or individual Purchase Order.
- (b) The Contractor must ship the Deliverable(s) "F.O.B. Destination, within Government Premises."
- (c) The State will examine all packages at the time of delivery. The quantity of packages delivered must be recorded and any obvious visible or suspected damage must be noted at the time of delivery using the shipper's delivery document(s) and appropriate procedures to record the damage.

2.8.3 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 the Contract for default by giving notice to the Contractor. Notwithstanding the foregoing, the State cannot use, as a basis for exercising its termination rights under this Section, deficiencies discovered in a repeat State Review Period that could reasonably have been discovered during a prior State Review Period.
- (e) The State, at any time and in its reasonable discretion, may reject the Deliverable without notation of all deficiencies if the acceptance process reveals deficiencies in a sufficient quantity or of a sufficient severity that renders continuing the process unproductive or unworkable.

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



2.8.6 Process for Approval of Services [Deleted, Not Applicable]

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

2.11.3 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 the 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 the Contract's requirements.



(c) It is the lawful owner or licensee of any Deliverable licensed or sold to the State by Contractor or developed by the Contractor for this Contract, and Contractor has all of the rights necessary to convey to the State the ownership rights or licensed use, as applicable, of any Deliverable(s). None of the 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 the award or making of this Contract.

(j) The Contractor arrived at its proposed prices independently, without communication or agreement with any other bidder for the purpose of restricting competition. The Contractor did not knowingly disclose its quoted prices for this Contract to any other bidder before the award of the 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 the 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- Deleted, Not Applicable



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

Deductible 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 the Contract is signed, and not less than 20 days before the insurance expiration date every year thereafter, the Contractor must provide evidence that the State and its agents, officers, and employees are listed as additional insureds under each commercial general liability and commercial automobile liability policy. 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 the 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.

The Contractor's liability for damages to the State is limited to two times the value of the Contract or \$500,000 which ever is higher. The foregoing limitation of liability does not apply to claims for infringement of United States patent, copyright, trademarks or trade secrets; to claims for personal injury or damage to property caused by the gross negligence or willful misconduct of the Contractor; to claims covered by other specific provisions of 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.

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

2.16 Termination by the State

2.16.1 Notice and Right to Cure

If the Contractor breaches the Contract, and the State, in its sole discretion, determines that the breach is curable, the State will provide the Contractor notice of the breach and a period of at least 30 days to cure the breach. The State does not need to provide notice or an opportunity to cure for successive or repeated breaches or if the State determines, in its sole discretion, that a breach poses a serious and imminent threat to the health or safety of any person or the imminent loss, damage, or destruction of any real or tangible personal property.

2.16.2 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 the 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 Contract 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 the Contract (which will be provided to the State on an "As-Is" basis except to the extent the State compensated the Contractor for warranty services related to the materials);
 - (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 30 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 the Contract and the Contractor, in its sole discretion, determines that the breach is curable, then the Contractor will provide the State with notice of the breach and a time period (not less than 30 days) to cure the breach.

The Contractor may terminate this Contract if the State: (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

2.18.1 Stop Work Order

The State may, by issuing a Stop Work Order, require that the Contractor fully or partially stop work for a period of up to 90 calendar days, and for any further period to which the parties agree. Upon receipt of the Stop Work Order, the Contractor must immediately take all reasonable steps to minimize incurring costs. Within the period of the Stop Work Order, the State must either: (a) terminate the Stop Work Order; or (b) terminate the work covered by the Stop Work Order as provided in Section 2.16, Termination by the State.

2.18.2 Termination of Stop Work Order

The Contractor must resume work if the State terminates a Stop Work Order or if it expires. The parties will agree upon an equitable adjustment in the delivery schedule, the Contract price, or both, and the Contract must be



modified, if: (a) the Stop Work Order results in an increase in the time required for, or the Contractor's costs properly allocated to, the performance of the Contract; and (b) the Contractor asserts its right to an equitable adjustment within 20 days after the end of the Stop Work Order by submission of a request for adjustment to the State; provided that, the State may receive and act upon the Contractor's request submitted at any time before final payment. Any adjustment will conform to the requirements of Section 2.3.4, Contract Changes.

2.18.3 Allowance of the Contractor's Costs

If the State fully or partially terminates the work covered by the Stop Work Order, for reasons other than material breach, the termination is a termination for convenience under Section 2.16, Termination by the State, and the State will pay reasonable costs resulting from the Stop Work Order in arriving at the termination settlement. The State is not liable to the Contractor for lost profits because of a Stop Work Order issued under Section 2.18, Stop Work.

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 the Contract by the other party will result in damages so immediate, so large or severe, and so incapable of adequate redress that a temporary restraining order or other injunctive relief is the only adequate remedy.



2.20.4 Continued Performance

Each party will continue performing its obligations under the Contract while a claim is being resolved, except to the extent the claim precludes performance and without limiting either party's right to terminate the Contract as provided in Section 2.16, 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- Deleted, Not Applicable

2.22.1 MiDEAL Requirements- Deleted, Not Applicable

2.22.2 State Administrative Fee - Deleted, Not Applicable

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 the Contract must be resolved in the State of Michigan. With respect to any claim between the parties, the Contractor consents to venue in Ingham County, Michigan, and irrevocably waives any objections to this venue that it may have, such as lack of personal jurisdiction or *forum non conveniens*. The Contractor must appoint agents in the State of Michigan to receive service of process.

2.23.4 Nondiscrimination

In the performance of the Contract, the Contractor agrees not to discriminate against any employee or applicant for employment, with respect to his or her hire, tenure, terms, conditions or privileges of employment, or any matter directly or indirectly related to employment, because of race, color, religion, national origin, ancestry, age, sex, height, weight, marital status, or physical or mental disability. The Contractor further agrees that every subcontract entered into for the performance of this Contract will contain a provision requiring non-discrimination in employment, as specified here, binding upon each Subcontractor. This covenant is required under the 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 the 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 the Contract, must not enter into a contract with a Subcontractor, manufacturer, or supplier whose name appears in this register. Under MCL 423.324, the State may void any Contract if, after award of the Contract, the name of the Contractor as an employer or the name of the Subcontractor, manufacturer or supplier of the Contractor appears in the register.

2.23.6 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 the 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 the 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 the Contract documents;
- (e) Any Purchase Order, Direct Voucher, or Procurement Card Order issued under the Contract; and
- (f) Bidder 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

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

2.24.14 Reformation and Severability

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

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

2.24.17 Survival

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





Systems Advantage

In Conjunction with HPS Contract #51 October 1, 2011- September 30, 2014

GFS CLEAN POWER SYSTEMS: *At least 3 of 5 for GFS CleanPower (Sanitation Systems)*

GFS

- Dishmachine Products _____
- General Kitchen Cleaning Products _____
- Waxes and Floor Care Products _____
- Laundry Cleaning Products _____
- Housekeeping & Janitorial Supplies _____

GFS BEVERAGE SYSTEMS: *All GFS Beverage Systems*

- All Coffee, Teas, Cocoa _____
- All Dispensed Juices _____
- Trayline Beverages (Ready to Drink) _____
- Cafeteria Line (If Available) _____
- Catering (If Available) _____

GFS DISPOSABLE PRODUCTS: *At least 4 of 5 + liners for Disposable Products (Plastic, Foam, Paper)*

- Foam Plates, Cups, Containers, Bowls _____
- Paper Cups, Plates, Bowls, Food Trays _____
- Adult Incontinence Products _____
- Toilet Tissue & Facial Tissue _____
- Napkins, Paper Towels, Roll Towels, C-Fold Towels _____
- Can Liners - MANDATORY _____

GFS PRODUCE AND DAIRY:

- Produce _____
- Dairy _____

GFS TABLETOP: *Utilize all for maximum advantage*

- Tabletop Contract - china, flatware, trays, temperature maint. systems _____
- Insulated Ware Contract - mugs, bowls, dome covers, traymats _____
- Rubbermaid Contract - total Rubbermaid line _____

Account Name: _____ Account #: / / / / / / / / / /

Customer Commitment: _____

Name (Title)

Sales Rep.: _____ Branch Management: _____

Date: _____

Please return to Matt Schichtel at 10021-6397

