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

**STATE OF MICHIGAN**
**DEPARTMENT OF TECHNOLOGY, MANAGEMENT AND BUDGET November 18, 2011**
**PROCUREMENT**
**P.O. BOX 30026, LANSING, MI 48909**
**OR**
**530 W. ALLEGAN, LANSING, MI 48933**

# CHANGE NOTICE NO. 3
# TO
# CONTRACT NO. 071B8200053
# between
# THE STATE OF MICHIGAN
# and

| | |
|---|---|
| NAME & ADDRESS OF VENDOR<br><br>**Diagnostic Hybrids, Inc.**<br>**3530 W. State Street**<br>**Athens, OH 45701**<br>**Email: Ellen_Flowers@dhiusa.com**<br>**dbrogren@quidel.com** | TELEPHONE:<br>**See information as noted on Change Notice No. 1**<br>VENDOR NUMBER/MAIL CODE<br><br>BUYER/CA (517) 373-6535<br>**William C. Walsh, CPPB** |
| Contract Compliance Inspector: Patty Clark<br>**Primary Thesus Monkey Kidney Cells – Department of Community Health** | |
| CONTRACT PERIOD: From: **January 1, 2008** To: **January 1, 2013** | |
| TERMS<br>**Net 30 Days** | SHIPMENT<br>**10 Days ARO** |
| F.O.B.<br>**Shipping Point, Prepaid & Add** | SHIPPED FROM<br>**Athens, OH** |
| MINIMUM DELIVERY REQUIREMENTS<br>**$50.00** | |
| MISCELLANEOUS INFORMATION: | |

**NATURE OF CHANGE(S):**

**Effective January 1, 2012 the second of two available Contract Option Years is hereby exercised. Therefore the Contract end date is CHANGED to January 1, 2013. The total Estimated Contract Value is hereby INCREASED $29,442.80.**

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

**AUTHORITY/REASON:**

**PRF from agency dated 10/26/2011, vendor agreement dated 11/18/2011 and DTMB-Procurement's approval.**

**INCREASE: $ 29,442.80**

**TOTAL REVISED ESTIMATED CONTRACT VALUE: $112,186.88**

| Unit of Measure | Description | Estimated Annual of Usage | Catalog Number | Price |
|---|---|---|---|---|
| Each | RMK cells with SV5 and SV40, 16x25 mm culture tubes, | 1,560 | #49-0600A | $1.80 |
| Each | African Green Monkey Kidney cells, with SV5 and SV40, 16x25 mm culture tubes | 1,040 | #46-0600A | $3.75 |
| Each | MRC-5 cells, 15x125 mm culture tubes | 1,560 | #51-0600 | $1.41 |
| Each | R-Mix Shell Vials | 3,120 | #96-0102 | $2.80 |
| Each | Refeed Medium, Resp. Virus Detection, 100 ml | 52 | #10-330100 | $24.00 |
| Case | Shell vial pack, sterile, with coverslips | 12 | #99-000050 | $57.40 |

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

**STATE OF MICHIGAN**
**DEPARTMENT OF TECHNOLOGY, MANAGEMENT AND BUDGET September 13, 2010**
**PURCHASING OPERATIONS**
**P.O. BOX 30026, LANSING, MI 48909**
**OR**
**530 W. ALLEGAN, LANSING, MI 48933**

# CHANGE NOTICE NO. 2
# TO
# CONTRACT NO. 071B8200053
# between
# THE STATE OF MICHIGAN
# and

| | |
|---|---|
| NAME & ADDRESS OF VENDOR<br><br>**Diagnostic Hybrids, Inc.**<br>**3530 W. State Street**<br>**Athens, OH 45701**<br>**Email: Ellen_Flowers@dhiusa.com**<br>**Jennifer_sayers@dhiusa.com** | TELEPHONE:<br>**See information as noted on Change Notice No. 1**<br>VENDOR NUMBER/MAIL CODE<br><br>BUYER/CA (517) 373-6535<br>**William C. Walsh, CPPB** |
| Contract Compliance Inspector: Patty Clark<br>**Primary Thesus Monkey Kidney Cells – Department of Community Health** | |
| CONTRACT PERIOD: From: **January 1, 2008** To: **January 1, 2012** | |
| TERMS<br>**Net 30 Days** | SHIPMENT<br>**10 Days ARO** |
| F.O.B.<br>**Shipping Point, Prepaid & Add** | SHIPPED FROM<br>**Athens, OH** |
| MINIMUM DELIVERY REQUIREMENTS<br>**$50.00** | |
| MISCELLANEOUS INFORMATION: | |

**NATURE OF CHANGE(S):**

**Effective September 1, 2010 the first of two available Contract Option Years is hereby exercised therefore the Contract end date is CHANGED to January 1, 2012. The total Estimated Contract Value is hereby INCREASED $24,000.00.**

**Effective September 1, 2010 the Buyer of this Contract is CHANGED to:**

**William C. Walsh, CPPB**
**(517) 373-6535**
**walsh@michigan.gov**

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

**AUTHORITY/REASON:**

**PRF from agency dated 9/1/10, vendor agreement dated 9/1/10 and per the terms and conditions of Article 2.004 of the Contract.**

**INCREASE: $ 24,000.00**

**TOTAL Estimated Contract Value: $82,744.08**

| Unit of Measure | Description | Estimated Annual of Usage | Catalog Number | Price |
|---|---|---|---|---|
| Each | RMK cells with SV5 and SV40, 16x25 mm culture tubes, | 1,560 | #49-0600A | $1.80 |
| Each | African Green Monkey Kidney cells, with SV5 and SV40, 16x25 mm culture tubes | 1,040 | #46-0600A | $3.75 |
| Each | MRC-5 cells, 15x125 mm culture tubes | 1,560 | #51-0600 | $1.41 |
| Each | R-Mix Shell Vials | 3,120 | #96-0102 | $2.80 |
| Each | Refeed Medium, Resp. Virus Detection, 100 ml | 52 | #10-330100 | $24.00 |
| Case | Shell vial pack, sterile, with coverslips | 12 | #99-000050 | $57.40 |

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

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

**November 24, 2009**

# CHANGE NOTICE NO. 1
# TO
# CONTRACT NO. 071B8200053
# between
# THE STATE OF MICHIGAN
# and

| NAME & ADDRESS OF VENDOR | TELEPHONE: **See Contact information below** |
|---|---|
| **Diagnostic Hybrids, Inc.**<br>**3530 W. State Street**<br>**Athens, OH 45701**<br>**Email: Ellen_Flowers@dhiusa.com**<br>**Jennifer_sayers@dhiusa.com** | VENDOR NUMBER/MAIL CODE<br><br>BUYER/CA (517) 373-6327<br>**Mary Ostrowski** |
| Contract Compliance Inspector: Patty Clark<br>**Primary Thesus Monkey Kidney Cells – Department of Community Health** | |
| CONTRACT PERIOD: From: **January 1, 2008** To: **January 1, 2011** | |
| TERMS<br>**Net 30 Days** | SHIPMENT<br>**10 Days ARO** |
| F.O.B.<br>**Shipping Point, Prepaid & Add** | SHIPPED FROM<br>**Athens, OH** |
| MINIMUM DELIVERY REQUIREMENTS<br>**$50.00** | |
| MISCELLANEOUS INFORMATION: | |

**NATURE OF CHANGE(S):**

**Effective immediately, pricing on this Contract is hereby reduced 5% until the Contract expiration date of January 1, 2011. Reduced Pricing is per the attached:**

**Please Note Updated Contact information:**

- **Contract Specialist: Ellen Flowers p(740) 589-3322 f(740) 592-9820 ellen_flowers@dhiusa.com**
- **Sales Representative: Jennifer Sayers p(740) 590-0050 jennifer_sayers@dhiusa.com**
- **Customer Service : Aaron Tate p(800) 344-5847 or p(740) 589-3300 f(740) 592-9820**
  **For orders, please ask for Aaron Tate when calling, and reference his name if faxing.**

**The Buyer for this Contract is changed to Mary Ostrowski.**

**AUTHORITY/REASON:**

**Per vendor email (Ellen Flowers) dated November 11, and 17, 2009, DMB Purchasing Operations, and DCH.**

**TOTAL ESTIMATED CONTRACT VALUE: $58,744.08**

| Unit of Measure | Description | Estimated Annual of Usage | Catalog Number | Price |
|---|---|---|---|---|
| Each | RMK cells with SV5 and SV40, 16x25 mm culture tubes, | 1,560 | #49-0600A | $1.71 |
| Each | African Green Monkey Kidney cells, with SV5 and SV40, 16x25 mm culture tubes | 1,040 | #46-0600A | $3.56 |
| Each | MRC-5 cells, 15x125 mm culture tubes | 1,560 | #51-0600 | $1.34 |
| Each | R-Mix Shell Vials | 3,120 | #96-0102 | $2.66 |
| Each | Refeed Medium, Resp. Virus Detection, 100 ml | 52 | #10-330100 | $22.80 |
| Case | Shell vial pack, sterile, with coverslips | 12 | #99-000050 | $54.61 |

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

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

**January 16, 2008**

# NOTICE
# OF
# CONTRACT NO. 071B8200053
# between
# THE STATE OF MICHIGAN
# and

| | |
|---|---|
| NAME & ADDRESS OF VENDOR<br><br>**Diagnostic Hybrids, Inc.**<br>**3530 W. State Street**<br>**Athens, OH 45701**<br>**Email: dishong@dhiusa.com** | TELEPHONE: Beth Dishong<br>**(740) 596-1784**<br>VENDOR NUMBER/MAIL CODE<br><br>BUYER/CA (517) 241-2005<br>**Lisa Morrison** |
| Contract Compliance Inspector: Patty Clark<br>**Primary Thesus Monkey Kidney Cells – Department of Community Health** | |
| CONTRACT PERIOD: From: **January 1, 2008** To: **January 1, 2011** | |
| TERMS<br>**Net 30 Days** | SHIPMENT<br>**10 Days ARO** |
| F.O.B.<br>**Shipping Point, Prepaid & Add** | SHIPPED FROM<br>**Athens, OH** |
| MINIMUM DELIVERY REQUIREMENTS<br>**$50.00** | |
| MISCELLANEOUS INFORMATION: | |

**The terms and conditions of this Contract are those of REQ #391R7200969, this Contract Agreement and the vendor's quote dated July 24, 2007. In the event of any conflicts between the specifications, and terms and conditions, indicated by the State and those indicated by the vendor, those of the State take precedence.**

**Estimated Contract Value: $58,744.08**

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

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

# CONTRACT NO. 071B8200053
## between
## THE STATE OF MICHIGAN
## and

| | |
|---|---|
| NAME & ADDRESS OF VENDOR<br>**Diagnostic Hybrids, Inc.**<br>**3530 W. State Street**<br>**Athens, OH 45701**<br>**Email: dishong@dhiusa.com** | TELEPHONE: Beth Dishong<br>**(740) 596-1784**<br>VENDOR NUMBER/MAIL CODE<br><br>BUYER/CA (517) 241-2005<br>**Lisa Morrison** |
| Contract Compliance Inspector: Patty Clark<br>**Primary Thesus Monkey Kidney Cells – Department of Community Health** | |
| CONTRACT PERIOD: From: **January 1, 2008** To: **January 1, 2011** | |
| TERMS<br>**Net 30 Days** | SHIPMENT<br>**10 Days ARO** |
| F.O.B.<br>**Shipping Point, Prepaid & Add** | SHIPPED FROM<br>**Athens, OH** |
| MINIMUM DELIVERY REQUIREMENTS<br>**$50.00** | |
| MISCELLANEOUS INFORMATION:<br>**The terms and conditions of this Contract are those of REQ #391R7200969, this Contract Agreement and the vendor's quote dated July 24, 2007. 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.**<br><br>**Estimated Contract Value: $58,744.08** | |

**THIS IS NOT AN ORDER: This Contract Agreement is awarded on the basis of our inquiry bearing the REQ No. 391R7200969. Orders for delivery will be issued directly by the Department of Community Health through the issuance of a Purchase Order Form.**

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

| **FOR THE VENDOR:** | **FOR THE STATE:** |
|---|---|
| **Diagnostics Hybrids, Inc.**<br>Firm Name | Signature |
| Authorized Agent Signature | **Jeffrey A. White, Buyer Manager**<br>Name/Title |
| Authorized Agent (Print or Type) | **Commodities Division, Purchasing Operations**<br>Division |
| Date | Date |

STATE OF MICHIGAN
Department of Management and Budget
Purchasing Operations

**Contract No. 071B8200053**
**Live Cells/Primary Thesus Monkey Kidney Cells**

**Buyer Name: Lisa Morrison**
**Telephone Number: (517) 241-2005**
**E-Mail Address: morrisonl1@michigan.gov**

*Live Cells/Primary Thesus Monkey Kidney Cells*


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# Article1 – Statement of Work (SOW)

1.0 Introduction

1.001 DEFINING DOCUMENT

1.002 PROJECT TITLE AND DESCRIPTION

**The purpose of this Contract is for RMK cells, African Green Monkey Kidney cells, MRC-5 cells, and R-Mix shell vials for viral isolation performed on human clinical specimens submitted to the Bureau of Laboratories.**

1.003 PROJECT CONTROL

**Project Control**

**a. The Vendor will carry out this project under the direction and control of the Department of Community Health (DCH).**

**b. Although there will be continuous liaison with the Vendor team, the client agency's project director will meet annually as a minimum, with the Vendor's project manager for the purpose of reviewing progress and providing necessary guidance to the Vendor in solving problems that arise.**

**c. The Vendor will submit brief written annual summaries of progress which outline the work accomplished during the reporting period; work to be accomplished during the subsequent reporting period; problems, real or anticipated, which should be brought to the attention of the client agency's project director; and notification of any significant deviation from previously agreed-upon work plans. A copy of this report will be forwarded to the named buyer in Purchasing Operations.**

**d. Within five (5) working days of the award of the Contract, the Vendor will submit to the *(DCH)* project director for final approval a work plan, which must include the following:**

**The Vendor's project organizational structure.**

**(1) The Vendor's staffing table with names and title of personnel assigned to the project. This must be in agreement with staffing of accepted proposal. Necessary substitutions due to change of employment status and other unforeseen circumstances may only be made with prior approval of the State.**

**(2) The project breakdown showing sub-projects, activities and tasks, and resources required and allocated to each.**

**(3) The time-phased plan in the form of a graphic display, showing each event, task, and decision point in your work plan.**

**Reports**

***Vendor shall have the capability to provide annual or multi-year consumables usage report for all products purchased, upon request.***

1.004 COMMENCEMENT OF WORK

**Vendor shall show acceptance of this agreement by signing a copy of this contract and returning it to the contract administrator. Vendor shall not proceed with performance of the work to be done under this agreement, including the purchase of necessary materials, until both parties have signed this agreement to show acceptance of its terms.**

1.1 Product Quality

1.101 SPECIFICATIONS

1. Price for the following lists of kits, reagents, and consumables (including shipping and handling charges:

   RMK cells with SV5 and SV40, 16 x25 mm culture tubes -- #49-0600A – estimated annual usage of 1,560 each

   African Green Monkey Kidney cells, with SV5 and SV40, 16x25 mm culture tubes -- #46-0600A – estimated annual usage of 1,040 each

   MRC-5 cells, 15x125 mm culture tubes -- #51-0600 – estimated annual usage of 1,560 each

   R-Mix Shell Vials -- #96-0102 – estimated annual usage of 3,120 each\

   Refeed Medium, Resp. Virus Detection, 100 ml -- #10-330100 – estimated annual usage of 52 each

   Shell vial pack, sterile, with coverslips -- #99-000050 – estimated annual usage of 12 cases

2. The State is specifying an estimated annual usage for each assay, but shall not offer a guaranteed number of purchases, whether for the overall contract, per year, or per quarter.

3. Percent off pricing for all contract items.

4. Price for any quantity discounts.

5. Minimum order requirements.

6. Shipping Point

7. The Vendor must be able to provide delivery schedules as determined by the laboratory standing purchase order for the kits. Cells must arrive in good condition on Monday of each week unless Monday is a holiday. On holiday weeks, cells must arrive in good condition the first business day following the holiday.

1.102 RESEARCH AND DEVELOPMENT - RESERVED

1.103 QUALITY ASSURANCE PROGRAM - RESERVED

1.104 WARRANTY FOR PRODUCTS OR SERVICES - RESERVED

1.2 Service Capabilities

1.201 CUSTOMER SERVICE/ORDERING

**This includes having the capacity to receive orders electronically, by phone, facsimile, and by written order. The Vendor shall provide a statewide toll-free phone number for phone orders. Vendor shall have internal controls, approved by Purchasing Operations, to insure that authorized individuals with the State place orders. The Vendor shall verify orders that have quantities that appear to be abnormal or excessive.**

**The Vendor shall have an accessible customer service department with an individual specifically assigned to State of Michigan accounts. The Vendor shall have experienced sales representatives make timely personal visits to State accounts. The Vendor's customer service must respond to State agency inquiries promptly. The Vendor shall provide a statewide toll-free number for customer service calls.**

**Any supplies and services to be furnished under this contract shall be ordered by issuance of delivery orders or task orders by the individuals or activities designated in the Schedule.**

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

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

1.202 TRAINING

**The Vendor shall provide training to individual agencies, when necessary, on aspects of ordering, shipping, billing, and receiving. At the request of the Contract Administrator, the Vendor shall provide in-service training to agency personnel on products, installation, and product safety issues. The Vendor shall also provide agency training jointly with the State as needed during the period covered by the contract at no additional charge.**

1.203 REPORTING

**Vendor shall be able to provide various reports, when requested by the State. Examples include itemized report of total items (commodities and services) purchased by all agencies or individual agencies, open invoice reports, delivery compliance reports, quantity reports, service compliance reports, etc.**

1.204 SPECIAL PROGRAMS

**The State is interested in any other special programs that vendor's may have, such as return policies, trade-in programs allowing the return of new product not needed, quantity discounts, etc.**

1.205 SECURITY

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

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

**The Vendor and its subcontractors shall comply with the security access requirements of individual State facilities.**

1.3 Delivery Capabilities

1.301 TIME FRAMES

**It is requested that all orders be delivered within 10 calendar days after receipt of order. The State is interested in both a standard delivery program and a quick-ship program, as well as if there are quantity and other limitations for the quick ship program.**

1.302 MINIMUM ORDER

**It is requested that the minimum order is $50.**

1.303 PACKAGING

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

1.304 PALLETIZING

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

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

1.305 DELIVERY TERM

**(X ) F.O.B. _____ *State Facility***

**Prices shall be quoted "F.O.B. Delivered" with transportation charges prepaid on all orders of $50 or more to the State, or on all orders totaling or in excess of the vendor's minimum order requirement stated on the Item Listing.**

**<u>Freight Charges</u> - Should an agency order below the minimum order requirement of a Contract, or should a vendor quote F.O.B. Shipping Point on one-time purchases, the Vendor for shipping products must use one of the following carriers. Orders being shipped from or to in the State of Michigan or the States of Illinois, Indiana, Ohio, and Wisconsin, use Alvan Motor Freight (Tel: (800) 632-4172, attention Earl Batenburg); orders being shipped from or to ALL other states, use Roadway Express, Inc. (Tel: (800) 253-3193, attention David Lewis).**

**United Parcel Service (UPS) must be used in instances where the weight of the shipment is less than 150 lbs., or where shipments could be separated into smaller parcels such as three (3) 50 lb. packages. Also, if the shipment weighs less than 150 lbs, but costs $3000 or more, it must be sent by the appropriate carrier listed above.**

**If the Vendor fails to follow these shipping instructions, the State shall pay the carrier used and deduct the difference from the Vendor's invoice for the amount that was charged and the amount that would have been charged if the requested carrier had been used.**

1.306 RESERVED FOR ACCEPTANCE OF DELIVERABLES/PARE EXPLANATION

1.4 Project Price

1.401 PROPOSAL PRICING

**Vendors shall provide pricing for the items included on this Contract (see attached Item Listing).**

1.402 QUICK PAYMENT TERMS - RESERVED

1.403 PRICE TERM

**Firm Fixed Price**

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

1.5 Quantity term

**Vendor agrees to supply all that the state requires**

1.6 Other Terms and Conditions Needed for this Contract

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

1. Reagents and supplies will be ordered per an established delivery schedule
2. Vendor will provide Bureau of Laboratories advance notification of product discontinuation.
3. Vendor must be able to provide specified quantities of cell lines on a weekly basis for the duration of the contract.
4. Cell lines must be received in a ready to use state and must not require any manipulation or passaging other than routine care and feeding.
5. Vendor must provide the Bureau of Laboratories advance notification of delay in product shipping including the reason for any delay.

## Article 2 – General Terms and Conditions

2.0 Introduction

2.001 GENERAL PURPOSE

**The Contract is for RMK cells, African Green Monkey Kidney cells, MRC-5 cells, and R-Mix shell vials for viral isolation performed on human clinical specimens submitted to the Bureau of Laboratories, for the State of Michigan. Exact quantities to be purchased are unknown, however the Vendor will be required to furnish all such materials and services as may be ordered during the CONTRACT period. Quantities specified if any, are estimates based on prior purchases, and the State is not obligated to purchase in these or any other quantities. Orders for delivery will be issued directly to the Vendor by various State Agencies on the Purchase Order Contract Release Form.**

2.002 ISSUING OFFICE AND CONTRACT ADMINISTRATOR

**The Contract is issued by Purchasing Operations, State of Michigan, Department of Management and Budget, hereinafter known as Purchasing Operations, for the Department of Community Health, hereinafter known *as DCH.* Where actions are a combination of those of Purchasing Operations and the State agencies, the authority will be known as the State.**

**Purchasing Operations is the sole point of contact in the State with regard to all procurement and contractual matters relating to the commodities and/or services described herein. Purchasing Operations is the only office authorized to negotiate, change, modify, amend, alter, clarify, etc., the specifications, terms, and conditions of the Contract. Purchasing Operations will remain the SOLE POINT OF CONTACT throughout the procurement process.**

**Vendor proceeds at its own risk if it takes negotiation, changes, modification, alterations, amendments, clarification, etc., of the specifications, terms, or conditions of the contract from any individual or office other than Purchasing Operations and the listed contract administrator**

**All communications covering this procurement must be addressed to contract administrator indicated below:**

**Department of Management and Budget**
**Purchasing Operations**
**Attn: Laura Gyorkos**
**2nd Floor, Mason Building**
**P.O. Box 30026**
**Lansing, Michigan 48909**
**(517) 373-1455**
***gyorkosl@michigan.gov***

2.003 NOTICE

**Any notice given to a party under this Contract must be written and shall be deemed effective, if addressed to such party as addressed below upon (i) delivery, if hand delivered; (ii) receipt of a confirmed transmission by facsimile if a copy of the notice is sent by another means specified in this section; (iii) the third (3rd) Business Day after being sent by U.S. mail, postage pre-paid, return receipt requested; or (iv) the next Business Day after being sent by a nationally recognized overnight express courier with a reliable tracking system.**

2.004 CONTRACT TERM

**The term of this Contract will be for three (3) years and will commence with the issuance of a Contract. This will be approximately 1/1/08 through 1/1/11.**

Option. **The State reserves the right to exercise two (2) one-year options, at the sole option of the State. Vendor performance, quality of products, price, cost savings, and the Vendor's ability to deliver on time are some of the criteria that will be used as a basis for any decision by Purchasing Operations to exercise an option year.**

Extension. **At the sole option of the State, the contract may also be extended. Vendor performance, quality of products, price, cost savings, and the Vendor's ability to deliver on time are some of the criteria that will be used as a basis for any decision by Purchasing Operations to exercise an option year.**

**Written notice will be provided to the Vendor within 30 days, provided that the State gives the Vendor a preliminary written notice of its intent to extend at least 60days before the contract expires. The preliminary notice does not commit the Government to an extension. If the Government exercises this option, the extended contract shall be considered to include this option clause.**

2.005 GOVERNING LAW

**The Contract shall in all respects be governed by, and construed in accordance with, the laws of the State of Michigan. By signing this agreement, vendor consents to personal jurisdiction in the state of Michigan. Any dispute arising herein shall be resolved in the State of Michigan.**

2.006 APPLICABLE STATUTES

**The following statutes, rules, and laws are applicable to the performance of this contract; some statutes are reflected in the clauses of this contract. This list is NOT exhaustive.**

**MI Uniform Commercial Code (MIUCC) MCL 440. (All sections unless otherwise altered by agreement)**
**MI OSHA MCL §§ 408.1001 – 408.1094**
**Freedom of Information Act (FIOA) MCL §§ 15.231, et seq.**
**Natural Resources and Environmental Protection Act MCL §§ 324.101, et seq.**
**MI Consumer Protection Act MCL §§ 445.901 – 445.922**
**Laws relating to wages, payments of wages, and fringe benefits on state projects MCL §§ 408.551 – 408.558, 408.471 – 408.490, 1965 PA 390.**
**Department of Civil Service Rules and regulations**
**Elliot Larsen Civil Rights Act MCL §§ 37.2201, et seq.**
**Persons with disabilities Civil Rights Act MCL §§ 37.1101, et seq.**
**MCL §§ 423.321, et seq.**
**MCL § 18.1264 (law regarding debarment)**
**Davis-Bacon Act (DBA) 40 USCU §§ 276(a), et seq.**
**Contract Work Hours and Safety Standards Act (CWHSAA) 40 USCS § 327, et seq.**
**Business Opportunity Act for Persons with Disabilities MCL §§ 450.791 – 450.795**
**Rules and regulations of the Environmental Protection Agency**
**Internal Revenue Code**
**Rules and regulations of the Equal Employment Opportunity Commission (EEOC)**
**The Civil Rights Act of 1964, USCS Chapter 42**
**Title VII, 42 USCS §§ 2000e et seq.**
**The Americans with Disabilities Act (ADA), 42 USCS §§ 12101 et seq.**
**The Age Discrimination in Employment Act of 1967 (ADEA), 29 USCS §§ 621, 623 et seq.**
**The Old Workers Benefit and Protection Act of 1990 (OWBPA), 29 USCS §§ 626, et seq.**
**The Family Medical Leave Act of 1993 (FMLA), 29 USC §§ 651 et seq.**
**The Fair Labor Standards Act (FLSA), 29 USC §§ 201 et seq.**
**Pollution Prevention Act of 1990 (PPA) 42 U.S.C. §13106**
**Sherman Act, 15 U.S.C.S. § 1 et seq.**
**Robinson-Patman Act, 15 U.S.C.S. § 13 et. seq.**
**Clayton Act, 15 U.S.C.S. § 14 et seq.**

2.007 RELATIONSHIP OF THE PARTIES

**The relationship between the State and the Vendor is that of client and independent Vendor. No agent, employee, or servant of the Vendor or any of its subcontractors shall be or shall be deemed to be an employee, agent, or servant of the State for any reason. The Vendor will be solely and entirely responsible for its acts and the acts of its agents, employees, servants and subcontractors during the performance of this Contract.**

2.008 HEADINGS

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

2.009 MERGER

**This document constitutes the complete, final, and exclusive agreement between the parties. All other prior writings and negotiations are ineffective.**

2.010 SEVERABILITY

**Each provision of the Contract shall be deemed to be severable from all other provisions of the Contract and, if one or more of the provisions of the Contract shall be declared invalid, the remaining provisions of the Contract shall remain in full force and effect.**

2.011 SURVIVORSHIP

**Any provisions of the Contract that impose continuing obligations on the parties including, but not limited to the Vendor's indemnity and other obligations shall survive the expiration or cancellation of the Contract for any reason.**

2.012 NO WAIVER OF DEFAULT

**The failure of a party to insist upon strict adherence to any term of the Contract shall not be considered a waiver or deprive the party of the right thereafter to insist upon strict adherence to that term or any other term of the Contract.**

2.013 PURCHASE ORDERS

**Orders for delivery of commodities and/or services may be issued directly by the State Departments through the issuance of a Purchase Order Form referencing this Contract (Blanket Purchase Order) agreement and the terms and conditions contained herein. Vendor is asked to reference the Purchase Order Number on all invoices for payment.**

2.1 Vendor/Contractor Obligations

2.101 ACCOUNTING RECORDS

**The Vendor and all subcontractors shall maintain all pertinent financial and accounting records and evidence pertaining to the Contract in accordance with generally accepted principles of accounting and other procedures specified by the State of Michigan. Financial and accounting records shall be made available, upon request, to the State of Michigan, its designees, or the Michigan Auditor General at any time during the Contract period and any extension thereof, and for three years from expiration date and final payment on the Contract or extension thereof.**

2.102 NOTIFICATION OF OWNERSHIP

**The Vendor shall make the following notifications in writing:**

1. **When the Vendor becomes aware that a change in its ownership or officers has occurred, or is certain to occur, that could result in changes in the valuation of its capitalized assets in the accounting records, the Vendor shall notify Purchasing Operations within 30 days.**

2. **The Vendor shall also notify the Purchasing Operations within 30 days whenever changes to asset valuations or any other cost changes have occurred or are certain to occur as a result of a change in ownership or officers.**

**The Vendor shall:**

1. **Maintain current, accurate, and complete inventory records of assets and their costs;**

2. **Provide Purchasing Operations or designated representative ready access to the records upon request;**

3. **Ensure that all individual and grouped assets, their capitalized values, accumulated depreciation or amortization, and remaining useful lives are identified accurately before and after each of the Vendor's ownership or officer changes; and**

4. **Retain and continue to maintain depreciation and amortization schedules based on the asset records maintained before each Vendor ownership or officer change.**

2.103 SOFTWARE COMPLIANCE

**The vendor warrants that all software for which the vendor either sells or licenses to the State of Michigan and used by the State prior to, during or after the calendar year 2000, includes or shall include, at no added cost to the State, design and performance so the State shall not experience software abnormality and/or the generation of incorrect results from the software, due to date oriented processing, in the operation of the business of the State of Michigan.**

**The software design, to insure year 2000 compatibility, shall include, but is not limited to: data structures (databases, data files, etc.) that provide 4-digit date century; stored data that contain date century recognition, including, but not limited to, data stored in databases and hardware device internal system dates; calculations and program logic (e.g., sort algorithms, calendar generation, event recognition, and all processing actions that use or produce date values) that accommodates same century and multi-century formulas and date values; interfaces that supply data to and receive data from other systems or organizations that prevent non-compliant dates and data from entering any State system; user interfaces (i.e., screens, reports, etc.) that accurately show 4 digit years; and assurance that the year 2000 shall be correctly treated as a leap year within all calculation and calendar logic.**

2.104 LIABILITY INSURANCE

A. Insurance

**The Vendor is required to provide proof of the minimum levels of insurance coverage as indicated below. The purpose of this coverage shall be to protect the State from claims which may arise out of or result from the Vendor's performance of services under the terms of this Contract, whether such services are performed by the Vendor, or by any subcontractor, or by anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable.**

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

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

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

**The insurers selected by Vendor shall have an A.M. Best rating of A or better, or as otherwise approved in writing by the State, or if such ratings are no longer available, with a comparable rating from a recognized insurance rating agency. Companies that have been approved to do business in the State shall issue all policies of insurance required in this Contract.**

See www.michigan.gov/cis

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

**Before both parties sign the Contract or before the purchase order is issued by the State, the Vendor must furnish to the Director of Purchasing Operations, certificate(s) of insurance verifying insurance coverage ("Certificates"). The Certificate must be on the standard "accord" form or equivalent.** THE CONTRACT OR PURCHASE ORDER NO. MUST BE SHOWN ON THE CERTIFICATE OF INSURANCE TO ASSURE CORRECT FILING. **All Certificate(s) are to be prepared and submitted by the Insurance Provider. All Certificate(s) shall contain a provision indicating that coverage afforded under the policies WILL NOT BE CANCELED, MATERIALLY CHANGED, OR NOT RENEWED without THIRTY (30) days prior written notice, except for ten (10) days for non-payment of premium, having been given to the Director of Purchasing Operations, Department of Management and Budget. The notice must include the Contract or Purchase Order number affected and be mailed to: Director, Purchasing Operations, Department of Management and Budget, P.O. Box 30026, Lansing, Michigan 48909. Failure to provide evidence of coverage, may, at the State's sole option, result in this Contract's termination.**

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

☑ **1. Commercial General Liability with the following minimum coverage:**

| | |
|---|---|
| **$2,000,000** | **General Aggregate Limit other than Products/Completed Operations** |
| **$2,000,000** | **Products/Completed Operations Aggregate Limit** |
| **$1,000,000** | **Personal & Advertising Injury Limit** |
| **$1,000,000** | **Each Occurrence Limit** |
| **$500,000** | **Fire Damage Limit (any one fire)** |

**The Vendor 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 Vendor also agrees to provide evidence that insurance policies contain a waiver of subrogation by the insurance company.**

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

**The Vendor 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 Vendor also agrees to provide evidence that insurance policies contain a waiver of subrogation by the insurance company.**

☑ **3. Workers' compensation coverage must be provided in accordance with applicable laws governing the employees and employers work activities in the state of the Vendor's domicile. If a self-insurer provides the applicable coverage, proof must be provided of**

**approved self-insured authority by the jurisdiction of domicile. For employees working outside of the state of qualification, Vendor must provide appropriate certificates of insurance proving mandated coverage levels for the jurisdictions where the employees' activities occur.**

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

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

☑ **4. Employers liability insurance with the following minimum limits:**

| | |
|---|---|
| **$100,000** | **each accident** |
| **$100,000** | **each employee by disease** |
| **$500,000** | **aggregate disease** |

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

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

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

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

B. Subcontractors

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

C. Certificates of Insurance and Other Requirements

**Vendor shall furnish to the Office of Purchasing Operations certificate(s) of insurance verifying insurance coverage or providing satisfactory evidence of self-insurance as required**

**in this Section (the "Certificates"). Before the Contract is signed, and not less than 20 days before the insurance expiration date every year thereafter, the Vendor shall provide evidence that the State and its agents, officers and employees are listed as additional insureds, but only to the extent of liabilities assumed by Vendor as set forth in Indemnification Section of this Contract, under each commercial general liability and commercial automobile liability policy. In the event the State approves the representation of the State by the insurer's attorney, the attorney may be required to be designated as a Special Assistant Attorney General by the Attorney General of the State of Michigan.**

**Vendor shall maintain all required insurance coverage throughout the term of the Contract and any extensions thereto and, in the case of claims-made Commercial General Liability policies, shall secure tail coverage for at least three (3) years following the expiration or termination for any reason of this Contract. The minimum limits of coverage specified above are not intended, and shall not be construed, to limit any liability or indemnity of Vendor under this Contract to any indemnified party or other persons. Vendor shall be responsible for all deductibles with regard to such insurance. If Vendor fails to pay any premium for required insurance as specified in this Contract, or if any insurer cancels or significantly reduces any required insurance as specified in this Contract without the State's written consent, at the State's election (but without any obligation to do so) after the State has given Vendor at least thirty (30) days written notice, the State may pay such premium or procure similar insurance coverage from another company or companies; and at the State's election, the State may deduct the entire cost (or part thereof) from any payment due Vendor, or Vendor shall pay the entire cost (or any part thereof) upon demand by the State.**

2.105 PERFORMANCE AND RELIABILTIY EVALUATION (PARE) - RESERVED

2.106 PREVAILING WAGE

**The rates of wages and fringe benefits to be paid each class of individuals employed by the Vendor, its subcontractors, their subcontractors, and all persons involved with the performance of this contract in privity of contract with the Vendor shall not be less than the wage rates and fringe benefits established by the Michigan Department of Consumer and Industry Service, Bureau of Safety and Regulation, Wage/Hour Division schedule of occupational classification and wage rates and fringe benefits for the local where the work is to be performed. The term Vendor shall include all general Vendors, prime Vendors, project managers, trade Vendors, and all of their Vendors or subcontractors and persons in privity of contract with them.**

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

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

2.107 PAYROLL AND BASIC RECORDS

**Payrolls and basic records relating to the performance of this contract shall be maintained by the Vendor during the course of the work and preserved for a period of 3 years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash**

**equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made, and actual wages paid. Vendors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.**

**The Vendor shall submit a copy of all payrolls to the Contract Administrator upon request. The payrolls submitted shall set out accurately and completely all of the information required to be maintained as indicated above.**

**The Prime Vendor is responsible for the submission of copies of payrolls by all subcontractors upon request from the Contract Administrator**

**The Vendor or subcontractor shall permit the Contract Administrator or representatives of the Contract Administrator or the State of Michigan to interview employees during working hours on the job.**

**If the Vendor or subcontractor fails to submit required records or to make them available, the Contract Administrator may, after written notice to the Vendor, take such action as may be necessary to cause the suspension of any further payment. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment.**

2.108 COMPETITION IN SUB-CONTRACTING

**The Vendor shall select subcontractors (including suppliers) on a competitive basis to the maximum practical extent consistent with the objectives and requirements of the contract.**

2.109 CALL CENTER DISCLOSURE

**Vendor and/or all subcontractors involved in the performance of this contract providing call or contact center services to the State of Michigan must disclose the location of its call or contact center services to inbound callers. Failure to disclose this information shall be a material breach of this agreement.**

2.110 WORKPLACE DISCRIMINATION

**The Vendor represents and warrants that in performing services for the State pursuant to this Contract, the Vendor agrees not to discriminate against any employee or applicant for employment, with respect to their hire, tenure, terms, conditions or privileges of employment, or any matter directly or indirectly related to employment, because of race, color, religion, national origin, ancestry, age, sex, height, weight, marital status, physical or mental handicap or disability. The Vendor further agrees that every subcontract entered into for the performance of any Contract or purchase order resulting here from will contain a provision requiring non-discrimination in employment, as herein specified, binding upon each subcontractor. This covenant is required pursuant to the Elliot Larsen Civil Rights Act, 1976 Public Act 453, as amended, MCL 37.2201, et seq., and the Persons With Disabilities Civil Rights Act, 1976 Public Act 220, as amended, MCL 37.1101, et seq., and any breach thereof may be regarded as a material breach of the Contract or purchase order.**

**Vendor hereby represents that in performing this contract it will not violate The Civil Rights Act of 1964, USCS Chapter 42, including, but not limited to, Title VII, 42 USCS §§ 2000e et seq.; the Americans with Disabilities Act (ADA), 42 USCS §§ 12101 et seq.; or The Age Discrimination in Employment Act of 1967 (ADEA), 29 USCS §§ 621, 623 et seq.; the Old Workers Benefit and Protection Act of 1990 (OWBPA), 29 USCS §§ 626 et seq.; the Family Medical Leave Act of 1993 (FMLA), 29 USC §§ 651 et seq.; or the Fair Labor Standards Act (FLSA), 29 USC §§ 201 et seq.**

_____ **(Initial)**

2.111 LABOR RELATIONS

**Pursuant to 1980 Public Act 278, as amended, MCL 423.231, et seq., the State shall 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 pursuant to Section 2 of the Act. A Vendor of the State, in relation to the Contract, shall not enter into a Contract with a subcontractor, manufacturer, or supplier whose name appears in this register. Pursuant to Section 4 of 1980 Public Act 278, MCL 423.324, the State may void any Contract if, subsequent to award of the Contract, the name of the Vendor as an employer, or the name of the subcontractor, manufacturer or supplier of the Vendor appears in the register.**

**The Vendor represents and warrants that the company does not appear in the current register of employers failing to correct an unfair labor practice.**

_____ **(Initial)**

2.2 Contract Performance

2.201 TIME IS OF THE ESSENCE - RESERVED

2.202 CONTRACT PAYMENT SCHEDULE - RESERVED

2.203 POSSIBLE PROGRESS PAYMENTS - RESERVED

2.204 POSSIBLE PERFORMANCE-BASED PAYMENTS - RESERVED

2.205 ELECTRONIC PAYMENT REQUIREMENT

**Electronic transfer of funds is available to State Vendors. Vendor is required to register with the State electronically at http://www.cpexpress.state.mi.us. Public Act 533 of 2004 requires all payments be transitioned over to EFT by October 2005.**

2.206 PERFORMANCE OF WORK BY VENDOR - RESERVED

2.3 Contract Rights and Obligations

2.301 INCURRING COSTS

**The State of Michigan is not liable for any cost incurred by the Vendor prior to signing of the Contract. The State fiscal year is October 1st through September 30th. The Vendor(s) should realize that payments in any given fiscal year are contingent upon enactment of legislative appropriations. Total liability of the State is limited to terms and conditions of the Contract.**

2.302 VENDOR RESPONSIBILITIES

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

2.303 ASSIGNMENT AND DELEGATION

**The Vendor shall not have the right to assign this Contract, to assign its rights under this contract, or delegate any of its duties or obligations under the Contract to any other party (whether by operation of law or otherwise), without the prior written consent of the State. Any purported**

**assignment in violation of this Section shall be null and void. Further, the Vendor may not assign the right to receive money due under the Contract without the prior written consent of the Director of Purchasing Operations.**

**The Vendor shall not delegate any duties or obligations under the Contract to a subcontractor other than a subcontractor named and approved in the bid unless the Director of Purchasing Operations has given written consent to the delegation.**

Vendor must obtain the approval of the Director of Purchasing Operations before using a place of performance that is different from the address that vendor provided in the bid.

2.304 TAXES

**Sales Tax: For purchases made directly by the State of Michigan, the State is exempt from State and Local Sales Tax. Prices shall not include such taxes. Exemption Certificates for State Sales Tax will be furnished upon request.**

**Federal Excise Tax: The State of Michigan may be exempt for Federal Excise Tax, or such taxes may be reimbursable, if articles purchased under this Contract are used for the State's exclusive use. Certificates exclusive use for the purposes of substantiating a tax-free, or tax-reimbursable sale will be sent to the Vendor upon request. If a sale is tax exempt or tax reimbursable under the Internal Revenue Code, prices shall not include the Federal Excise Tax.**

**The State's Tax Exempt Certification is available for vendor viewing upon request to the Contract Administrator.**

2.305 INDEMNIFICATION

**General Indemnification**

**To the fullest extent permitted by law, the Vendor shall indemnify, defend and hold harmless the State, its departments, divisions, agencies, sections, commissions, officers, employees and agents, from and against all losses, liabilities, penalties, fines, damages and claims (including taxes), and all related costs and expenses (including reasonable attorneys' fees and disbursements and costs of investigation, litigation, settlement, judgments, interest and penalties), arising from or in connection with any of the following:**

1. **Any claim, demand, action, citation or legal proceeding against the State, its employees and agents arising out of or resulting from (1) the product provided or (2) performance of the work, duties, responsibilities, actions or omissions of the Vendor or any of its subcontractors under this Contract.**

2. **Any claim, demand, action, citation or legal proceeding against the State, its employees and agents arising out of or resulting from a breach by the Vendor of any representation or warranty made by the Vendor in the Contract;**

3. **Any claim, demand, action, citation or legal proceeding against the State, its employees and agents arising out of or related to occurrences that the Vendor is required to insure against as provided for in this Contract;**

4. **Any claim, demand, action, citation or legal proceeding against the State, its employees and agents arising out of or resulting from the death or bodily injury of any person, or the damage, loss or destruction of any real or tangible personal property, in connection with the performance of services by the Vendor, by any of its subcontractors, by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable; provided, however, that this indemnification obligation shall not apply to the extent, if any, that such death, bodily injury or property damage is caused solely by the negligence or reckless or intentional wrongful conduct of the State;**

5. Any claim, demand, action, citation or legal proceeding against the State, its employees and agents which results from an act or omission of the Vendor or any of its subcontractors in its or their capacity as an employer of a person.

**Patent/Copyright Infringement Indemnification**

To the fullest extent permitted by law, the Vendor shall indemnify, defend and hold harmless the State, its employees and agents from and against all losses, liabilities, damages (including taxes), and all related costs and expenses (including reasonable attorneys' fees and disbursements and costs of investigation, litigation, settlement, judgments, interest and penalties) incurred in connection with any action or proceeding threatened or brought against the State to the extent that such action or proceeding is based on a claim that any piece of equipment, software, commodity or service supplied by the Vendor or its subcontractors, or the operation of such equipment, software, commodity or service, or the use or reproduction of any documentation provided with such equipment, software, commodity or service infringes any United States or foreign patent, copyright, trade secret or other proprietary right of any person or entity, which right is enforceable under the laws of the United States. In addition, should the equipment, software, commodity, or service, or the operation thereof, become or in the Vendor's opinion be likely to become the subject of a claim of infringement, the Vendor shall at the Vendor's sole expense (i) procure for the State the right to continue using the equipment, software, commodity or service or, if such option is not reasonably available to the Vendor, (ii) replace or modify the same with equipment, software, commodity or service of equivalent function and performance so that it becomes non-infringing, or, if such option is not reasonably available to Vendor, (iii) accept its return by the State with appropriate credits to the State against the Vendor's charges and reimburse the State for any losses or costs incurred as a consequence of the State ceasing its use and returning it.

**Code Indemnification**

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

**Indemnification Obligation Not Limited**

In any and all claims against the State of Michigan, or any of its agents or employees, by any employee of the Vendor or any of its subcontractors, the indemnification obligation under the Contract shall not be limited in any way by the amount or type of damages, compensation or benefits payable by or for the Vendor or any of its subcontractors under worker's disability compensation acts, disability benefits acts, or other employee benefits acts. This indemnification clause is intended to be comprehensive. Any overlap in sub clauses, 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 sub clause.

**Continuation of Indemnification Obligation**

The duty to indemnify will continue in full force and affect not withstanding the expiration or early termination of the Contract with respect to any claims based on facts or conditions, which occurred prior to termination.

**Indemnification Procedures**

The procedures set forth below shall apply to all indemnity obligations under this Contract.

(a) After receipt by the State of notice of the action or proceeding involving a claim in respect of which it will seek indemnification, the State shall promptly notify Vendor of such claim in writing and take or assist Vendor in taking, as the case may be, any reasonable action to avoid the imposition of a default judgment against Vendor. No failure to so notify Vendor shall relieve Vendor of its indemnification obligations except to the extent that Vendor can demonstrate damages attributable to such failure. Within

**ten (10) days following receipt of written notice from the State relating to any claim, Vendor shall notify the State in writing whether Vendor agrees to assume control of the defense and settlement of that claim (a "Notice of Election"). After notifying Vendor of a claim and prior to the State receiving Vendor's Notice of Election, the State shall be entitled to defend against the claim, at Vendor's expense, and Vendor will be responsible for any reasonable costs incurred by the State in defending against the claim during such period.**

**(b) If Vendor delivers a Notice of Election relating to any claim: (i) the State shall be entitled to participate in the defense of such claim and to employ counsel at its own expense to assist in the handling of such claim and to monitor and advise the State about the status and progress of the Defense; (ii) Vendor shall, at the request of the State, demonstrate to the reasonable satisfaction of the State, Vendor's financial ability to carry out its defense and indemnity obligations under this Contract; (iii) Vendor shall periodically advise the State about the status and progress of the defense and shall obtain the prior written approval of the State before entering into any settlement of such claim or ceasing to defend against such claim and (iv) to the extent that any principles of Michigan governmental or public law may be involved or challenged, the State shall have the right, at its own expense, to control the defense of that portion of such claim involving the principles of Michigan governmental or public law. Notwithstanding the foregoing, the State may retain control of the defense and settlement of a claim by written notice to Vendor given within ten (10) days after the State's receipt of Vendor's information requested by the State pursuant to clause (ii) of this paragraph if the State determines that Vendor has failed to demonstrate to the reasonable satisfaction of the State Vendor's financial ability to carry out its defense and indemnity obligations under this Section. Any litigation activity on behalf of the State of Michigan, or any of its subdivisions pursuant to this Section, must be coordinated with the Department of Attorney General. In the event the insurer's attorney represents the State pursuant to 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 Vendor does not deliver a Notice of Election relating to any claim of which it is notified by the State as provided above, the State shall have the right to defend the claim in such manner as it may deem appropriate, at the cost and expense of Vendor. If it is determined that the claim was one against which Vendor was required to indemnify the State, upon request of the State, Vendor shall promptly reimburse the State for all such reasonable costs and expenses.**

2.306 LIMITATION OF LIABILITY

**Except as set forth herein, neither the Vendor nor the State shall be liable to the other party for indirect or consequential damages, even if such party has been advised of the possibility of such damages. Such limitation as to indirect or consequential damages shall 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 Vendor; to claims covered by other specific provisions of this Contract calling for liquidated damages; to Vendor's indemnification obligations (2.305); or to court costs or attorney's fees awarded by a court in addition to damages after litigation based on this Contract.**

**The State's liability for damages to the Vendor shall be limited to the value of the Contract.**

2.307 CONTRACT DISTRIBUTION

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

2.308 FORM, FUNCTION, AND UTILITY

**If the Contract is for use of more than one State agency and if the good or service provided under this Contract do not the meet the form, function, and utility required by a State agency, that agency may, subject to State purchasing policies, procure the good or service from another source.**

2.309 ASSIGNMENT OF ANTITRUST CAUSE OF ACTION

**For and in consideration of the opportunity to submit a quotation and other good and valuable consideration, the vendor hereby assigns, sells and transfers to the State of Michigan all rights, title and interest in and to all causes of action it may have under the antitrust laws of the United States or this State for price fixing, which causes of action have accrued prior to the date of payment and which relate solely to the particular goods, commodities, or services purchased or procured by this State pursuant to this transaction.**

2.310 PURCHASING FROM OTHER STATE AGENCIES

**State agencies are exempt from utilizing the resulting Contract if they would instead prefer to purchase similar items from the following State agencies:**

- **Michigan State Industries (MSI), which provides valuable training opportunities for inmates at State correctional facilities.**

- **Department of Management and Budget, Print and Graphics Services**

2.311 TRANSITION ASSISTANCE

**If this Contract is not renewed at the end of this term, or is canceled prior to its expiration, for any reason, the Vendor must provide for up to 6 (six) months after the expiration or cancellation of this Contract, all reasonable transition assistance requested by the State, to allow for the expired or canceled portion of the Services to continue without interruption or adverse effect, and to facilitate the orderly transfer of such services to the State or its designees. Such transition assistance will be deemed by the parties to be governed by the terms and conditions of this Contract, (notwithstanding this expiration or cancellation) except for those Contract terms or conditions that do not reasonably apply to such transition assistance. The State shall pay the Vendor for any resources utilized in performing such transition assistance at the most current rates provided by the Contract for Contract performance.**

2.312 RESERVED

2.313 RESERVED

2.314 WEBSITE INCORPORATION

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

2.4 Contract Review and Evaluation

2.401 CONTRACT COMPLIANCE INSPECTOR

**Upon receipt at Purchasing Operations of the properly executed Contract Agreement(s), the person named below will be allowed to oversee the Contract performance on a day-to-day basis during the term of the Contract. However, overseeing the Contract implies** no authority to negotiate, change, modify, clarify, amend, or otherwise alter the terms, conditions, and specifications of such Contract(s). That authority is retained by Purchasing Operations**. The Contract Compliance Inspector for this project is:**

Patricia Clark
Michigan Department of Community Health
Bureau of Laboratories
517-335-8102
ClarkP@michigan.gov

2.402 PERFORMANCE REVIEWS

**Purchasing Operations in conjunction with the DCH may review with the Vendor their performance under the Contract. Performance reviews shall be conducted quarterly, semi-annually or annually depending on Vendor's past performance with the State. Performance reviews shall include, but not limited to, quality of products/services being delivered and provided, timeliness of delivery, percentage of completion of orders, the amount of back orders, status of such orders, accuracy of billings, customer service, completion and submission of required paperwork, the number of substitutions and the reasons for substitutions, and other requirements of the Contract.**

**Upon a finding of poor performance, which has been documented by Purchasing Operations, the Vendor shall be given an opportunity to respond and take corrective action. If corrective action is not taken in a reasonable amount of time as determined by Purchasing Operations, the Contract may be canceled for default. Delivery by the Vendor of unsafe and/or adulterated or off-condition products to any State agency is considered a material breach of Contract subject to the cancellation provisions contained herein.**

2.403 AUDIT OF CONTRACT COMPLIANCE/ RECORDS AND INSPECTIONS

**The Vendor agrees that the State may, upon 24-hour notice, perform an audit at Vendor's location(s) to determine if the Vendor is complying with the requirements of the Contract. The Vendor agrees to cooperate with the State during the audit and produce all records and documentation that verifies compliance with the Contract requirements.**

2.5 Quality and Warranties

2.501 PROHIBITED PRODUCTS

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

2.502 QUALITY ASSURANCE

**The State reserves the right to periodically test products, which have been received to verify compliance with specifications. If laboratory analysis shows that the product does not meet specifications or fails to perform satisfactorily at any time, the Vendor shall be responsible for:**

1. **All costs of testing and laboratory analysis.**
2. **Disposal and/or replacement of all products which fail to meet specifications.**
3. **All costs of repair and/or replacement of equipment deemed to have been damaged by substandard products as determined by the State.**

2.503 INSPECTION

**All goods are subject to inspection and testing. In the event goods are defective in material or workmanship, or otherwise fail to meet the requirements of the Contract, the State shall have the right to reject the goods or retain the goods and correct the defects. The Vendor shall pay the State for expenses incurred in correcting defects. Rejected goods will be held for 45 days after delivery.**

**The Vendor must arrange for the return of said goods, including paying for handling, packing, and transportation costs. The State has the authority to dispose of the goods without further liability to the State in the event the Vendor fails to make arrangements within the specified time period.**

2.504 GENERAL WARRANTIES (goods)

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

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

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

2.505 VENDOR WARRANTIES - RESERVED

2.506 STAFF

**The State reserves the right to approve the Vendor's assignment of Key Personnel to this project and to recommend reassignment of personnel deemed unsatisfactory by the State.**

**The Vendor shall not remove or reassign, without the State's prior written approval any of the Key Personnel until such time as the Key Personnel have completed all of their planned and assigned responsibilities in connection with performance of the Vendor's obligations under this Contract. The Vendor agrees that the continuity of Key Personnel is critical and agrees to the continuity of Key Personnel. Removal of Key Personnel without the written consent of the State may be considered by the State to be a material breach of this Contract. The prohibition against removal or reassignment shall not apply where Key Personnel must be replaced for reasons beyond the reasonable control of the Vendor including but not limited to illness, disability, resignation or termination of the Key Personnel's employment.**

2.507 RESERVED

2.508 EQUIPMENT WARRANTY

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

**The Vendor represents and warrants that the equipment/system(s) shall be in good operating condition and shall operate and perform to the requirements and other standards of performance contained in this Contract, when installed, at the time of Final Acceptance by the State, and for a period of one (1) year commencing upon the first day following Final Acceptance.**

**Within 3 business days of notification from the State, the Vendor shall adjust, repair or replace all equipment that is defective or not performing in compliance with the Contract. The Vendor shall assume all costs for replacing parts or units and their installation including transportation and delivery fees, if any.**

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

**The Vendor agrees that all warranty service it provides under this Contract shall be performed by original equipment manufacturer (OEM) trained, certified and authorized technicians.**

**The Vendor shall act as the sole point of contact for warranty service. The Vendor warrants that it shall pass through to the State any and all warranties obtained or available from the original equipment manufacturer, including any replacement, upgraded, or additional equipment warranties.**

2.509 RESERVED

2.6 Breach of Contract

2.601 BREACH DEFINED

**Failure to comply with articles, sections, or subsections of this agreement, or making any false statement in this agreement will be considered a material breach of this agreement giving the state authority to invoke any and all remedies available to it under this agreement.**

**In addition to any remedies available in law and by the terms of this contract, if the Vendor breaches Sections 2.508, 2.509, or 2.510, such a breach may be considered as a default in the performance of a material obligation of this contract.**

2.602 NOTICE AND THE RIGHT TO CURE

**In the event of a curable breach by the Vendor, the State shall provide the Vendor written notice of the breach and a time period to cure said breach described in the notice. This section requiring notice and an opportunity to cure shall not be applicable in the event of successive or repeated breaches of the same nature or if the State determines in its sole discretion that the breach poses a serious and imminent threat to the health or safety of any person or the imminent loss, damage or destruction of any real or tangible personal property.**

2.603 EXCUSABLE FAILURE

1. **Neither party shall be liable for any default or delay in the performance of its obligations under the Contract if and to the extent such default or delay is caused, directly or indirectly, by: fire, flood, earthquake, elements of nature or acts of God; riots, civil disorders, rebellions or revolutions in any country; the failure of the other party to perform its material responsibilities under the Contract (either itself or through another Vendor); 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 such party; provided the non-performing party and its subcontractors are without fault in causing such default or delay, and such 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. In such event, the non-performing party will be excused from any further performance or observance of the obligation(s) so affected for as long as such circumstances prevail and such party continues to use its best efforts to recommence performance or observance whenever and to whatever extent possible without delay provided such party promptly notifies the other party in writing of the inception of the excusable failure occurrence, and also of its abatement or cessation.**

2. **If any of the above enumerated circumstances substantially prevent, hinder, or delay performance of the services necessary for the performance of the State's functions for more than 14 consecutive days, and the State determines that performance is not likely to be resumed within a period of time that is satisfactory to the State in its reasonable discretion, then at the State's option: (a) the State may procure the affected services from an alternate source, and the State shall not be liable for payments for the unperformed services under the Contract for so long as the delay in performance shall continue; (b) the State may cancel any portions of the Contract so affected and the charges payable hereunder shall be equitably**

**adjusted to reflect those services canceled; or (c) the Contract will be canceled without liability of the State to the Vendor as of the date specified by the State in a written notice of cancellation to the Vendor. The Vendor will not have the right to any additional payments from the State as a result of any excusable failure occurrence or to payments for services not rendered as a result of the excusable failure condition. Defaults or delays in performance by the Vendor which are caused by acts or omissions of its subcontractors will not relieve the Vendor of its obligations under the Contract except to the extent that a subcontractor is itself subject to any excusable failure condition described above and the Vendor cannot reasonably circumvent the effect of the subcontractor's default or delay in performance through the use of alternate sources, workaround plans or other means.**

2.7 Remedies

2.701 CANCELLATION

**The State may cancel this Contract without further liability or penalty to the State, its departments, divisions, agencies, offices, commissions, officers, agents, and employees for any of the following reasons:**

**1. <u>Material Breach by the Vendor</u>. In the event that the Vendor breaches any of its material duties or obligations under the Contract, which are either not capable of or subject to being cured, or are not cured within the time period specified in the written notice of breach provided by the State, or pose a serious and imminent threat to the health and safety of any person, or the imminent loss, damage or destruction of any real or tangible personal property, the State may, having provided written notice of cancellation to the Vendor, cancel this Contract in whole or in part, for cause, as of the date specified in the notice of cancellation.**

**In the event that this Contract is canceled for cause, in addition to any legal remedies otherwise available to the State by law or equity, the Vendor shall be responsible for all costs incurred by the State in canceling the Contract, including but not limited to, State administrative costs, attorneys fees and court costs, and any additional costs the State may incur to procure the services required by this Contract from other sources. All excess re-procurement costs and damages shall not be considered by the parties to be consequential, indirect or incidental, and shall not be excluded by any other terms otherwise included in the Contract.**

**In the event the State chooses to partially cancel this Contract for cause charges payable under this Contract will be equitably adjusted to reflect those services that are canceled.**

**In the event this Contract is canceled for cause pursuant to this section, and it is therefore determined, for any reason, that the Vendor was not in breach of contract pursuant to the provisions of this section, that cancellation for cause shall be deemed to have been a cancellation for convenience, effective as of the same date, and the rights and obligations of the parties shall be limited to that otherwise provided in the Contract for a cancellation for convenience.**

**2. <u>Cancellation For Convenience By the State</u>. The State may cancel this Contract for its convenience, in whole or part, if the State determines that such a cancellation is in the State's best interest. Reasons for such cancellation shall be left to the sole discretion of the State and may include, but not limited to (a) the State no longer needs the services or products specified in the Contract, (b) relocation of office, program changes, changes in laws, rules, or regulations make implementation of the Contract services no longer practical or feasible, and (c) unacceptable prices for additional services requested by the State. The State may cancel the Contract for its convenience, in whole or in part, by giving the Vendor written notice 30 days prior to the date of cancellation. If the State chooses to cancel this Contract in part, the charges payable under this Contract shall be equitably adjusted to reflect those services that are canceled.**

**3. <u>Non-Appropriation</u>. In the event that funds to enable the State to effect continued payment under this Contract are not appropriated or otherwise made available. The Vendor acknowledges that, if this Contract extends for several fiscal years, continuation of this**

**Contract is subject to appropriation or availability of funds for this project. If funds are not appropriated or otherwise made available, the State shall have the right to cancel this Contract at the end of the last period for which funds have been appropriated or otherwise made available by giving written notice of cancellation to the Vendor. The State shall give the Vendor written notice of such non-appropriation or unavailability within 30 days after it receives notice of such non-appropriation or unavailability.**

**4. Criminal Conviction. In the event the Vendor, an officer of the Vendor, or an owner of a 25% or greater share of the Vendor, is convicted of a criminal offense incident to the application for or performance of a State, public or private Contract or subcontract; or convicted of a criminal offense including but not limited to any of the following: embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, attempting to influence a public employee to breach the ethical conduct standards for State of Michigan employees; convicted under State or federal antitrust statutes; or convicted of any other criminal offense which in the sole discretion of the State, reflects upon the Vendor's business integrity.**

**5. Approvals Rescinded. The State may terminate this Contract without further liability or penalty in the event any final administrative or judicial decision or adjudication disapproves a previously approved request for purchase of personal services pursuant to Constitution 1963, Article 11, section 5, and Civil Service Rule 7. Termination may be in whole or in part and may be immediate as of the date of the written notice to Vendor or may be effective as of the date stated in such written notice.**

2.702 RIGHTS UPON CANCELLATION

Termination Assistance. **If this Contract (or any Statement of Work issued under it) is terminated for any reason prior to completion, Vendor agrees to provide for up to six (6) months after the termination all reasonable termination assistance requested by the State to facilitate the orderly transfer of such Services to the State or its designees in a manner designed to minimize interruption and adverse effect. Such termination assistance will be deemed by the parties to be governed by the terms and conditions of this Contract (notwithstanding its termination) other than any terms or conditions that do not reasonably apply to such termination assistance. Such termination assistance shall be at no additional charge to the State if the termination is for Vendor's Default pursuant to Section 2.602; otherwise the State shall compensate Vendor for such termination assistance on a time and materials basis in accordance with the Amendment Labor Rates identified within this Contract agreement.**

2.703 LIQUIDATED DAMAGES - RESERVED

2.704 STOP WORK - RESERVED

2.705 SUSPENSION OF WORK - RESERVED

2.8 Changes, Modifications, and Amendments

2.801 APPROVALS

**The Contract may not be modified, amended, extended, or augmented except by a writing executed by the parties hereto, and any breach or default by a party shall not be waived or released other than in writing signed by the other party.**

2.802 TIME EXTENTIONS

**Time extensions for contract changes will depend upon the extent, if any, by which the changes cause delay in the completion of the various elements of performance as described in the statement of work. The change order granting the time extension may provide that the contract completion date will be extended only for those specific elements related to the changed work and that the remaining contract completion dates for all other portions of the work will not be altered. The change order also may provide an equitable readjustment of liquidated damages under the new completion schedule.**

2.803 MODIFICATION

**Purchasing Operations reserves the right to modify this contract at any time during the contract term. Such modification may include changing the locations to be serviced, additional locations to be serviced, method or manner of performance of the work, number of days service is to be performed, addition or deletion of tasks to be performed, addition or deletion of items, and/or any other modifications deemed necessary. Any changes in pricing proposed by the Vendor resulting from the proposed changes are subject to acceptance by the State. Changes may be increases or decreases. IN THE EVENT PRICES ARE NOT ACCEPTABLE TO THE STATE, THE CONTRACT SHALL BE SUBJECT TO COMPETITIVE BIDDING BASED UPON THE NEW SPECIFICATION.**

The State reserves the right to add an item(s) that is not described on the item listing and is available from the Contract vendor. **The item(s) may be included on the Contract, only if prior written approval has been granted by Purchasing Operations.**

2.804 AUDIT AND RECORDS UPON MODIFICATION

**DEFINITION: records includes books, documents, accounting procedures and practices, and other data, regardless of whether such items are in written form, electronic form, or in any other form**

**Vendor shall be required to submit cost or pricing data with the pricing of any modification of this contract to the Contract Administrator in Purchasing Operations. Data may include accounting records, payroll records, employee time sheets, and other information the state deems necessary to perform a fair evaluation of the modification proposal. Contract Administrator or authorized representative of the state shall have the right to examine and audit all of the Vendor's records, including computations and projections, related to:**

1. **The proposal for modification;**
2. **The discussions conducted on the proposal, including those related to negotiation;**
3. **Pricing of the modification; or**
4. **Performance of the modification.**

**Vendor shall make available at its office at all reasonable times the materials described in the paragraphs above.**

**If this contract is completely or partially terminated, the records relating to the work terminated shall be made available for 3 years after any resulting final termination settlement.**

2.805 CHANGES

**(a) The Contract Administrator may, at any time, without notice to the sureties, if any, by written order designated or indicated to be a change order, make changes in the work within the general scope of the contract, including changes:**

**(1) In the specifications (including drawings and designs);**
**(2) In the method or manner of performance of the work;**
**(3) In the Government-furnished facilities, equipment, materials, services, or site; or**
**(4) Directing acceleration in the performance of the work.**

**(a) Any other written or oral order (which, as used in this paragraph (b), includes direction, instruction, interpretation, or determination) from the Contract Administrator that causes a change shall be treated as a change order under this clause; Provided, that the Vendor gives the Contract Administrator written notice stating:**

**(1) The date, circumstances, and source of the order; and**
**(2) That the Vendor regards the order as a change order.**

**(b) Except as provided in this clause, no order, statement, or conduct of the Contract Administrator shall be treated as a change under this clause or entitle the Vendor to an equitable adjustment.**

# ITEM LISTING

| Unit of Measure | Description | **Estimated Annual of Usage** | **Catalog Number** | **Price** |
|---|---|---|---|---|
| Each | RMK cells with SV5 and SV40, 16x25 mm culture tubes, | 1,560 | #49-0600A | $1.80 |
| Each | African Green Monkey Kidney cells, with SV5 and SV40, 16x25 mm culture tubes | 1,040 | #46-0600A | $3.75 |
| Each | MRC-5 cells, 15x125 mm culture tubes | 1,560 | #51-0600 | $1.41 |
| Each | R-Mix Shell Vials | 3,120 | #96-0102 | $2.80 |
| Each | Refeed Medium, Resp. Virus Detection, 100 ml | 52 | #10-330100 | $24.00 |
| Case | Shell vial pack, sterile, with coverslips | 12 | #99-000050 | $57.48 |