

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

CHANGE NOTICE NO. 3
 to
CONTRACT NO. 071B2200120
 between
THE STATE OF MICHIGAN
 and

NAME & ADDRESS OF CONTRACTOR:	PRIMARY CONTACT	EMAIL
Alcohol Monitoring Systems, Inc. 1241 W. Mineral Ave, #200 Littleton, CO 80120	Richard Irrer	dirrer@alcoholmonitoring.com
	TELEPHONE	CONTRACTOR #, MAIL CODE
	(517) 381-2467	

STATE CONTACTS	AGENCY	NAME	PHONE	EMAIL
CONTRACT COMPLIANCE INSPECTOR				
BUYER	DTMB	Whitnie Zuker	517-335-5306	zuckerw@michigan.gov

CONTRACT SUMMARY:			
DESCRIPTION: Electronic Alcohol Monitoring Device			
INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW
March 1, 2012	December 31, 2012	2 , 1 Year Options	December 31, 2013
PAYMENT TERMS	F.O.B	SHIPPED	SHIPPED FROM
N/A	N/A	N/A	N/A
ALTERNATE PAYMENT OPTIONS:			AVAILABLE TO MiDEAL PARTICIPANTS
<input type="checkbox"/> P-card <input type="checkbox"/> Direct Voucher (DV) <input type="checkbox"/> Other			<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
MINIMUM DELIVERY REQUIREMENTS:			
N/A			

DESCRIPTION OF CHANGE NOTICE:				
EXTEND CONTRACT EXPIRATION DATE	EXERCISE CONTRACT OPTION YEAR(S)	EXTENSION BEYOND CONTRACT OPTION YEARS	LENGTH OF OPTION/EXTENSION	EXPIRATION DATE AFTER CHANGE
<input type="checkbox"/> No <input checked="" type="checkbox"/> Yes	<input checked="" type="checkbox"/>	<input type="checkbox"/>	5 months	May 30, 2014
VALUE/COST OF CHANGE NOTICE:		ESTIMATED REVISED AGGREGATE CONTRACT VALUE:		
\$840,000.00		\$4,480,920.80		

Effective immediately, contract is hereby extended using five (5) months of the last option year, to May 30, 2014, and increased by \$840,000.00 to cover equipment and support services until a new contract is awarded (see RFPBID0071141113B0000112). The State may terminate this agreement at any time. The State may pay maintenance and support charges on a monthly basis. Payment of maintenance services/support of less than one month's duration shall be prorated at 1/30th of the basic monthly maintenance charges for each calendar day. Please also note that the buyer has been changed to Whitnie Zuker. All other terms, conditions, pricing and specifications remain the same. Per vendor and agency agreement, the approval of DTMB Procurement, and the approval of the State Administrative Board dated December 17, 2013.

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

September 13, 2013

CHANGE NOTICE NO. 2
 to
CONTRACT NO. 071B2200120
 between
THE STATE OF MICHIGAN
 and

NAME & ADDRESS OF CONTRACTOR:	PRIMARY CONTACT	EMAIL
Alcohol Monitoring Systems, Inc. 1241 W. Mineral Ave, #200 Littleton, CO 80120	Richard Irrer	direr@alcoholmonitoring.com
	TELEPHONE	CONTRACTOR #, MAIL CODE
	(517) 381-2467	

STATE CONTACTS	AGENCY	NAME	PHONE	EMAIL
CONTRACT COMPLIANCE INSPECTOR				
BUYER	DTMB	Joe Kelly	517-373-3993	Kellyj11@michigan.gov

CONTRACT SUMMARY:			
DESCRIPTION: Electronic Alcohol Monitoring Device			
INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW
March 1, 2012	December 31, 2012	2, 1 Year Options	December 31, 2013
PAYMENT TERMS	F.O.B	SHIPPED	SHIPPED FROM
N/A	N/A	N/A	N/A
ALTERNATE PAYMENT OPTIONS:			AVAILABLE TO MiDEAL PARTICIPANTS
<input type="checkbox"/> P-card <input type="checkbox"/> Direct Voucher (DV) <input type="checkbox"/> Other			<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
MINIMUM DELIVERY REQUIREMENTS:			
N/A			

DESCRIPTION OF CHANGE NOTICE:				
EXTEND CONTRACT EXPIRATION DATE	EXERCISE CONTRACT OPTION YEAR(S)	EXTENSION BEYOND CONTRACT OPTION YEARS	LENGTH OF OPTION/EXTENSION	EXPIRATION DATE AFTER CHANGE
<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	<input type="checkbox"/>	<input type="checkbox"/>		December 31, 2013
VALUE/COST OF CHANGE NOTICE:		ESTIMATED REVISED AGGREGATE CONTRACT VALUE:		
\$840,000.00		\$3,640,920.83		

Effective immediately, this contract is utilizing an option year to December 31, 2014 and is INCREASED by \$840,000.00.

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

Per vendor and agency agreement, the approval of DTMB Procurement, and the approval of the State Administrative Board dated September 13, 2013.

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

CHANGE NOTICE NO. 1
 to
CONTRACT NO. 071B2200120
 between
THE STATE OF MICHIGAN
 and

NAME & ADDRESS OF CONTRACTOR:	PRIMARY CONTACT	EMAIL
Alcohol Monitoring Systems, Inc. 1241 W. Mineral Ave, #200 Littleton, CO 80120	Richard Irrer	direr@alcoholmonitoring.com
	TELEPHONE	CONTRACTOR #, MAIL CODE
	(517) 381-2467	

STATE CONTACTS	AGENCY	NAME	PHONE	EMAIL
CONTRACT COMPLIANCE INSPECTOR				
BUYER	DTMB	Joe Kelly	517-373-3993	Kellyj11@michigan.gov

CONTRACT SUMMARY:			
DESCRIPTION: Electronic Alcohol Monitoring Device			
INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW
March 1, 2012	December 31, 2012		December 31, 2012
PAYMENT TERMS	F.O.B	SHIPPED	SHIPPED FROM
N/A	N/A	N/A	N/A
ALTERNATE PAYMENT OPTIONS:			AVAILABLE TO MiDEAL PARTICIPANTS
<input type="checkbox"/> P-card <input type="checkbox"/> Direct Voucher (DV) <input type="checkbox"/> Other			<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
MINIMUM DELIVERY REQUIREMENTS:			
N/A			

DESCRIPTION OF CHANGE NOTICE:				
EXTEND CONTRACT EXPIRATION DATE	EXERCISE CONTRACT OPTION YEAR(S)	EXTENSION BEYOND CONTRACT OPTION YEARS	LENGTH OF OPTION/EXTENSION	EXPIRATION DATE AFTER CHANGE
<input type="checkbox"/> No <input checked="" type="checkbox"/> Yes	<input checked="" type="checkbox"/>	<input type="checkbox"/>	1 year	December 31, 2013
VALUE/COST OF CHANGE NOTICE:		ESTIMATED REVISED AGGREGATE CONTRACT VALUE:		
\$1,500,000.00		\$2,800,920.83		
Effective November 20, 2012, this contract exercises a contract option. The new contract end date will be December 31, 2013. The contract is also INCREASED by \$1,500,000.00. All other terms, conditions, pricing and specifications remain the same. Per vendor and agency agreement and the approval of DTMB Procurement and the approval of the State Administrative Board on November 20, 2012.				

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

March 30, 2012

NOTICE
OF
CONTRACT NO. 071B2200120
between
THE STATE OF MICHIGAN
and

NAME & ADDRESS OF CONTRACTOR Alcohol Monitoring Systems, Inc. 1241 W. Mineral Ave., #200 Littleton, CO 80120 Email: dirrerr@alcoholmonitoring.com	TELEPHONE Richard Irrer (517) 381-2467 CONTRACTOR NUMBER/MAIL CODE BUYER/CA 517-373-3993 Joseph Kelly
Contract Compliance Inspector: <p style="text-align: center;">Electronic Alcohol Monitoring Device</p>	
CONTRACT PERIOD: From: March 1, 2012 To: December 31, 2012	
TERMS <p style="text-align: center;">N/A</p>	SHIPMENT <p style="text-align: center;">N/A</p>
F.O.B. <p style="text-align: center;">N/A</p>	SHIPPED FROM <p style="text-align: center;">N/A</p>
MINIMUM DELIVERY REQUIREMENTS <p style="text-align: center;">N/A</p>	
MISCELLANEOUS INFORMATION:	

TOTAL ESTIMATED CONTRACT VALUE: \$ 1,300,920.83

STATE OF MICHIGAN
DEPARTMENT OF TECHNOLOGY, MANAGEMENT AND BUDGET
PROCUREMENT
 P.O. BOX 30026, LANSING, MI 48909
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CONTRACT NO. 071B2200120
between
THE STATE OF MICHIGAN
and

NAME & ADDRESS OF CONTRACTOR Alcohol Monitoring Systems, Inc. 1241 W. Mineral Ave., #200 Littleton, CO 80120 Email: dirrerr@alcoholmonitoring.com	TELEPHONE Richard Irrer (517) 381-2467 CONTRACTOR NUMBER/MAIL CODE BUYER/CA 517-373-3993 Joseph Kelly
Contract Compliance Inspector: <p style="text-align: center;">Electronic Alcohol Monitoring Device</p>	
CONTRACT PERIOD: From: March 1, 2012 To: December 31, 2012	
TERMS <p style="text-align: center;">N/A</p>	SHIPMENT <p style="text-align: center;">N/A</p>
F.O.B. <p style="text-align: center;">N/A</p>	SHIPPED FROM <p style="text-align: center;">N/A</p>
MINIMUM DELIVERY REQUIREMENTS <p style="text-align: center;">N/A</p>	
MISCELLANEOUS INFORMATION: The terms and conditions of this Contract are those of ITB #071R2200048, this Contract Agreement and the vendor's quote. In the event of any conflicts between the specifications, and terms and conditions, indicated by the State and those indicated by the vendor, those of the State take precedence.	
Estimated Contract Value: \$ 1,300,920.83	

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



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Article 1 – Statement of Work

1.1 Project Identification

The purpose of this contract is to provide Electronic Alcohol Monitoring products (continuous) defined in section 1.2.

1.1.2 Background

The Michigan Department of Corrections (MDOC) has used Electronic Monitoring devices to assist in the supervision of offenders since the 1980s. The use of Electronic Monitoring devices in the community on convicted felons has been proven to be a viable cost efficient alternative to incarceration while providing for public safety.

In the mid-1980s, the MDOC began using radio frequency technology. This technology merely enforces curfews which are established by supervising agents and allows us to determine the presence of the offender in their home. The downside of this technology is that the offender must have land based telephone service in order for the technology to work as intended. We currently own approximately 3,100 units that were manufactured by B. I., Incorporated.

During 2001, the MDOC began using random or set alcohol monitoring which requires the offender to exhale into a device at random or set intervals. This testing occurs in the offender's home during their curfew hours. It only tests for alcohol usage at a given moment in time and can't determine if alcohol has been consumed and secreted from the body between testing events. The downside of this technology is that the offender must have land based telephone service in order for the technology to work as intended. This unit provides specific breath alcohol content (BrAC) which identifies the exact amount of alcohol present at the time of the test. This is essential during violation proceedings. We currently own approximately 900 units that were manufactured by B. I., Incorporated.

During 2004, the MDOC began use of secure continuous remote alcohol monitoring units. The benefit of this technology is that it monitors the offender's alcohol consumption continuously by measuring the transdermal vapors secreted by the body at 30 minute intervals, 24 hours per day. This technology has been tested and affirmed as permissible evidence in court cases. This unit also has the ability to store data for multiple days. This is important because if an offender does not have land-based telephone service, the offender will be required to report to their supervising agent to download the information. This unit provides transdermal alcohol concentration (TAC) which identifies the specific amount of alcohol secreted during the drinking event. This information is essential during violation proceedings. We currently own approximately 1,100 units manufactured by Alcohol Monitoring Systems, Inc. and we have the largest offender population monitored by a governmental agency with this product.

During 2005, the MDOC began using digital cellular technology. This technology allows us to use radio frequency monitoring in an offender's home that does not have land-based telephone service. The downside of this technology is that it is only a viable solution in areas with cellular coverage. This has been a challenge in the more remote areas of northern Michigan. We currently lease approximately 120 units from B.I., Incorporated.

During 2006, the MDOC began using a global positioning system (GPS). This technology allows us to monitor the movement of offenders throughout the community. This is accomplished through the use of maps and the supervising agent's ability to review the offender's movement and length of stay at various locations. We are currently using active GPS which allows for real time monitoring. Points are collected on a map at a rate of one per minute when the offender is in compliance. The rate of collection increases to the rate of one every 15 seconds when the offender has a zone violation. We consider offenders not in compliance when the satellite signal is lost, when they are out of range of the tracking device, when they leave their inclusion zone or enter an exclusion zone, or when their equipment becomes compromised or detects a tamper. The MDOC places this device on offenders based on the crime for which they were convicted. Under State of Michigan law, we are required to place on lifetime GPS offenders who are convicted of committing specific sex offenses on a minor under the age of 13. In addition, offenders who are convicted of specific stalking



offenses are required to be placed on GPS. The original technology allowed the MDOC to text message the offender but did not allow for two-way voice communication.



We have found that two-way voice communication allows the MDOC to quickly troubleshoot unit failure and provide immediate direction to the offender. This two-way voice communication capability has assisted us in resolving alert alarms quickly, thereby more efficiently managing the GPS offender population. We are currently leasing approximately 2,170 units and we own approximately 250 units that were manufactured by Pro-Tech Monitoring, Inc.

The MDOC operates an Electronic Monitoring Center (EMC) under the direction of Field Operations Administration (FOA) that employs 61 staff members and is a 24/7/365 operation. The main function of the EMC is to manage alerts that are received from the various devices that are being used in the community to supervise offenders on parole or probation. These alerts are managed through telephone communication with the offender or a member of their family. The monitoring center staff responds to and resolves in excess of 5,000 alerts per day. Some alerts can be resolved in minutes and some take a considerable amount of time and investigation to resolve. All alerts remain open and monitored by the EMC staff until the offender is brought into compliance and the alert is resolved. The alert management procedures used by the EMC have been established by the MDOC, FOA. These procedures are necessary to provide for public safety in local communities where the offender resides. In addition, Michigan State Law requires us to provide monitoring services to sentencing judges and county sheriffs. The EMC is responsible for inventory management, which includes any device in use or available for use, those deemed lost or inoperable, or those under warranty or break/fix repair. They are also responsible for ensuring that devices are at field offices when they are needed.

FOA is organized into 2 regions, 12 areas, and 83 counties. Each county has at least one field office, and the larger counties have 2 or more field offices. Each field office requires units on a daily basis. The EMC manages this movement of units between the offices to ensure that when an offender is released on parole or probation the required unit is available at the field office. The Michigan State Police (MSP) administers the Law Enforcement Information Network (LEIN). The MSP has delegated to the EMC responsibility for entering all parole absconder warrants and prison escape warrants into the LEIN database. Warrants are entered into LEIN for a parolee's arrest if an alert has not been resolved within two hours. This is a matter of public safety and allows law enforcement to apprehend any offender who cannot be located. Routinely law enforcement officers contact the EMC to confirm that the MDOC warrant is valid and requires arrest. The EMC works with the Social Security Administration to verify warrants of individuals who are applying for federal benefits.

MDOC policy requires supervising agents to be available at all times to the offenders that they supervise, their families and local law enforcement. Each offender has been provided with a toll free telephone number to the EMC and is transferred by the EMC staff to the after hour's telephone number provided by each supervising agent. The average number of calls transferred each month is in excess of 1,300. The EMC also provides training throughout the state to all new agents and supervisors on each of the Electronic Monitoring technologies that are being used by the MDOC. They also provide trouble shooting techniques and suggestions to field staff that are having difficulty installing devices.

1.1.3 Environment

The links below provide information on the State's Enterprise information technology (IT) policies, standards and procedures which includes security policy and procedures, IT strategic plan, eMichigan web development and the State Unified Information Technology Environment (SUITE).

Enterprise IT Policies, Standards and Procedures:

<http://www.michigan.gov/dmb/0,1607,7-150-56355-107739--,00.html>

All software and hardware items provided by the Contractor must run on and be compatible with the MDTMB Standard Information Technology Environment. Additionally, the State must be able to maintain software and other items produced as the result of the Contract. Therefore, non-standard development tools may not be used unless approved by MDTMB. The Contractor must request, in writing, approval to use non-standard software development tools, providing justification for the requested change and all costs associated with any change. The MDTMB Project Manager must approve any tools, in writing, before use on any information technology project.



It is recognized that technology changes rapidly. The Contractor may request, in writing, a change in the standard environment, providing justification for the requested change and all costs associated with any change. The State's Project Manager must approve any changes, in writing, and MDTMB, before work may proceed based on the changed environment.

Enterprise IT Security Policy and Procedures:

http://www.michigan.gov/documents/dmb/1310_183772_7.pdf

http://www.michigan.gov/documents/dmb/1310.02_183775_7.pdf

http://www.michigan.gov/documents/dmb/1325_193160_7.pdf

http://www.michigan.gov/documents/dmb/1335_193161_7.pdf

http://www.michigan.gov/documents/dmb/1340_193162_7.pdf

http://www.michigan.gov/documents/dmb/1350.10_184594_7.pdf

The State's security environment includes:

MDTMB Single Login.

MDTMB provided SQL security database.

Secured Socket Layers.

SecureID (State Security Standard for external network access and high risk Web systems)

MDTMB requires that its single - login security environment be used for all new client-server software development. Where software is being converted from an existing package, or a client-server application is being purchased, the security mechanism must be approved in writing by the State's Project Manager and MDTMB Office of Enterprise Security.

Any additional Agency specific security requirements above and beyond the enterprise requirements and standard terms and conditions stated in Article 2 must be provided as part of the Agency Specific Technical Environment.

IT Strategic Plan:

<http://www.michigan.gov/itstrategicplan>

1.2 Scope of Work and Deliverable(s)

1.2.1 In Scope

Alcohol monitoring hardware and software

Hardware and software documentation, training, customized reports prepared by the Contractor

Requirements as outlined in Section 1.2.2 Deliverable(s).

1.2.2 Deliverable(s)

Open specifications - Brands or trade names are for identification purposes only and do not limit the contractor to such brands or trade names; provided, the Deliverable(s) are equal in quality and function to those specified.

Contractor must provide the following Deliverable(s):

1.2.2.1 Alcohol Monitoring Equipment

A device that remotely measures transdermal vapors for the consumption of alcohol by an offender at 30 minute intervals 24 hours per day. The measurements must provide a specific transdermal alcohol concentration (TAC) measurement for use in violation and court proceedings and must meet court standards for admissibility as the sole source of confirming violation behavior. This device will be used on an offender that does not have a curfew monitoring requirement. In order to enhance public safety it is important that the MDOC knows if these offenders have consumed alcohol at any point



during the day. The device shall not require any active participation by the offender in the collection of the samples for the measurements.

The contractor shall provide a device designed to remotely and continuously monitor, measure, record and communicate the TAC of an offender's insensible perspiration. The system infrastructure shall consist of three integrated and interchangeable hardware components (and associated software), including an ankle bracelet, base station and server.

A. General Requirements

1. The contractor shall not change any device manufacturer without the prior written approval of the MDOC.
2. The Contractor shall have the ability to deliver up to 1,200 alcohol monitoring devices. If leased, at the contractor's expense an additional 30% spare device ratio over the number of activated devices shall be provided to the MDOC.
3. The MDOC shall pay a daily monitoring fee only for devices which have been activated on offenders.
4. The contractor shall work out of their facility.
5. The State shall not provide workspace for the contractor except in the event required for services under the contract.
6. The Contractor shall identify the system manufacturers and devices proposed. For the term of the contract, the contractor shall not be authorized to change the device without the prior written approval of the MDOC. The MDOC will only utilize one device and one user application for each technology.
7. All device consumables such as straps, clips, batteries, etc. shall be provided at the contractor's expense.
8. The contractor shall provide system documentation, including training materials, product bulletins/updates, and other materials as MDOC deems necessary.
9. Contractor shall provide the MDOC as needed with staff capable of providing expert testimony in court cases at the contractor's expense.
10. Any TAC confirmation data analysis shall be performed by the contractor.

B. Hardware Requirements

1. The ankle bracelet shall:
 - a. House the transdermal testing sensor, tamper detection, data collection and analysis, storage and transmission circuitry.
 - b. Test an offender for the presence of alcohol in the body that is being emitted as vapors through the skin in 30 minute intervals.
 - c. Record the date and time of a positive measurement when the bracelet detects the presence of alcohol.
 - d. Store and transmit all readings to the base station at regular intervals until the readings have been successfully transmitted to the base station.
 - e. Detect interference, tampering or removal and will alert the system in the event of any such activity.
 - f. Store all measurements and alerts for download through a USB or similar device compatible with State of Michigan (SOM) technology where the offender does not have a land-based telephone line.
2. A base station shall be located in the offender's residence and shall:
 - a. Provide for bi-directional communications with the ankle bracelet and for bi-directional secure telephone connectivity with the system network.
 - b. Have the ability to be programmed for communicating with the ankle bracelet/server up to six times per day.
 - c. The base station shall store all collection data until this information is successfully communicated to the server.



3. The server shall communicate bi-directionally with the base station and use information received from the base station to compile, analyze and record the ankle bracelet information. Access to the server should be controlled, managed, and auditable.
4. Information shall be accessible to the MDOC through a Web-based software application program on the server.
5. All integrated hardware components and devices shall have all required Federal Communications Commission (FCC) certification.
6. The integrated hardware components provided to the MDOC shall be of the latest technology available from the manufacturer of the equipment. All devices purchased shall be new equipment which has not been previously used.
7. The integrated hardware components shall use standard or digital telephone lines, wireless, cellular, or similar means to communicate between the base station and the server. The contractor shall provide plans to interact with a completely digital telephone network.
8. The Contractor's integrated hardware components shall be upgradeable and the MDOC shall receive from the Contractor all new revisions, as they become available, at no cost to the MDOC.
9. The Contractor's integrated hardware components shall comply with the State's security standards.

C. Software System Requirements

1. The Contractor shall provide minimum software, hardware and system requirements necessary for any State information technology resource that will interface with the operation of the Contractor's system.
2. The system shall be accessible through a web-based user interface system 24/7/365. The MDOC shall have access via a toll- free telephone number from anywhere in the United States for both the communication of information from the base station to the server and for direct access by the MDOC to the server.
3. The Contractor shall provide a breakdown of the various response times found in the complete system. These response times include but are not limited to screen transition, report generation, device communication, and retrieval of historical data.
4. The base station shall have the ability to be programmed for bi-directional communication of stored data up to six times per day.
5. The system must be capable of performing Data Integrity as part of normal maintenance and after restoration of data files.
6. The system must allow on-site administrator access for configuration of the system.
7. The Contractor shall provide Critical User Support through a toll free number that is available during Extended Business Hours. The call center shall be staffed with employees that are experienced and have technical knowledge of the integrated hardware components.
8. The Contractor shall provide Non-Critical User Support through email with a guaranteed one hour acknowledgement of receipt of issue with an appropriate timeframe for resolution.
9. The system shall allow 24/7/365 user and administrative access and to meet the requirements set by regulating agencies and/or institutions.
10. The Contractor shall provide the following with regards to software releases:
 - a. The contractor must provide the number of releases scheduled per year and the anticipated release dates of all software release. All costs to configure and deploy a software release are to be provided at the contractor's expense. All software releases, including those installed on State equipment, must comply with State IT policies, standards and procedures and State software and equipment standards.
 - b. All scheduled releases must be delivered to the MDOC and implemented based upon the schedule agreed to by the MDOC, DTMB and the Contractor.



- c. All software releases shall be fully tested at the contractor site with a comparable system to the current MDOC environment at the contractor's expense. MDOC and DTMB staff shall be allowed to fully test the software releases to ensure compliance with State IT policies, standards and procedures at least three months prior to the anticipated release date. Modifications to the required testing duration must be approved by the State.
 - d. The contractor will provide support for upgrades, releases, etc. at their own expense to ensure an operational production environment.
11. The system must have the ability to handle "surge capacity" in times of emergency and crisis, without the shutdown of the system and/or limitation on the number of users.
 12. The system must have a means of "journaling" to insure that data is not lost from the time of the last backup to the time the system failure occurred.
 13. The system must keep a complete audit trail of all entries and edits within the system which includes but is not limited to; reports, tests, database items, etc.
 14. The system must be fully compliant with HIPPA regulations, standards, requirements, guidelines and grants, as well as comply with all Federal and State government, laws, regulations, requirements, guidelines and grants.
 15. Allow authorized MDOC staff secure encrypted web-based software access to perform enrollments, deletions, inventory control, and alert processing; set up schedules, and view, print, or download offender monitoring data.
 16. All offender information collected by this device must be stored in a retrievable format and retained for a minimum of seven years.
 17. At a minimum the system database shall contain the following:
 - a. Field Office Information: Field Office name, Field Office code, Field Office Address, Field Office Supervisor name, Field Office Supervisor telephone including extension and fax numbers, Field Office Supervisor email address, Field Office Supervisor after hours phone number and contact instructions
 - b. Region Office Information: Region Office Name
 - c. Supervising Agent Information: Supervising Agent name, Supervising Agent office address, Supervising Agent office telephone including extension and fax numbers, Supervising Agent email address
 - d. Offender information: Offender Name, Offender MDOC number, Offender Address, Offender Phone number #1 and #2, Offender Supervision Level, Monitoring Equipment Serial Identification numbers, Alerts & History, Alert comments/case notes, Monitoring start date, Monitoring end date, Reason for removal
 18. MDOC staff must have the ability to enter case notes on each generated alert.
- D. Disaster Recovery:** The contractor shall also provide the MDOC with a fully functioning Disaster Recovery solution for the service. The contractor shall provide their solution to DTMB for review of the contractor's hosting solution. If the DTMB determines that the infrastructure solution does not support the required environment then DTMB has the option to require that the Contractor bring the environment up to state standards at no cost to the state.
1. For security reasons the MDOC's data shall be stored on a dedicated server within each hosting center.
 2. The server shall be in a high availability clustered environment with automatic failover.
 3. The Disaster Recovery solution shall be tested at least once a year.



E. **Training:** The contractor shall provide the MDOC training services consisting of the below items (see Section 1.3.8 for additional information):

1. Initial training shall be provided by the contractor on site and include the use and deployment of the system. Ongoing training shall be provided quarterly by the contractor.
2. Travel, lodging and reasonable expenses incurred by the contractor's personnel for purposes of training and training support services are the responsibility of the contractor.
3. All training shall be provided at no additional cost to the MDOC.

F. **Technical Support:**

1. The Contractor shall provide equipment installation and troubleshooting technical support via a toll-free telephone number during extended business hours. The call center shall be staffed with employees that are experienced and have technical knowledge of the integrated hardware components and system software.
2. System application software technical support and database management during extended business hours. These services shall include bug-fixes, workarounds, code rewrites, documentation updates, etc. The contractor will also provide regular off-site data storage and backup Services for the MDOC.

G. **Device Maintenance:** All maintenance and recalibration of integrated hardware components to insure that they will remain in working order and will continue to meet or exceed published specifications.

1. The parties will establish an ongoing and routine maintenance and recalibration program and a schedule that will insure the return of each ankle bracelet to the proposed contractor at predetermined periodic intervals.
2. The contractor will send reminder notices to the MDOC no less than monthly by the ankle bracelet serial numbers which are scheduled for periodic maintenance and recalibration services within the following thirty (30) days.
3. The MDOC shall be responsible for collecting these identified ankle bracelets from offenders and for shipping them to the contractor, at the contractor's expense, by a delivery service that tracks receipt of shipments and makes such tracking information available via the Internet.
4. The maintenance and recalibration program shall not cover integrated hardware components damaged or rendered inoperative for any cause not covered by warranty.

H. **Reports:**

1. Reports must be available in the software at the time of Contract execution and must include, but not be limited to the following:
 - a. Daily Violation Reports – reports which indicate the number of alerts generated by an offender or group of offenders during a specified time and date query.
 - b. Inventory/ Equipment Reports – reports which indicate the amount of equipment that is assigned to all offices. The reports shall list the current status of the equipment (i.e. assigned or unassigned). The reports shall also allow queries which indicate the system history that will show previous offenders who were assigned to the equipment.
 - c. Offender Population Reports – reports which indicate offender population by agent, office, and region.
 - d. Offender Status Reports – reports which indicate the offender's current status (i.e. alert status, compliant status) in summary, or "at a glance" form.
 - e. Offender Violation Court Reports – a report that is created by the Contractor detailing offender information, the specified alert information, and the supporting documentation that a violation occurred.



- f. Incomplete Offender Hardware Assignment – a report which identifies offenders who have been enrolled in the system but who do not have devices assigned.
 - g. Offender Demographic Reports – reports which indicate offender demographic or offense information which may be used for statistical gathering. This would also include the reason for the offender's removal from the technology.
 - h. Offender Alerts – reports which indicate all alerts generated by a specific offender or group of offenders during a specific time and date query.
 - i. Pending Activation / De-Activation Report – a report that indicates equipment that has been assigned to an offender but not activated or is pending de-activation.
2. The MDOC shall have the ability to request additional customized reports which shall be provided within 30 business days. Data accessible shall include offender data and staff activity data to ensure compliance with department policies and procedures. Offender data which may be requested in customized reports includes, but is not limited to:
- a. Field Office Information: Field Office name, Field Office code, Field Office Supervisor name
 - b. Region Office Information: Region Office Name
 - c. Supervising Agent Information: Supervising Agent name, Supervising Agent office telephone, Supervising Agent email address
 - d. Offender Information: Offender Name, Offender MDOC number, Offender Address, all Offender Phone numbers, Offender Status
 - e. Equipment Information: Monitoring Equipment Serial Identification numbers, High profile offender designation, Monitoring start date and/or end date, Reason for removal, any alerts, equipment previously assigned and/or removed from an offender.
- I. **Transition Plan:** A transition plan shall be included in the Contractor's proposal and shall include the conversion of data and replacement of existing equipment.
1. At the contractor's expense, the contractor shall convert the previous seven years of data from the current Contractor to ensure that historical data is retained and readily available to the MDOC.
 2. The contractor shall also be responsible for replacement of all devices worn on or located in the offender's home and in the Parole/Probation Offices located throughout the State.
 3. The transition plan shall identify a timeline, major milestones and the method that will be used for conversion of data, devices and training. The Contractor, in conjunction with the State, shall utilize the State's SUITE processes.
 4. The contractor shall provide transition project status reports every other week to project managers.

1.2.3 Quantity

There shall be no minimum order requirement on this proposed contract.

1.2.4 Ordering

The Contract, once it has been executed by the State, constitutes an order for the Deliverable(s). The contractor is not authorized to begin performance until commencement of the Contract term or receipt of an executed Contract, whichever is later.



1.3 Management and Staffing

1.3.1 Project Management

Preliminary Project Plan

The Contractor will provide a Preliminary Project Plan with the proposal for evaluation purposes, including necessary time frames and deliverables for the various stages of the project and the responsibilities and obligations of both the Contractor and the State.

1. In particular, the Preliminary Project Plan will include a MS Project plan or equivalent (check the SUITE/PMM standard):
 - a. A description of the deliverables to be provided under this contract.
 - b. Target dates and critical paths for the deliverables.
 - c. Identification of roles and responsibilities, including the organization responsible. Contractor is to provide a roles and responsibility matrix.
 - d. The labor, hardware, materials and supplies required to be provided by the State in meeting the target dates established in the Preliminary Project Plan.
 - e. Internal milestones
 - f. Task durations
2. The Preliminary Project Plan shall include the following deliverable/milestones for which payment shall be made.
 - a. Payment to the Contractor will be made upon the completion and acceptance of the deliverable or milestone, not to exceed contractual costs of the phase. A milestone is defined as complete when all of the deliverables within the milestone have been completed.
 - b. Failure to provide deliverable/milestone by the identified date may be subject to liquidated damages as identified in Article 2.

Note: A Final Project Plan will be required as stated in Article 1, Section 1.301 Project Control.

Orientation Meeting

Upon 14 calendar days from execution of the Contract, the Contractor will be required to attend an orientation meeting to discuss the content and procedures of the Contract. The meeting will be held in Lansing, Michigan, at a date and time mutually acceptable to the State and the Contractor. The State shall bear no cost for the time and travel of the Contractor for attendance at the meeting.

Performance Review Meetings

The State will require the Contractor to attend monthly meetings, at a minimum, to review the Contractor's performance under the Contract. The meetings will be held in Lansing, Michigan, or by teleconference, as mutually agreed by the State and the Contractor. The State shall bear no cost for the time and travel of the Contractor for attendance at the meeting.

Project Control

1. The Contractor will carry out this project under the direction and control of MDOC, (Michigan Department of Corrections).
2. Within 30 working days of the execution of the Contract, the Contractor will submit to the State project manager(s) for final approval of the project plan. This project plan must be in agreement with Article 1, Section 1.2.2 Deliverable(s), and must include the following:
 - The Contractor's project organizational structure.*
 - The Contractor'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.*
 - The project work breakdown structure (WBS) showing sub-projects, activities and tasks, and resources required and allocated to each.*



- The time-phased plan in the form of a graphic display, showing each event, task, and decision point in the WBS.*
3. The Contractor will manage the project in accordance with the State Unified Information Technology Environment (SUITE) methodology, which includes standards for project management, systems engineering, and associated forms and templates which is available at <http://www.michigan.gov/suite>
 - a. Contractor will use an automated tool for planning, monitoring, and tracking the Contract's progress and the level of effort of any Contractor personnel spent performing Services under the Contract. The tool shall have the capability to produce:
 - Staffing tables with names of personnel assigned to Contract tasks.
 - Project plans showing tasks, subtasks, deliverables, and the resources required and allocated to each (including detailed plans for all Services to be performed within the next 20 calendar days, updated semi-monthly).
 - Updates must include actual time spent on each task and a revised estimate to complete.
 - Graphs showing critical events, dependencies and decision points during the course of the Contract.
 - b. Any tool(s) used by Contractor for such purposes must produce information of a type and in a manner and format that will support reporting in compliance with the State standards.
 4. The project manager will meet weekly with the contractor's project manager to review progress and provide necessary guidance.
 5. The contractor will submit biweekly written progress reports that: outline the work accomplished during the reporting period and work to be done during the next reporting period; identify actual and anticipated problems that should be brought to the attention of the project manager; and provide notice of any significant deviation from previously agreed upon project plans. The contractor will provide these reports to the Buyer.

1.3.2 Reports

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

1.3.3 Staff, Duties, and Responsibilities

The Contractor must provide, and update when changed, an organizational chart highlighting the key people assigned to manage the personnel called for in the RFP, and illustrating the lines of authority.

The Contractor must identify a Project Manager who will oversee the project during implementation. The Project Manager must be identified as a Key Personnel subject to the State's interview and approval.

The Contractor must identify an Account Representative who will be responsible for the day to day activities related to this contract throughout the contract term. The Project Manager must be identified as a Key Personnel subject to the State's interview and approval.

The Contractor must designate an individual to serve as the Contract Manager for the provision of services pursuant to the RFP. The duties of the Contractor's Contract Manager shall include but not be limited to:

- supporting the management of the contract,
- facilitating dispute resolution, and
- advising DTMB of performance under the terms and conditions of the contract.

DTMB reserves the right to require a change in the Contractor's Contract Manager if the assigned Contract Manager is not, in the opinion of DTMB, adequately serving the needs of the State. The Contract Manager must be available to meet with State staff on a daily basis, if needed, to resolve issues that may arise.

The Contract Manager must be identified as a Key Personnel subject to the State's interview and approval.



In accepting a SOW, the Contractor recognizes its responsibility for all tasks and deliverables contained therein, warrants that it has fully informed itself of all relevant factors affecting accomplishment of the tasks and deliverables and agrees to be fully accountable for the performance of selected staff. Please review Section 1.104 Work and Deliverables Section of the Contract detailing the expectations of the State. In addition, the Contractor assumes full responsibility for the acts of all subcontractors.

The Contractor must provide all management oversight, administrative and clerical functions required for the effective and efficient performance of all SOW's it accepts. The Contractor is accountable to the State for the following actions.

Contractor's management responsibilities include, but are not limited to, the following:

- A. Ensure staff understands the work to be performed on SOW to which they are assigned.
- B. Ensure staff know their management chain and adhere to contractor policies and exhibit professional conduct to perform in the best interest of the State.
- C. Ensure staff adheres to applicable laws, regulations, and contract conditions governing contractor performance and relationships with the State.
- D. Ensure high quality results are achieved through task performance.
- E. Will be available to meet on an as needed basis to resolve issues related to services.
- F. Contractor's office shall be available during normal State hours of operation – 8:00 am to 6:00 pm, Monday through Friday, excluding State holidays.
- G. Contractor must provide an after-hours method of contact for emergency or mission critical operations support.
- H. The State reserves the option to require the Contractor to supply workstations and State-required software licenses for staff placed under this contract. This would be based on individual SOW requests.

Contractor must maintain current the following information for any subcontractor firm from which the staffs are obtained:

- Name of subcontractor firm
- Mailing address
- Primary contact name, phone number, and e-mail address
- Staff profiles provided by the subcontractor

The Contractor must indicate the qualifications of personnel to be assigned to the project. Qualifications will be reviewed based on education and experience, with emphasis on experience on projects similar to the RFP. Contractor shall provide at a minimum the resume for their Contract Manager, Project Manager, Account Representative and any other staffing they have deemed to be key to the contract. The resume must include detailed work experience that is relevant to the work that is being asked for within the Contract. The Contractor shall use the Resume template provided in Attachment I.

1.3.4 Meetings

The State may request a kick-off meeting with the contractor within thirty (30) days of the Effective Date. The State may request other meetings as it deems appropriate.

The State may request other meetings as it deems appropriate.

1.3.5 Place of Performance

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

Full address of place of performance	Owner/operator of facility to be used	Percent (%) of Contract value to be performed at listed location



1.3.6 Reserved

1.3.7 Binding Commitments

The Contractor must identify its representatives with the authority to make binding commitments on the Contractor's behalf and state the extent of that authority.

1.3.8 Training

The Contractor must explain its training capabilities and any training that is included in its bid.

The Contractor shall provide training at various locations for identified staff. The training shall include the operational use of the integrated system and the use of all associated equipment and services (i.e. how the equipment works, is installed, removed, how to navigate and use the software).

The Contractor shall provide system administration training (user management, inventory control, etc.). System administrator training and EMC staff training shall occur before training of field staff in the use of hardware and software for day-to-day use.

The Contractor shall provide training on system upgrades and modifications that affect system use at no additional cost.

The Contractor shall provide ongoing training at least quarterly.

The Contractor shall work in cooperation with the MDOC to schedule training sessions to satisfy the needs of the MDOC.

The Contractor shall supply all equipment (i.e. devices, tools, straps) for use in training sessions.

The Contractor shall provide all training manuals, training plans and other documentation to the MDOC and shall include:

- Instruction on application use
- Instruction on equipment installation, use, functionality, device service
- Troubleshooting to assist in resolving equipment related problems
- Bulletins and software release notes

The Contractor shall make available electronically all training materials. The MDOC shall be granted unlimited copying rights for internal use of the contractor's documents.

1.3.9 Security

The contractor may be required to make frequent deliveries to State facilities. The contractor must explain how it intends to ensure the security and safety of these facilities, including, but not limited to, performance of background checks on its personnel. The contractor must explain how background checks are performed, what the background check consists of, the name of the company that performs the background checks, whether the contractor uses uniforms and ID badges, etc. If background checks are performed, the contractor must provide a document stating that its personnel have satisfactorily completed a background check and are suitable for State work.

The State may issue State ID badges to the contractor's delivery personnel or accept the ID badge issued to delivery personnel by the contractor. The State may decide to perform an additional background check under Section 2.4.9, Background Checks. If so, the contractor must provide a list of all personnel, including name and date of birth, that will be assigned to State work.

1.4 Delivery and Acceptance

1.4.1 Time Frames

All Deliverable(s) must be delivered within **71** Days after receipt of order. The receipt of order date is governed in the same manner as notices sent under Section 2.3.6, Notices. The contractor must explain in detail its various delivery programs (e.g., standard delivery and quick-ship), including any limitations such as quantity.



1.4.2 Minimum Order

The State's requested minimum order is **11**. The contractor must explain if it can accept a lower minimum order requirement.

The contractor must explain any additional charges (i.e., handling fees) on orders less than the State's requested minimum order or less than the contractor's minimum order requirement.

1.4.3 Packaging

The contractor must explain the details of its proposed packaging sizes for the Deliverable(s). *Packaging must be no greater than 32" x18" x20" in size, and not greater than 50 pounds in weight.*

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

1.4.4 Palletizing – Reserved

1.4.5 Delivery Term

Unless specified otherwise below, delivery is governed by Section 2.8.2, Delivery Responsibilities.

The contractor must quote prices "F.O.B. Destination, within Government Premises" with transportation charges prepaid on all orders that meet the minimum order requirement specified in Section 1.4.2, Minimum Order.

Freight Charges - If the State orders below the minimum order requirement specified in Section 1.4.2, Minimum Order, or if a contractor quotes F.O.B. Shipping Point on one-time purchases, the contractor must specify the carrier being used.

Where the weight of the shipment is less than 150 lbs. or where shipments could be separated into smaller parcels, the contractor must use the State's current express delivery carrier, which is UPS. If the shipment weighs less than 150 lbs., but the Deliverable costs \$3000 or more, it must be sent by an appropriate carrier.

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

1.4.6 Acceptance Process

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

1.4.7 Criteria

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

The specific payment schedule for the Contract(s) will be mutually agreed upon by the State and the Contractor(s). The schedule should show payment amount and should reflect actual work done by the payment dates, less any penalty cost charges accrued by those dates. As a general policy statements shall be forwarded to the designated representative by the 15th day of the following month

1.5 Proposal Pricing

1.5.1 Pricing

The contractor must specify the fixed prices for all Deliverable(s), and the associated payment milestones and payment amounts as required by Section 2.2.1, Fixed Prices for Deliverable(s). The contractor must provide pricing details in **Attachment A**.



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

1.5.2 Quick Payment Terms

The Contractor is encouraged to offer quick payment terms. The number of days must not include processing time for payment to be received by the contractor's financial institution.

The contractor must check one box below:

The Contractor will offer a quick payment discount of 2 % off an invoice if paid within 15 Days (# of days may be changed) from the State's receipt of the invoice or delivery of the Deliverable(s), whichever is later.

No quick payment discount will be offered.

1.5.3 Price Term

Prices in **Attachment A** are firm for the term of the Contract.

1.5.4 Tax Excluded from Price

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

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

1.5.5 Invoices

The contractor must provide a sample invoice that, at a minimum, includes:

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

1.6 Commodity Requirements

1.6.1 Customer Service

The contractor must confirm whether it is able to receive orders by any of the following methods: electronically, phone, facsimile transmission, or by written order. If not, the contractor must explain its ordering capabilities. The contractor must have internal controls, approved by DTMB-Purchasing Operations, to: (a) ensure that only authorized individuals place orders; and (b) verify any orders that appear to be abnormal.

The contractor must have: (a) one or more knowledgeable individual(s) specifically assigned to State of Michigan accounts that will respond to State agency inquiries promptly; and (b) a statewide toll-free number for customer service calls. If not, the contractor must explain how it intends to provide customer service.

1.6.2 Research and Development

The contractor must explain its ability to invest in new research and development.



1.6.3 Quality Assurance Program

The contractor must explain its Quality Assurance Program(s).

1.6.4 Warranty for Deliverable(s)

The contractor must explain its warranty as required by Section 2.13, Warranties. The contractor must explain the process for reporting warranty issues and how it will handle any repairs or replacements.

1.6.5 Special Incentives

The contractor must explain any special incentives that the contractor is offering, such as return policies, trade-in programs, quantity discounts, etc.

1.6.6 Energy Efficiency

The State prefers to purchase energy-efficient products, including "Energy Star" certified products. The contractor must explain if it intends to provide energy-efficient or "Energy Star" certified products.

1.6.7 Environmental Requirements

The State prefers to purchase products that impact the environment less than competing products. Environmental components that may be considered include: recycled content, recyclability, and the presence of undesirable materials in the products, especially persistent, bioaccumulative, and toxic chemicals. The contractor must explain if it intends to provide such products, including any relevant third-party certification (such as Green Seal, etc.).

1.6.8 Recycled Content and Recyclability

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

- _____ % (total estimated percentage of recovered material)
- _____ % (estimated percentage of post-consumer material)
- _____ % (estimated percentage of post-industrial waste)

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

The contractor must explain if it intends to offer packaging materials that meet one or more of these criteria.

1.6.9 Materials Identification and Tracking

(a) **Hazardous Chemical Identification**. The contractor must list any hazardous chemical, as defined in 40 CFR §370.2, to be delivered. Each hazardous chemical must be properly identified, including any applicable identification number, such as a National Stock Number or Special Item Number. Material Safety Data Sheets must be submitted in accordance with the federal Emergency Planning and Community Right-to-Know Act, 42 USC 11001 *et seq.*, as amended. This list must be updated whenever any other chemical to be delivered is hazardous.



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

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

(c) **Brominated Flame Retardants.** The State prefers to purchase products that do not contain brominated flame retardants (BFRs) whenever possible. The contractor must disclose whether the products contain BFRs.

(d) **Environmental Permits and Requirements.** The contractor must disclose whether any of its facilities are in violation of any environmental laws. The contractor must immediately notify DTMB-Purchasing Operations of the receipt of any EPA, State, or local agency communication indicating that any of the contractor's facilities are in violation of applicable environmental laws.

1.7 Extended Purchasing

1.7.1 MiDEAL

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

The contractor must supply Deliverable(s) to the State and MiDEAL Members at the established State Contract prices and terms, subject to Section 2.22.1, MiDEAL Requirements.

CONTRACTOR MUST CHECK ONE BOX BELOW

- Commodities and/or services on this Request for Quotation will be supplied to State of Michigan departments and agencies, and authorized MIDEAL Program members according to the terms and prices quoted. A complete listing of eligible participants in the MIDEAL Program will be provided if this option is selected.
- Commodities and/or services on the Request for Quotation will not be supplied to State of Michigan authorized MIDEAL members. We will supply to State of Michigan departments and agencies only.

1.7.2 State Employee Purchases - Reserved



Article 2 – Terms and Conditions

2.1 Contract Term

2.1.1 Contract Term

The Contract term begins [March 1, 2012] and expires [December 31, 2012]. All outstanding Purchase Orders will expire upon the termination of the Contract for any of the reasons listed in Section 2.16, Termination by the State, unless otherwise agreed to in writing by DTMB-Purchasing Operations. Absent an early termination, Purchase Orders issued, but not expired, by the end of the Contract's term will remain in effect until the next September 30.

2.1.2 Options to Renew

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

2.2 Payments and Taxes

2.2.1 Fixed Prices for Deliverable(s)

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

2.2.2 Payment Deadlines

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

2.2.3 Invoicing and Payment – In General

- (a) Each Statement of Work issued under this Contract shall list (or indicate by reference to the appropriate Contract Exhibit) the prices for all Services/Deliverables, equipment and commodities to be provided, and the associated payment milestones and payment amounts.
- (b) Each Contractor invoice shall show details as to charges by Service/Deliverable component and location at a level of detail reasonably necessary to satisfy the State's accounting and charge-back requirements. Invoices for Services performed on a time and materials basis shall show, for each individual, the number of hours of Services performed during the billing period, the billable skill/labor category for such person and the applicable hourly billing rate. Prompt payment by the State is contingent on the Contractor's invoices showing the amount owed by the State minus any holdback amount to be retained by the State in accordance with **Section 1.600**.
- (c) Correct invoices shall be due and payable by the State, in accordance with the State's standard payment procedure as specified in 1984 Public Act No. 279, MCL 17.51 *et seq.*, within 45 days after receipt, provided the State determines that the invoice was properly rendered.
- (d) All invoices should reflect actual work done. Specific details of invoices and payments shall be agreed upon between the Contract Administrator and the Contractor after the proposed Contract Agreement has been signed and accepted by both the Contractor and the Director of Purchasing Operations, Department of Management & Budget. This activity shall occur only upon the specific written direction from Purchasing Operations.

The specific payment schedule for any Contract(s) entered into, as the State and the Contractor(s) shall mutually agree upon. The schedule should show payment amount and should reflect actual work done by the payment dates, less any penalty cost charges accrued by those dates. As a general policy statements shall be forwarded to the designated representative by the 15th day of the following month.

The Government may make progress payments to the Contractor when requested as work progresses, but not more frequently than monthly, in amounts approved by the Contract Administrator, after negotiation. Contractor must show verification of measurable progress at the time of requesting progress payments.

2.2.4 Pro-ration

To the extent there are Services that are to be paid for on a monthly basis, the cost of such Services shall be pro-rated for any partial month.



2.2.5 Final Payment and Waivers

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

2.2.6 Electronic Payment Requirement

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

2.2.7 Employment Taxes

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

2.2.8 Sales and Use Taxes

The Contractor must register and remit sales and use taxes on taxable sales of tangible personal property or services delivered into the State. If the Contractor lacks sufficient presence in Michigan to be required to register and pay taxes, it must do so on a voluntary basis. The requirement to register and remit sales and use taxes extends to (a) all members of a "controlled group of corporations" as defined in § 1563(a) of the Internal Revenue Code, 26 USC 1563(a), and applicable regulations; and (b) all organizations under common control that make sales at retail for delivery into the State. Any United States Department of Treasury regulation that references "two or more trades or businesses under common control" includes organizations such as sole proprietorships, partnerships (as defined in § 7701(a)(2) of the Internal Revenue Code, 26 USC 7701(a)(2)), trusts, estates, corporations, or limited liability companies.

2.3 Contract Administration

2.3.1 Issuing Office

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

Joe Kelly, Buyer
 Purchasing Operations
 Department of Technology, Management and Budget
 Mason Bldg, 2nd Floor
 PO Box 30026
 Lansing, MI 48909
 Kellyj11@michigan.gov
 517-373-3993

2.3.2 Contract Compliance Inspector

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

Kami Pasch, Financial Specialist
 Department of Corrections
 206 E Michigan
 Lansing, MI 48933
 paschk@michigan.gov
 517-241-7229
 517-335-3840



2.3.3 Project Manager

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

Greg Roach, EMC Manager
Department of Corrections
1305 S Washington Suite 103
Lansing, MI 48910
roachgl@michigan.gov
517-334-7370
517-334-7243

David Enslin, Application Development and Maintenance Manager
Department of Technology Management and Budget
608 W. Allegan Street,
Lansing, MI 48913
enslind@michigan.gov
517-334-6535

Sheila Wilson, Manager
Automated Data Systems Section
Department of Corrections
206 E. Michigan Avenue
Lansing, MI 48910
wilsons34@michigan.gov
517-241-0958

2.3.4 Contract Changes

(a) If the State requests or directs the Contractor to provide any Deliverable(s) that the Contractor believes are outside the scope of the Contractor's responsibilities under the Contract, the Contractor must notify the State before performing the requested activities. If the Contractor fails to notify the State, any activities performed will be considered in-scope and not entitled to additional compensation or time. If the Contractor begins work outside the scope of the Contract and then ceases performing that work, the Contractor must, at the request of the State, retract any out-of-scope work that would adversely affect the Contract.

(b) The State or the Contractor may propose changes to the Contract. If the Contractor or the State requests a change to the Deliverable(s) or if the State requests additional Deliverable(s), the Contractor must provide a detailed outline of all work to be done, including tasks, timeframes, listing of key personnel assigned, estimated hours for each individual per Deliverable, and a complete and detailed cost justification. If the parties agree on the proposed change, DTMB-Purchasing Operations will prepare and issue a notice that describes the change, its effects on the Deliverable(s), and any affected components of the Contract (Contract Change Notice).

(c) No proposed change may be performed until DTMB-Purchasing Operations issues a duly executed Contract Change Notice for the proposed change.

2.3.5 Price Changes

If allowed by Section 1.5.3, Price Term, the State and the Contractor will complete a pricing review (Review) every 365 days following the Effective Date, to allow for changes based on actual costs incurred. Requested changes may include increases or decreases in price and must be accompanied by supporting information indicating market support of proposed modifications (such as the CPI and PPI, US City Average, as published by the US Department of Labor, Bureau of Labor Statistics).

- (a) The State may request a Review upon 30 days written notice that specifies what Deliverable is being reviewed. At the Review, each party may present supporting information including information created by, presented, or received from third parties.



(b) Following the presentation of supporting information, both parties will have 30 days to review the supporting information and prepare any written response.

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

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

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

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

2.3.6 Notices

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

If to State:

State of Michigan
DTMB-Purchasing Operations
Attention: Joe Kelly
PO Box 30026
530 West Allegan
Lansing, MI 48909
E-mail: kellyj11@michigan.gov
Fax: 517-335-0046

If to Contractor:

Alcohol Monitoring Systems, Inc.
Attention: Chris Stites
1241 W. Mineral Ave., #200
Littleton, CO 80120
E-mail: cstites@alcoholmonitoring.com
Fax: 303-791-4262

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

2.3.7 Covenant of Good Faith

Each party must act reasonably and in good faith. Unless otherwise provided in this Contract, the parties will not unreasonably delay, condition or withhold their consent, decision, or approval any time it is requested or reasonably required in order for the other party to perform its responsibilities under the Contract.

2.3.8 Assignments

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

(b) If the Contractor intends to assign this Contract or any of the Contractor's rights or duties under the Contract, the Contractor must notify the State and provide adequate information about the assignee at least 90 days before the proposed assignment or as otherwise provided by law or court order. The State may withhold approval from proposed assignments, subcontracts, or novations if the State determines, in its sole discretion, that the transfer of responsibility would decrease the State's likelihood of receiving performance on the Contract or the State's ability to recover damages.

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



2.3.9 Equipment

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

2.3.10 Facilities - Reserved

2.4 Contract Management

2.4.1 Contractor Personnel Qualifications

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

2.4.2 Contractor Key Personnel

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

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

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

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

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

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

The State may require the Contractor to remove or reassign personnel if the State has legitimate, good-faith reasons articulated in a notice to the Contractor. Replacement personnel must be fully qualified for the position. If the State exercises this right, and the Contractor cannot immediately replace the removed personnel, the State agrees to an equitable adjustment in schedule or other terms that may be affected.

2.4.4 Contractor Personnel Location

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

2.4.5 Contractor Identification

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

2.4.6 Cooperation with Third Parties

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



2.4.7 Relationship of the Parties

The relationship between the State and Contractor is that of client and independent contractor. No agent, employee, or servant of the Contractor, or any of its subcontractors, is an employee, agent or servant of the State. The Contractor will be solely and entirely responsible for its acts and the acts of its agents, employees, servants, and subcontractors during the performance of the Contract.

2.4.8 Contractor Return of State Equipment/Resources

The Contractor must return to the State any State-furnished equipment, facilities and other resources when no longer required for the Contract in the same condition as when provided by the State, reasonable wear and tear excepted.

2.4.9 Background Checks

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

At the State's discretion, a Law Enforcement Information Network (LEIN) background check may be required for Contractor personnel.

2.4.10 Compliance With State Policies

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

2.5 Subcontracting by Contractor

2.5.1 Contractor Responsible

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

2.5.2 State Approval of Subcontractor

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

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

2.5.3 Subcontract Requirements

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



2.5.4 Competitive Selection

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

2.6 Reserved

2.7 Performance

2.7.1 Time of Performance

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

(b) If the Contractor believes that a delay in performance by the State has caused or will cause the Contractor to be unable to perform its obligations according to specified Contract time periods, the Contractor must immediately notify the State and, to the extent practicable, continue to perform its obligations according to the Contract time periods. The Contractor will not be in default for a delay in performance to the extent the delay is caused by the State.

2.7.2 Service Level Agreements

(a) SLAs will be completed with the following operational considerations:

- (1) SLAs will not be calculated for individual Incidents where any event of Excusable Failure has been determined; Incident means any interruption in Services.
- (2) SLAs will not be calculated for individual Incidents where loss of service is planned and where the State has received prior notification or coordination.
- (3) SLAs will not apply if the applicable Incident could have been prevented through planning proposed by Contractor and not implemented at the request of the State. To invoke this consideration, complete documentation relevant to the denied planning proposal must be presented to substantiate the proposal.
- (4) Time period measurements will be based on the time Incidents are received by the Contractor and the time that the State receives notification of resolution based on 24x7x365 time period, except that the time period measurement will be suspended based on the following:
 - (i) Time period(s) will not apply where Contractor does not have access to a physical State Location and where access to the State Location is necessary for problem identification and resolution.
 - (ii) Time period(s) will not apply where Contractor needs to obtain timely and accurate information or appropriate feedback and is unable to obtain timely and accurate information or appropriate feedback from the State.

- (b) Chronic Failure for any Service(s) will be defined as three unscheduled outage(s) or interruption(s) on any individual Service for the same reason or cause or if the same reason or cause was reasonably discoverable in the first instance over a rolling 30 day period. Chronic Failure will result in the State's option to terminate the effected individual Service(s) and procure them from a different Contractor for the chronic location(s) with Contractor to pay the difference in charges for up to three additional months. The termination of the Service will not affect any tiered pricing levels.
- (c) Root Cause Analysis will be performed on any Business Critical outage(s) or outage(s) on Services when requested by the Contract Administrator. Contractor will provide its analysis within two weeks of outage(s) and provide a recommendation for resolution.
- (d) All decimals must be rounded to two decimal places with five and greater rounding up and four and less rounding down unless otherwise specified.



2.7.3 Liquidated Damages

The parties acknowledge that late or improper completion of the Work will cause loss and damage to the State, and that it would be impracticable and extremely difficult to fix the actual damage sustained by the State as a result. Therefore, Contractor and the State agree that if there is late or improper completion of the Work and the State does not elect to exercise its rights under **Section 2.152**, the State is entitled to collect liquidated damages in the amount of \$25,000.00 and an additional \$600.00 per day for each day Contractor fails to remedy the late or improper completion of the Work.

Unauthorized Removal of any Key Personnel

It is acknowledged that an Unauthorized Removal will interfere with the timely and proper completion of the Contract, to the loss and damage of the State, and that it would be impracticable and extremely difficult to fix the actual damage sustained by the State as a result of any Unauthorized Removal. Therefore, Contractor and the State agree that in the case of any Unauthorized Removal in respect of which the State does not elect to exercise its rights under **Section 2.152**, the State may assess liquidated damages against Contractor as specified below.

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

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

2.7.4 Excusable Failure

Neither party will be liable for any default, damage or delay in the performance of its obligations that is caused by government regulations or requirements, power failure, electrical surges or current fluctuations, war, forces of nature or acts of God, delays or failures of transportation, equipment shortages, suppliers' failures, acts or omissions of common carriers, fire, riots, civil disorders, labor disputes, embargoes, injunctions (provided the injunction was not issued as a result of any fault or negligence of the party seeking to have its default or delay excused), or any other cause beyond the reasonable control of a party; provided the non-performing party and any Subcontractors are without fault in causing the default or delay, and the default or delay could not have been prevented by reasonable precautions and cannot reasonably be circumvented by the non-performing party through the use of alternate sources, workaround plans, or other means, including disaster recovery plans.

If a party does not perform its contractual obligations for any of the reasons listed, the non-performing party will be excused from any further performance of its affected obligation(s) for as long as the circumstances prevail. The non-performing party must promptly notify the other party immediately after the excusable failure occurs, and when it abates or ends. Both parties must use commercially reasonable efforts to resume performance.

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

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



2.8 Acceptance of Deliverable(s)

2.8.1 Quality Assurance

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

2.8.2 Delivery Responsibilities

Unless otherwise specified by the State in Section 1.4.5, Delivery Term, the following are applicable to all deliveries:

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

2.8.3 Process for Acceptance of Deliverable(s)

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

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

If the State delivers to the Contractor a notice of deficiencies, the Contractor will correct the described deficiencies and within 30 Days resubmit the Deliverable(s) with an explanation that demonstrates all corrections have been made to the original Deliverable(s). The Contractor's correction efforts will be made at no additional charge. Upon receipt of a corrected Deliverable from the Contractor, the State will have a reasonable additional period of time, not to exceed 30 Days, to accept the corrected Deliverable.

2.8.4 Acceptance of Deliverable(s)

- (a) The State's obligation to comply with any State Review Period is conditioned on the timely delivery of the Deliverable(s). The State Review Period will begin on the first Business Day following the State's receipt of the Deliverable(s).
- (b) The State may inspect the Deliverable to confirm that all components have been delivered without material deficiencies. If the State determines that the Deliverable or one of its components has material deficiencies, the State may reject the Deliverable without performing any further inspection or testing.
- (c) The State will only approve a Deliverable after confirming that it conforms to and performs according to its specifications without material deficiency. The State may, in its discretion, conditionally approve a Deliverable that contains material deficiencies if the State elects to permit the Contractor to correct those deficiencies post-approval. The Contractor remains responsible for working diligently to correct, within a reasonable time at the Contractor's expense, all deficiencies in the Deliverable that remain outstanding at the time of State approval.
- (d) If, after three opportunities the Contractor is unable to correct all deficiencies, the State may: (i) demand that the Contractor cure the failure and give the Contractor additional time to do so at the sole expense of the Contractor; (ii) keep the Contract in force and perform, either itself or through other parties, whatever the Contractor has failed to do, and recover the difference between the cost to cure the deficiency and the Contract price plus an additional amount equal to 10% of the State's cost to cure the deficiency; or (iii) fully or partially terminate the Contract for default by giving notice to the Contractor. Notwithstanding the foregoing, the State cannot use, as a basis for exercising its termination rights under this Section, deficiencies discovered in a repeat State Review Period that could reasonably have been discovered during a prior State Review Period.



(e) The State, at any time and in its reasonable discretion, may reject the Deliverable without notation of all deficiencies if the acceptance process reveals deficiencies in a sufficient quantity or of a sufficient severity that renders continuing the process unproductive or unworkable.

2.8.5 Process for Approval of Written Deliverable(s)

The State Review Period for Written Deliverables will be the number of days set forth in the applicable Statement of Work following delivery of the final version of the Written Deliverable (failing which the State Review Period, by default, shall be five (5) Business Days for Written Deliverables of one hundred (100) pages or less and ten (10) Business Days for Written Deliverables of more than one hundred (100) pages). The duration of the State Review Periods will be doubled if the State has not had an opportunity to review an interim draft of the Written Deliverable prior to its submission to the State. The State agrees to notify Contractor in writing by the end of the State Review Period either stating that the Written Deliverable is approved in the form delivered by Contractor or describing any deficiencies that shall be corrected prior to approval of the Written Deliverable (or at the State's election, subsequent to approval of the Written Deliverable). If the State delivers to Contractor a notice of deficiencies, Contractor will correct the described deficiencies and within five (5) Business Days resubmit the Deliverable in a form that shows all revisions made to the original version delivered to the State. Contractor's correction efforts will be made at no additional charge. Upon receipt of a corrected Written Deliverable from Contractor, the State will have a reasonable additional period of time, not to exceed the length of the original State Review Period, to review the corrected Written Deliverable to confirm that the identified deficiencies have been corrected.

2.8.6 Process for Approval of Services - Reserved

2.8.7 Final Acceptance

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

2.9 Ownership

2.9.1 Ownership of Work Product by State

The State owns all Deliverables, as they are work made for hire by the Contractor for the State. The State owns all United States and international copyrights, trademarks, patents or other proprietary rights in the Deliverables.

2.9.2 Vesting of Rights

With the sole exception of any preexisting licensed works identified in the SOW, the Contractor assigns, and upon creation of each Deliverable automatically assigns, to the State, ownership of all United States and international copyrights, trademarks, patents, or other proprietary rights in each and every Deliverable, whether or not registered by the Contractor, insofar as any the Deliverable, by operation of law, may not be considered work made for hire by the Contractor for the State. From time to time upon the State's request, the Contractor must confirm the assignment by execution and delivery of the assignments, confirmations of assignment, or other written instruments as the State may request. The State may obtain and hold in its own name all copyright, trademark, and patent registrations and other evidence of rights that may be available for Deliverables.



2.9.3 Rights in Data

The State is the owner of all data made available by the State to the Contractor or its agents, Subcontractors or representatives under the Contract. The Contractor will not use the State's data for any purpose other than providing the Services, nor will any part of the State's data be disclosed, sold, assigned, leased or otherwise disposed of to the general public or to specific third parties or commercially exploited by or on behalf of the Contractor. No employees of the Contractor, other than those on a strictly need-to-know basis, have access to the State's data. Contractor will not possess or assert any lien or other right against the State's data. Without limiting the generality of this Section, the Contractor must only use personally identifiable information as strictly necessary to provide the Services and must disclose the information only to its employees who have a strict need-to-know the information. The Contractor must comply at all times with all laws and regulations applicable to the personally identifiable information.

The State is the owner of all State-specific data under the Contract. The State may use the data provided by the Contractor for any purpose. The State will not possess or assert any lien or other right against the Contractor's data. Without limiting the generality of this Section, the State may use personally identifiable information only as strictly necessary to utilize the Services and must disclose the information only to its employees who have a strict need to know the information, except as provided by law. The State must comply at all times with all laws and regulations applicable to the personally identifiable information. Other material developed and provided to the State remains the State's sole and exclusive property.

2.9.4 Ownership of Materials

The State and the Contractor will continue to own their respective proprietary technologies developed before entering into the Contract. Any hardware bought through the Contractor by the State, and paid for by the State, will be owned by the State. Any software licensed through the Contractor and sold to the State, will be licensed directly to the State.

2.10 State Standards

2.10.1 Existing Technology Standards

The Contractor will adhere to all existing standards as described within the comprehensive listing of the State's existing technology standards at <http://www.michigan.gov/dit>.

2.10.2 Acceptable Use Policy

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

2.10.3 Systems Changes

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

2.11 Confidentiality

2.11.1 Confidential Information

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

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



2.11.2 Protection and Destruction of Confidential Information

(a) Each party must use the same care to prevent unauthorized disclosure of Confidential Information as it uses to prevent disclosure of its own information of a similar nature, but in no event less than a reasonable degree of care. Neither the Contractor nor the State will: (i) make any use of the Confidential Information of the other except as contemplated by this Contract; (ii) acquire any interest or license in or assert any lien against the Confidential Information of the other; or (iii) if requested to do so, refuse for any reason to promptly return the other party's Confidential Information.

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

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

2.11.3 Exclusions

The provisions of Section 2.11, Confidentiality, will not apply where the receiving party is required by law to disclose the other party's Confidential Information, provided that the receiving party: (i) promptly provides the furnishing party with notice of the legal request; and (ii) assists the furnishing party in resisting or limiting the scope of the disclosure as reasonably requested by the furnishing party.

2.11.4 No Obligation to Disclose

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

2.11.5 Security Breach Notification

If Contractor breaches this Section, it must (i) promptly cure any deficiencies in Contractor's internal security controls; and (ii) comply with any applicable federal and state laws and regulations pertaining to unauthorized disclosures. Contractor and the State will cooperate to mitigate, to the extent practicable, the effects of any breach, intrusion, or unauthorized access, use, or disclosure. Contractor must notify the State of any unauthorized use or disclosure of Confidential Information, whether suspected or actual, within 10 days of becoming aware of the use or disclosure or a shorter time period as is reasonable under the circumstances. The State may require Contractor to purchase credit monitoring services for any individuals affected by the breach.

2.12 Records and Inspections

2.12.1 Inspection of Work Performed

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

2.12.2 Retention of Records

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

(b) If an audit, litigation, or other action involving the Contractor's records is initiated before the end of the Audit Period, the Contractor must retain the records until all issues arising out of the audit, litigation, or other action are resolved or until the end of the Audit Period, whichever is later.



2.12.3 Examination of Records

The State, upon 10 days notice to the Contractor, may examine and copy any of the Contractor's records that relate to this Contract. The State does not have the right to review any information deemed confidential by the Contractor if access would require the information to become publicly available. This requirement also applies to the records of any parent, affiliate, or subsidiary organization of the Contractor, or any Subcontractor that performs services in connection with this Contract.

2.12.4 Audit Resolution

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

2.12.5 Errors

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

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

2.13 Warranties

2.13.1 Warranties and Representations

The Contractor represents and warrants:

(a) It is capable of fulfilling and will fulfill all of its obligations under this Contract. The performance of all obligations under this Contract must be provided in a timely, professional, and workmanlike manner and must meet the performance and operational standards required under this Contract.

(b) The Contract appendices, attachments, and exhibits identify the equipment, software, and services necessary for the Deliverable(s) to comply with the Contract's requirements.

(c) It is the lawful owner or licensee of any Deliverable licensed or sold to the State by Contractor or developed by the Contractor for this Contract, and Contractor has all of the rights necessary to convey to the State the ownership rights or licensed use, as applicable, of any Deliverable(s). None of the Deliverable(s) provided by Contractor to the State, nor their use by the State, will infringe the patent, trademark, copyright, trade secret, or other proprietary rights of any third party.

(d) If the Contractor procures any equipment, software, or other Deliverable(s) for the State (including equipment, software, and other Deliverable(s) manufactured, re-marketed or otherwise sold by the Contractor or under the Contractor's name), then the Contractor must assign or otherwise transfer to the State or its designees, or afford the State the benefits of, any manufacturer's warranty for the Deliverable(s).

(e) The Contract signatory has the authority to enter into this Contract on behalf of the Contractor.

(f) It is qualified and registered to transact business in all locations where required.

(g) Neither the Contractor nor any affiliates, nor any employee of either, has, will have, or will acquire, any interest that would conflict in any manner with the Contractor's performance of its duties and responsibilities to the State or otherwise create an appearance of impropriety with respect to the award or performance of this Contract. The Contractor must notify the State about the nature of any conflict or appearance of impropriety within two days of learning about it.

(h) Neither the Contractor nor any affiliates, nor any employee of either, has accepted or will accept anything of value based on an understanding that the actions of the Contractor, its affiliates, or its employees on behalf of the State would be influenced. The Contractor must not attempt to influence any State employee by the direct or indirect offer of anything of value.



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

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

(k) All financial statements, reports, and other information furnished by the Contractor to the State in connection with the award of this Contract fairly and accurately represent the Contractor's business, properties, financial condition, and results of operations as of the respective dates covered by the financial statements, reports, or other information. There has been no material adverse change in the Contractor's business, properties, financial condition, or results of operation.

(l) All written information furnished to the State by or for the Contractor in connection with the award of this Contract is true, accurate, and complete, and contains no false statement of material fact nor omits any material fact that would make the submitted information misleading.

(m) It will immediately notify DTMB-Purchasing Operations if any of the certifications, representations, or disclosures made in the Contractor's original bid response change after the Contract is awarded.

2.13.2 Warranty of Merchantability

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

2.13.3 Warranty of Fitness for a Particular Purpose

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

2.13.4 Warranty of Title

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

2.13.5 Equipment Warranty

(a) The Contractor represents and warrants that the equipment/system(s) are in good operating condition and perform to the requirements contained in this Contract at the time of Final Acceptance, and for a period of one year following Final Acceptance.

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

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

(d) Within 10 Business Days of notification, the Contractor must adjust, repair or replace all equipment that is defective or not performing in compliance with the Contract. The Contractor must assume all costs for replacing parts or units and their installation including transportation and delivery fees, if any.

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

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

2.13.6 New Deliverable(s)

The Contractor must provide new Deliverable(s) where the Contractor knows or has the ability to select between new or like-new. Unless specified in Article 1, Statement of Work, equipment that is assembled from new or serviceable used parts that are like new in performance is acceptable only where the Contractor does not have knowledge or the ability to select one or the other.



2.13.7 Prohibited Products

Shipping of salvage, distressed, outdated, or discontinued goods to any State agency will be considered a material default by the Contractor. The brand and product number offered for all items will remain consistent for the term of the Contract, unless DTMB-Purchasing Operations has approved a change order under Section 2.3.4, Contract Changes.

2.13.8 Consequences For Breach

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

2.14 Insurance

2.14.1 Liability Insurance

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

(a) The following apply to all insurance requirements:

- (i) The State, in its sole discretion, may approve the use of a fully-funded self-insurance program in place of any specified insurance identified in this Section.
- (ii) Where specific coverage limits are listed in this Section, they represent the minimum acceptable limits. If the Contractor's policy contains higher limits, the State is entitled to coverage to the extent of the higher limits. The minimum limits of coverage specified are not intended, and may not be construed to limit any liability or indemnity of the Contractor to any indemnified party or other persons.
- (iii) If the Contractor fails to pay any premium for a required insurance policy, or if any insurer cancels or significantly reduces any required insurance without the State's approval, the State may, after giving the Contractor at least 30 days notice, pay the premium or procure similar insurance coverage from another company or companies. The State may deduct any part of the cost from any payment due the Contractor, or require the Contractor to pay that cost upon demand.
- (iv) In the event the State approves the representation of the State by the insurer's attorney, the attorney may be required to be designated as a Special Assistant Attorney General by the Michigan Attorney General.

(b) The Contractor must:

- (i) provide proof that it has obtained the minimum levels of insurance coverage indicated or required by law, whichever is greater. The insurance must protect the State from claims that are alleged or may arise or result from the Contractor's or a Subcontractor's performance, including any person directly or indirectly employed by the Contractor or a Subcontractor, or any person for whose acts the Contractor or a Subcontractor may be liable.
- (ii) waive all rights against the State for the recovery of damages that are covered by the insurance policies the Contractor is required to maintain under this Section. The Contractor's failure to obtain and maintain the required insurance will not limit this waiver.
- (iii) ensure that all insurance coverage provided relative to this Contract is primary and non-contributing to any comparable liability insurance (including self-insurance) carried by the State.
- (iv) obtain insurance, unless the State approves otherwise, from any insurer that has an A.M. Best rating of "A" or better and a financial size of VII or better, or if those ratings are not available, a comparable rating from an insurance rating agency approved by the State. All policies of insurance must be issued by companies that have been approved to do business in the State.
- (v) maintain all required insurance coverage throughout the term of this Contract and any extensions. However, in the case of claims-made Commercial General Liability policies, the Contractor must secure tail coverage for at least three years following the termination of this Contract.
- (vi) pay all deductibles.
- (vii) pay for and provide the type and amount of insurance checked below:



(A) Commercial General Liability Insurance

Minimal Limits:

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

Deductible maximum:

\$50,000 Each Occurrence

Additional Requirements:

The Contractor must list the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees, and agents as additional insureds on the Commercial General Liability certificate. The Contractor also agrees to provide evidence that insurance policies contain a waiver of subrogation by the insurance company.

(B) Umbrella or Excess Liability Insurance

Minimal Limits:

\$10,000,000 General Aggregate

Additional Requirements:

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

(C) Motor Vehicle Insurance

Minimal Limits:

If a motor vehicle is used in relation to the Contractor's performance, the Contractor must have vehicle liability insurance on the motor vehicle for bodily injury and property damage as required by law.

(D) Hired and Non-Owned Motor Vehicle Coverage

Minimal Limits:

\$1,000,000 Per Accident

Additional Requirements:

The Contractor must list the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees, and agents as additional insureds on the vehicle liability certificate. The Contractor must also provide evidence that insurance policies contain a waiver of subrogation by the insurance company.

(E) Workers' Compensation Insurance

Minimal Limits:

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

For employees working outside of the state of the Contractor's domicile, the Contractor must provide certificates of insurance proving mandated coverage levels for the jurisdictions where the employees' activities occur.



Additional Requirements:

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

(F) Employers Liability Insurance

Minimal Limits:

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

Additional Requirements:

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

2.14.2 Subcontractor Insurance Coverage

Except where the State has approved a subcontract with other insurance provisions, the Contractor must require any Subcontractor to purchase and maintain the insurance coverage required in Section 2.14.1, Liability Insurance. Alternatively, the Contractor may include a Subcontractor under the Contractor's insurance on the coverage required in that Section. The failure of a Subcontractor to comply with insurance requirements does not limit the Contractor's liability or responsibility.

2.14.3 Certificates of Insurance and Other Requirements

Before the Contract is signed, and not less than 20 days before the insurance expiration date every year thereafter, the Contractor must provide evidence that the State and its agents, officers, and employees are listed as additional insureds under each commercial general liability and commercial automobile liability policy. The Contractor must provide DTMB-Purchasing Operations with all applicable certificates of insurance verifying insurance coverage or providing satisfactory evidence of self-insurance as required in Section 2.14.1, Liability Insurance. Each certificate must be on the standard "accord" form or equivalent and **MUST CONTAIN THE APPLICABLE CONTRACT OR PURCHASE ORDER NUMBER**. Each certificate must be prepared and submitted by the insurer and must contain a provision indicating that the coverage afforded will not be cancelled, materially changed, or not renewed without 30 days prior notice, except for 10 days for nonpayment of premium, to the Director of DTMB-Purchasing Operations. The notice to the Director of DTMB-Purchasing Operations must include the applicable Contract or Purchase Order number.

2.15 Indemnification

2.15.1 General Indemnification

To the extent permitted by law, the Contractor must indemnify, defend, and hold the State harmless from liability, including all claims and losses, and all related costs and expenses (including reasonable attorneys' fees and costs of investigation, litigation, settlement, judgments, interest and penalties), accruing or resulting to any person, firm, or corporation that may be injured or damaged by the Contractor in the performance of this Contract and that are attributable to the negligence or tortious acts of the Contractor, any of its subcontractors, or by anyone else for whose acts any of them may be liable.

2.15.2 Code Indemnification - Reserved

2.15.3 Employee Indemnification

In any claims against the State, its departments, agencies, commissions, officers, employees, and agents, by any employee of the Contractor or any of its subcontractors, the indemnification obligation will not be limited in any way by the amount or type of damages, compensation, or benefits payable by or for the Contractor or any of its subcontractors under worker's disability compensation acts, disability benefit acts, or other employee benefit acts. This indemnification clause is



intended to be comprehensive. Any overlap in provisions, or the fact that greater specificity is provided as to some categories of risk, is not intended to limit the scope of indemnification under any other provisions.

2.15.4 Patent/Copyright Infringement Indemnification

(a) To the extent permitted by law, the Contractor must indemnify and hold the State harmless from liability, including all claims and losses, and all related costs and expenses (including reasonable attorneys' fees and costs of investigation, litigation, settlement, judgments, interest, and penalties) resulting from any action threatened or brought against the State to the extent that the action is based on a claim that any piece of equipment, software, commodity, or service supplied by the Contractor or its subcontractors, or its operation, use, or reproduction, infringes any United States patent, copyright, trademark or trade secret of any person or entity.

(b) If, in the State's or the Contractor's opinion, any piece of equipment, software, commodity or service supplied by the Contractor or its subcontractors, or its operation, use, or reproduction, is likely to become the subject of an infringement claim, the Contractor must, at its expense: (i) procure for the State the right to continue using the equipment, software, commodity or service or, if this option is not reasonably available to the Contractor; (ii) replace or modify to the State's satisfaction the same with equipment, software, commodity or service of equivalent function and performance so that it becomes non-infringing, or, if this option is not reasonably available to Contractor; (iii) accept its return by the State with appropriate credits to the State against the Contractor's charges and reimburse the State for any losses or costs incurred as a consequence of the State ceasing its use and returning it.

(c) Notwithstanding the foregoing, the Contractor has no obligation to indemnify or defend the State for, or to pay any costs, damages or attorneys' fees related to, any infringement claim based upon: (i) equipment, software, commodity or service developed based on written specifications of the State; (ii) use of the equipment, software, or commodity in a configuration other than implemented or approved by the Contractor, including any modification of the same by the State; or (iii) the combination, operation, or use of the equipment, software, or commodity with equipment, software, or commodities not supplied by the Contractor under this Contract.

2.15.5 Continuing Obligation

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

2.15.6 Indemnification Procedures

These procedures apply to all indemnity obligations:

(a) After the State receives notice of an action or proceeding involving a claim for which it will seek indemnification, the State must promptly notify the Contractor of the claim and take, or assist the Contractor in taking, any reasonable action to avoid a default judgment against the Contractor. Failure to notify the Contractor does not relieve the Contractor of its indemnification obligations except to the extent that the Contractor can prove damages attributable to the notification failure. Within 10 days following receipt of notice from the State relating to any claim, the Contractor must notify the State whether the Contractor agrees to assume control of the defense and settlement of that claim (a "Notice of Election"). After notifying the Contractor of a claim and before the State receives the Contractor's Notice of Election, the State is entitled to defend against the claim, at the Contractor's expense, and the Contractor will be responsible for any reasonable costs, including attorney fees, incurred by the State in defending against the claim during that period.

(b) If the Contractor delivers a Notice of Election relating to any claim: (i) the State is entitled to participate in the defense of the claim and to employ counsel at its own expense to assist in handling the claim and to monitor and advise the State about the status and progress of the defense; (ii) the Contractor must, at the request of the State, demonstrate the Contractor's financial ability to carry out its defense and indemnity obligations under this Contract; (iii) the Contractor must periodically advise the State about the status and progress of the defense and must obtain prior approval of the State before entering into any settlement of the claim or ceasing to defend against the claim; and (iv) to the extent that any principles of Michigan governmental or public law may be involved or challenged, the State has the right, at its own expense, to control the defense of that portion of the claim. The State may retain control of the defense and settlement of a claim by notifying the Contractor within 10 days after the State's receipt of the Contractor's information requested by the State under clause (ii) of this paragraph, if the State determines that the Contractor has failed to demonstrate to the reasonable satisfaction of the State the Contractor's financial ability to carry out its defense and indemnity obligations under this Section. Any litigation activity on behalf of the State, or any of its subdivisions under this Section, must be coordinated with the Department of Attorney General. In the event the insurer's attorney represents



the State under this Section, the insurer's attorney may be required to be designated as a Special Assistant Attorney General by the Attorney General of the State of Michigan.

(c) If the Contractor does not deliver a Notice of Election relating to any claim of which it is notified, the State may defend the claim in a manner it deems appropriate, at the cost and expense of the Contractor. If it is determined that the claim was one against which the Contractor was required to indemnify the State, upon request of the State, the Contractor must promptly reimburse the State for all reasonable costs and expenses.

2.15.7 Limitation of Liability

Neither the Contractor nor the State shall be liable to each other, regardless of the form of action, for consequential, incidental, indirect, or special damages. This limitation of liability does not apply to claims for infringement of United States patent, copyright, trademark or trade secrets; to claims for personal injury or damage to property caused by the gross negligence or willful misconduct of the Contractor; to claims covered by other specific provisions of this Contract calling for liquidated damages; or to court costs or attorney's fees awarded by a court in addition to damages after litigation based on this Contract.

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

2.16 Termination by the State

2.16.1 Notice and Right to Cure

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

2.16.2 Termination for Cause

(a) The State may fully or partially terminate this Contract for cause by notifying the Contractor if the Contractor: (i) breaches any of its material duties or obligations (including a Chronic Failure to meet any SLA); or (ii) fails to cure a breach within the time period specified in a notice of breach provided by the State.

(b) The Contractor must pay all reasonable costs incurred by the State in terminating this Contract for cause, including administrative costs, attorneys' fees and court costs, and any additional costs the State incurs to procure the Deliverable(s) from other sources. Re-procurement costs are not consequential, indirect, or incidental damages, and cannot be excluded by any other terms otherwise included in this Contract, provided the costs are not in excess of 50% more than the prices for the Deliverable(s).

(c) If the State partially terminates this Contract for cause, any charges payable to the Contractor will be equitably adjusted to reflect those Deliverable(s) that are terminated. The State must pay for all Deliverable(s) for which Final Acceptance has been granted before the termination date. Any services or related provisions of this Contract that are terminated for cause must cease on the effective date of the termination.

(d) If the State terminates this Contract for cause and it is determined, for any reason, that the Contractor was not in breach of the Contract, the termination will be deemed to have been a termination under Section 2.16.3, Termination for Convenience, effective as of the same date, and the rights and obligations of the parties will be limited to those provided in that Section.



2.16.3 Termination for Convenience

The State may fully or partially terminate this Contract for its convenience if the State determines that a termination is in the State's best interest. Reasons for the termination are within the sole discretion of the State and may include: (a) the State no longer needs the Deliverable(s) specified in this Contract; (b) a relocation of office, program changes, or changes in laws, rules, or regulations make the Deliverable(s) no longer practical or feasible for the State; (c) unacceptable prices for Contract changes; or (d) falsification or misrepresentation, by inclusion or non-inclusion, of information material to a response to any RFP issued by the State. The State may terminate this Contract for its convenience by giving Contractor notice at least 30 days before the date of termination. If the State chooses to terminate this Contract in part, any charges payable to the Contractor must be equitably adjusted to reflect those Deliverable(s) that are terminated.

2.16.4 Termination for Non-Appropriation

(a) If this Contract extends for more than one fiscal year, continuation of this Contract is subject to the appropriation or availability of funds. If sufficient funds to enable the State to continue payment are not appropriated or otherwise made available, the State must fully or partially terminate this Contract at the end of the last period for which funds have been appropriated or otherwise made available. The State must give the Contractor notice at least 30 days before the date of termination, unless the State receives notice of the non-appropriation or unavailability less than 30 days before the end of the last period for which funds have been appropriated or otherwise made available.

(b) If funding for this Contract is reduced by law, or funds to pay the Contractor for the Deliverable(s) are not appropriated or are otherwise unavailable, the State may, upon 30 days notice to the Contractor, change the Deliverable(s) in the manner and for the periods of time the State may elect. The charges payable under this Contract will be equitably adjusted to reflect any Deliverable(s) not provided because of the reduction.

(c) If the State fully or partially terminates this Contract for non-appropriation, the State must pay the Contractor for all work-in-progress performed through the effective date of the termination to the extent funds are available.

2.16.5 Termination for Criminal Conviction

The State may terminate this Contract immediately and without further liability or penalty if the Contractor, an officer of the Contractor, or an owner of a 25% or greater share of the Contractor is convicted of a criminal offense related to a State, public, or private Contract or subcontract.

2.16.6 Termination for Approvals Rescinded

The State may terminate this Contract if any final administrative or judicial decision or adjudication disapproves a previously approved request for purchase of personal services under Constitution 1963, Article 11, § 5, and Civil Service Rule 7-1. In that case, the State will pay the Contractor for all work-in-progress performed through the effective date of the termination. The Contract may be fully or partially terminated and will be effective as of the date stated in the notice.

2.16.7 Rights and Obligations upon Termination

- (a) If the State terminates this Contract for any reason, the Contractor must:
- (i) stop all work as specified in the notice of termination;
 - (ii) take any action that may be necessary, or that the State may direct, to preserve and protect Deliverable(s) or other State property in the Contractor's possession;
 - (iii) return all materials and property provided directly or indirectly to the Contractor by any entity, agent, or employee of the State;
 - (iv) transfer title in and deliver to the State, unless otherwise directed, all Deliverable(s) intended to be transferred to the State at the termination of the Contract (which will be provided to the State on an "As-Is" basis except to the extent the State compensated the Contractor for warranty services related to the materials);
 - (v) to the maximum practical extent, take any action to mitigate and limit potential damages, including terminating or limiting subcontracts and outstanding orders for materials and supplies; and
 - (vi) take all appropriate action to secure and maintain State information confidentially in accordance with Section 2.11, Confidentiality.



(b) If the State terminates this Contract under Section 2.16.3, Termination for Convenience, the State must pay the Contractor all charges due for Deliverable(s) provided before the date of termination and, if applicable, as a separate item of payment, for work-in-progress, based on a percentage of completion determined by the State. All completed or partially completed Deliverable(s) prepared by the Contractor, at the option of the State, become the State's property, and the Contractor is entitled to receive equitable compensation for those Deliverable(s). Regardless of the basis for the termination, the State is not obligated to pay or otherwise compensate the Contractor for any lost expected future profits, costs, or expenses incurred with respect to Deliverable(s) not actually completed.

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

2.16.8 Reservation of Rights

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

2.16.9 Contractor Transition Responsibilities

If this Contract terminates under Section 2.16, Termination by the State, the Contractor must make reasonable efforts to transition the performance of the work, including all applicable equipment, services, software, and leases, to the State or a third party designated by the State within a reasonable period of time that does not exceed 30 days from the date of termination. The Contractor must provide any required reports and documentation.

2.16.10 Transition Payments

If the transition responsibilities outlined in Section 2.16.9, Contractor Transition Responsibilities, arise based on a termination of this Contract, reimbursement will be governed by the provisions of Section 2.16, Termination by the State. If the transition results from expiration, the Contractor will be reimbursed for all reasonable transition costs (i.e., costs incurred after the expiration within the time period in Section 2.16.9 that result from transition operations) at the Contract rates. The Contractor must prepare an accurate accounting from which the State and the Contractor may reconcile all outstanding accounts.

2.17 Termination by the Contractor

2.17.1 Termination

If the State breaches the Contract and the Contractor, in its sole discretion, determines that the breach is curable, then the Contractor will provide the State with notice of the breach and a time period (not less than 30 days) to cure the breach.

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

2.18 Stop Work

2.18.1 Stop Work Order

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



2.18.2 Termination of Stop Work Order

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

2.18.3 Allowance of the Contractor's Costs

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

2.19 Reserved

2.20 Dispute Resolution

2.20.1 General

(a) The Contractor must submit any claim related to this Contract to the State under Section 2.3.6, Notices, together with all supporting documentation for the claim.

(b) The representatives of the Contractor and the State must meet as often as the parties reasonably deem necessary to gather and furnish to each other all information related to the claim.

(c) During the course of negotiations, each party will honor all reasonable requests made by the other for non-privileged information reasonably related to the claim.

2.20.2 Informal Dispute Resolution

(a) If, after a reasonable time following submission of a claim under Section 2.20.1, General, the parties are unable to resolve the claim, the parties must meet with the Director of DTMB-Purchasing Operations, or his or her designee, for the purpose of attempting to resolve the dispute without the need for formal legal proceedings.

(b) Within 60 calendar days of the meeting with the Director of DTMB-Purchasing Operations, or such other time as agreed to by the parties, the Director of DTMB-Purchasing Operations will issue a written recommendation regarding settlement of the claim. The Contractor must notify DTMB-Purchasing Operations within 21 days after the recommendation is issued whether the Contractor accepts or rejects the recommendation. Acceptance by the Contractor constitutes the final resolution of the claim addressed in the recommendation, and the Contractor may not assert that claim in any future litigation or other proceeding between the parties.

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

(d) This section will not be construed to prohibit either party from instituting formal proceedings to avoid the expiration of any applicable limitations period, to preserve a superior position with respect to other creditors, or under Section 2.20.3, Injunctive Relief.

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

2.20.3 Injunctive Relief

A claim between the State and the Contractor is not subject to the provisions of Section 2.20.2, Informal Dispute Resolution, where a party makes a good faith determination that a breach of the Contract by the other party will result in damages so immediate, so large or severe, and so incapable of adequate redress that a temporary restraining order or other injunctive relief is the only adequate remedy.



2.20.4 Continued Performance

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

2.21 Disclosure Responsibilities

2.21.1 Disclosure of Litigation

(a) Within 30 days after receiving notice of any litigation, investigation, arbitration, or other proceeding (collectively, "Proceeding") that arises during the term of this Contract, the Contractor must disclose the following to the Contract Administrator:

- (i) A criminal Proceeding involving the Contractor (or any Subcontractor) or any of its officers or directors;
- (ii) A parole or probation Proceeding;
- (iii) A Proceeding involving the Contractor (or any Subcontractor) or any of its officers or directors under the Sarbanes-Oxley Act; and
- (iv) A civil Proceeding to which the Contractor (or, if the Contractor is aware, any Subcontractor) is a party, and which involves (A) a claim that might reasonably be expected to adversely affect the viability or financial stability of the Contractor or any Subcontractor; or (B) a claim or written allegation of fraud against the Contractor (or, if the Contractor is aware, any Subcontractor) by a governmental or public entity arising out of the Contractor's business dealings with governmental or public entities.

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

(c) If any Proceeding that is disclosed to the State or of which the State otherwise becomes aware, during the term of this Contract, would cause a reasonable party to be concerned about: (i) the ability of the Contractor (or a Subcontractor) to continue to perform this Contract; or (ii) whether the Contractor (or a Subcontractor) is engaged in conduct that is similar in nature to the conduct alleged in the Proceeding and would constitute a breach of this Contract or a violation of federal or state law, regulations, or public policy, then the Contractor must provide the State all requested reasonable assurances that the Contractor and its Subcontractors will be able to continue to perform this Contract.

2.21.2 Other Disclosures

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

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

2.21.3 Call Center Disclosure

The Contractor and all Subcontractors involved in the performance of this Contract providing call or contact center services to the State must disclose the location of its call or contact center services to inbound callers. Failure to disclose this information is a material breach of this Contract.

2.22 Extended Purchasing

2.22.1 MiDEAL Requirements

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

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

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

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



2.22.2 State Administrative Fee - Reserved

2.22.3 State Employee Purchase Requirements - Reserved

2.23 Laws

2.23.1 Governing Law

This Contract is governed by, and construed according to, the substantive laws of the State of Michigan without regard to any Michigan choice of law rules that would apply the substantive law of another jurisdiction to the extent not inconsistent with or preempted by federal law.

2.23.2 Compliance with Laws

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

2.23.3 Jurisdiction

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

2.23.4 Nondiscrimination

In the performance of the Contract, the Contractor agrees not to discriminate against any employee or applicant for employment, with respect to his or her hire, tenure, terms, conditions or privileges of employment, or any matter directly or indirectly related to employment, because of race, color, religion, national origin, ancestry, age, sex, height, weight, marital status, or physical or mental disability. The Contractor further agrees that every subcontract entered into for the performance of this Contract will contain a provision requiring non-discrimination in employment, as specified here, binding upon each Subcontractor. This covenant is required under the Elliott-Larsen Civil Rights Act, 1976 PA 453, MCL 37.2101, *et seq.*, and the Persons with Disabilities Civil Rights Act, 1976 PA 220, MCL 37.1101, *et seq.*, and any breach of this provision may be regarded as a material breach of the Contract.

2.23.5 Unfair Labor Practices

Under 1980 PA 278, MCL 423.321, *et seq.*, the State must not award a Contract or subcontract to an employer whose name appears in the current register of employers failing to correct an unfair labor practice compiled under MCL 423.322. This information is compiled by the United States National Labor Relations Board. A Contractor of the State, in relation to the Contract, must not enter into a contract with a Subcontractor, manufacturer, or supplier whose name appears in this register. Under MCL 423.324, the State may void any Contract if, after award of the Contract, the name of the Contractor as an employer or the name of the Subcontractor, manufacturer or supplier of the Contractor appears in the register.

2.23.6 Environmental Provision

For the purposes of this section, "Hazardous Materials" include asbestos, ACBMs, PCBs, petroleum products, construction materials including paint thinners, solvents, gasoline, oil, and any other material the manufacture, use, treatment, storage, transportation or disposal of which is regulated by the federal, state, or local laws governing the protection of the public health, natural resources, or the environment:

(a) The Contractor must use, handle, store, dispose of, process, transport, and transfer any Hazardous Material according to all federal, State, and local laws. The State must immediately advise the Contractor of the presence of any known Hazardous Material at the work site. If the Contractor encounters material reasonably believed to be Hazardous Material that may present a substantial danger, the Contractor must: (i) immediately stop all affected work; (ii) notify the State in accordance with Section 2.3.6, Notices; (iii) notify any entities required by law; and (iv) take appropriate health and safety precautions.



(b) The State may issue a Stop Work Order if the material is a Hazardous Material that may present a substantial danger and the Hazardous Material was not brought to the site by the Contractor, or does not wholly or partially result from any violation by the Contractor of any laws covering the use, handling, storage, disposal of, processing, transport and transfer of Hazardous Materials. The State may remove the Hazardous Material, render it harmless, or terminate the affected work for the State's convenience.

(c) If the Hazardous Material was brought to the site by the Contractor, or wholly or partially results from any violation by the Contractor of any laws covering the use, handling, storage, disposal of, processing, transport and transfer of Hazardous Material, or from any other act or omission within the control of the Contractor, the Contractor must bear its proportionate share of the delay and costs involved in cleaning up the site and removing and rendering harmless the Hazardous Material according to applicable laws.

2.23.7 Freedom of Information

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

2.23.8 Workplace Safety and Discriminatory Harassment - Reserved

2.23.9 Prevailing Wage - Reserved

2.23.10 Abusive Labor Practices

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

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

2.24 General Provisions

2.24.1 Bankruptcy and Insolvency

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

- (a) the Contractor files for bankruptcy protection;
- (b) an involuntary petition is filed against the Contractor and not dismissed within 30 days;
- (c) the Contractor becomes insolvent or a receiver is appointed due to the Contractor's insolvency;
- (d) the Contractor makes a general assignment for the benefit of creditors; or
- (e) the Contractor or its affiliates are unable to provide reasonable assurances that the Contractor or its affiliates can provide the Deliverable(s) under this Contract.

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

2.24.2 Media Releases

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

2.24.3 Contract Distribution

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



2.24.4 Permits

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

2.24.5 Website Incorporation

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

2.24.6 Future Bidding Preclusion

Contractor acknowledges that, to the extent this Contract involves the creation, research, investigation or generation of a future RFP; it may be precluded from bidding on the subsequent RFP. The State reserves the right to disqualify any Bidder if the State determines that the Bidder has used its position (whether as an incumbent Contractor, or as a Contractor hired to assist with the RFP development, or as a Vendor offering free assistance) to gain a competitive advantage on the RFP

2.24.7 Antitrust Assignment

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

2.24.8 Disaster Recovery

Contractor and the State recognize that the State provides essential services in times of natural or man-made disasters. Therefore, except as mandated by federal disaster response requirements, Contractor personnel dedicated to providing Deliverable(s) under this Contract will provide the State with priority.

2.24.9 Legal Effect

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

2.24.10 Entire Agreement

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

2.24.11 Order of Precedence

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

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

2.24.12 Headings

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

2.24.13 Form, Function and Utility

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



2.24.14 Reformation and Severability

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

2.24.15 Approval

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

2.24.16 No Waiver of Default

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

2.24.17 Survival

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



Glossary

This section provides definitions for terms used throughout this document.

Alcohol - also called ethanol, ethyl alcohol, pure alcohol, grain alcohol, or drinking alcohol, is a volatile, flammable, colorless liquid.

Business Day - whether capitalized or not, means any day other than a Saturday, Sunday, State employee temporary layoff day, or State-recognized legal holiday (as identified in the Collective Bargaining Agreement for State employees) from 8:00 a.m. through 5:00 p.m. Eastern Time unless otherwise stated.

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

Chronic Failure - as defined in applicable Service Level Agreements.

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

Contractor – the awarded contractor after the Effective Date.

Critical User Support – any issue preventing the monitoring of offenders, such as the application going down. A problem outside of the contractor’s control would not apply (i.e. local power outage, MDOC network issues).

Days - Business Days unless otherwise specified.

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

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

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

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

Extended Business Hours - whether capitalized or not, means any day other than a Saturday, Sunday, State employee temporary layoff day, or State-recognized legal holiday (as identified in the Collective Bargaining Agreement for State employees) from 7:00 a.m. through 7:00 p.m. Eastern Time unless otherwise stated.

Executable Ad Hoc Reports – a report created by the contractor which can be executed by MDOC staff report as often as needed with current data without the assistance of the contractor.

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

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

Near real time - a real event time plus programmed delays, depending on the event.

Non-Critical User Support – any issue that would still allow the monitoring of offenders (i.e. reports not being generated).

Post-Industrial Waste - industrial by-products which would otherwise go to disposal and wastes generated after completion of a manufacturing process, but does not include internally generated scrap commonly returned to industrial or manufacturing processes.



Presence of Alcohol - includes any by-product of alcohol consumption.

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

Software Release – all upgrades, fixes, modifications to any software being utilized by the system.

State - the State of Michigan.

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

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

Subcontractor - a company or person that the Contractor delegates performance of a portion of the Deliverable(s) to, but does not include independent contractors engaged by the Contractor solely in a staff augmentation role.

SUITE - State Unified Information Technology Environment. The State of Michigan's implementation of a standard methodology, procedures, training, and tools for projects and systems development lifecycle management throughout the Michigan Department of Information Technology (MDIT), in order to implement repeatable processes and conduct development activities according to the Capability Maturity Model Integrated (CMMI) Level 3 requirements.

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



Attachment A - Price Table

Alcohol Monitoring Equipment

Purchase

Equipment Information

Purchase Quantity	Device manufacturer, model number*	Purchase Price per Unit	Daily Monitoring Fee**	Replacement cost for lost or damaged devices
All Quantities	***AMS, SCRAMx Set, No. 00602 (Includes SCRAMx bracelet and base station)	\$1,299.00	\$3.29	\$490.00 (damaged) \$1,299.00 (lost)
All Quantities	***AMS, SCRAMx, Bracelets, No. 00777	\$1,075.00	\$3.29	\$340.00 (damaged) \$1,075.00 (lost)
All Quantities	***AMS, SCRAMx, Base Station, No. 00840	\$299.00	\$0.00 (included in No. 00602, Set)	\$150.00 (damaged) \$299.00 (lost)
All Quantities	***AMS, SCRAMx, Direct Connect, No. 00301	\$49.00	\$0.00	\$49.00
All Quantities	AMS, MultiConnect AW Wireless Device, No. 01752	\$363.00	\$1.00	

Prices include batteries, straps, retaining clips, tamper clips, screws, faceplate kits, telephone cords, power cord, tools necessary for the installation, maintenance and/or removal of the device.

Daily Monitoring Fee shall only be assessed on those devices that have been assigned to an offender. These fees shall not be assessed for devices that are awaiting use.

Note: The MDOC currently owns approximately 1,200 SCRAMx units. AMS has traditionally provided 10% spares, even on purchased units, and more recently has increased the spare allowance to 15%, at no cost to MDOC. Based on this allowance, the MDOC has approximately 1350 units which may be placed in service.