

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

December 10, 2008

CHANGE NOTICE NO. 2
TO
CONTRACT NO. 071B5200152
between
THE STATE OF MICHIGAN
and

NAME & ADDRESS OF VENDOR		TELEPHONE 1-800-272-3350	
National Diagnostics Inc. 6407 Idlewild, Suite 211 Charlotte, NC 28212		Jerry Stewart	
		BUYER/CA (517) 241-1916 Jim Wilson	
Contract Compliance Inspector: Kathy Urda Drug and Alcohol Compliance Assistance - MDOT			
CONTRACT PERIOD:		From: January 1, 2005	To: December 31, 2009
TERMS	N/A	SHIPMENT	N/A
F.O.B.	N/A	SHIPPED FROM	N/A
MINIMUM DELIVERY REQUIREMENTS		N/A	

NATURE OF CHANGE(S):

Effective immediately, this Contract is hereby **EXTENDED** through December 31, 2009, and **INCREASED** by \$99,500.00. All other terms, conditions, specifications, and pricing remain unchanged.

AUTHORITY/REASON:

Per agency request, Ad Board approval on 12/2/08, and DMB/Purchasing Operations' approval.

REVISED CURRENT AUTHORIZED SPEND LIMIT: \$210,000.00

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

May 7, 2008

CHANGE NOTICE NO. 1
TO
CONTRACT NO. 071B5200152
between
THE STATE OF MICHIGAN
and

NAME & ADDRESS OF VENDOR		TELEPHONE 1-800-272-3350
National Diagnostics Inc. 6407 Idlewild, Suite 211 Charlotte, NC 28212		Jerry Stewart
		BUYER/CA (517) 241-1916 Jim Wilson
Contract Compliance Inspector: Kathy Urda Drug and Alcohol Compliance Assistance - MDOT		
CONTRACT PERIOD: From: January 1, 2005 To: December 31, 2008		
TERMS	N/A	SHIPMENT
		N/A
F.O.B.	N/A	SHIPPED FROM
		N/A
MINIMUM DELIVERY REQUIREMENTS		
N/A		

NATURE OF CHANGE(S):

Effective immediately, this Contract is hereby EXTENDED through December 31, 2008, and INCREASED by \$22,500.00. NOTE: The DMB Buyer for this Contract is changed to Jim Wilson (517) 241-1916. All other terms, conditions, specifications, and pricing remain unchanged.

AUTHORITY/REASON:

Per agency request, Ad Board approval on 5/6/08 and DMB/Purchasing Operations' approval.

REVISED CURRENT AUTHORIZED SPEND LIMIT: \$110,500.00

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

January 4, 2004

NOTICE
TO
CONTRACT NO. 071B5200152
between
THE STATE OF MICHIGAN
and

NAME & ADDRESS OF VENDOR		TELEPHONE 1-800-272-3350	
National Diagnostics Inc. 6407 Idlewild, Suite 211 Charlotte, NC 28212		Jerry Stewart	
		BUYER/CA (517) 373-1455 Laura Gyorkos, CPPB	
Contract Compliance Inspector: Kathy Urda Drug and Alcohol Compliance Assistance - MDOT			
CONTRACT PERIOD: From: January 1, 2005 To: December 31, 2007			
TERMS		SHIPMENT	
N/A		N/A	
F.O.B.		SHIPPED FROM	
N/A		N/A	
MINIMUM DELIVERY REQUIREMENTS			
N/A			

The terms and conditions of this Contract are those of ITB #071I5200047, this Contract Agreement and the vendor's quote dated November 4, 2004. In the event of any conflicts between the specifications, terms and conditions indicated by the State and those indicated by the vendor, those of the State take precedence.

Estimated Contract Value: \$88,000.00

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

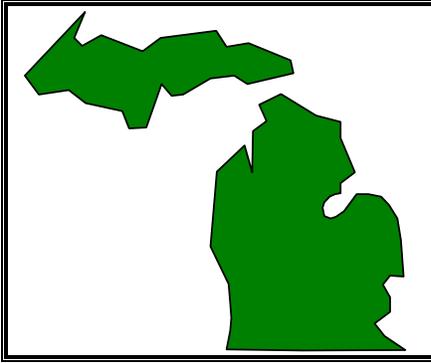
**CONTRACT NO. 071B5200152
 between
 THE STATE OF MICHIGAN
 and**

NAME & ADDRESS OF VENDOR National Diagnostics Inc. 6407 Idlewild, Suite 211 Charlotte, NC 28212	TELEPHONE 1-800-272-3350 Jerry Stewart BUYER/CA (517) 373-1455 Laura Gyorkos, CPPB
Contract Compliance Inspector: Kathy Urda Drug and Alcohol Compliance Assistance - MDOT	
CONTRACT PERIOD: From: January 1, 2005 To: December 31, 2007	
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: <p>The terms and conditions of this Contract are those of ITB #071I5200047, this Contract Agreement and the vendor's quote dated November 4, 2004. In the event of any conflicts between the specifications, terms and conditions indicated by the State and those indicated by the vendor, those of the State take precedence.</p> <p>Estimated Contract Value: \$88,000.00</p>	

THIS IS NOT AN ORDER: This Contract Agreement is awarded on the basis of our inquiry bearing the ITB No. 071I5200047. Orders for delivery may be issued directly by the Department of Transportation through the issuance of a Purchase Order Form.

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

FOR THE VENDOR:	FOR THE STATE:
National Diagnostics Inc.	Signature
Firm Name	Laura L. Gyorkos, CPPB
Authorized Agent Signature	Name
Authorized Agent (Print or Type)	Strategic Division, Acquisition Services
Date	Title
Date	Date



STATE OF MICHIGAN
Department of Management and Budget
Acquisition Services

Contract No. 071IB5200152
Drug and Alcohol Compliance Assistance

Buyer Name: Laura Gyorkos
Telephone Number: 517-373-1455
E-Mail Address: gyorkosl@michigan.gov



Drug and Alcohol Compliance Assistance

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Article 1 – Statement of Work (SOW)

1.0 Project Identification

1.001 PROJECT REQUEST

This Contract is to provide compliance assistance for Michigan local intrastate bus transit agencies regarding United States Department of Transportation (USDOT) drug and alcohol related legislation. This includes drug testing resource identification, training, coordination, oversight and quality control, consultation, consortium management and record keeping, administrative services, Federal Transit Authority report securement, and education and training for Michigan transit agencies. Detailed descriptions of products and services to be provided for this project are listed in the work plan.

1.002 BACKGROUND

Background

USDOT considers one of their highest priorities to be the safety of public transportation. Alcohol and drug abuse within the transit industry can have a significant negative effect on that goal. Therefore, in order to minimize this effect, several substantial pieces of legislation were passed. These pieces of legislation attempt to eliminate and control drug and alcohol impaired work performance largely by requiring drug and alcohol policies, drug and alcohol testing, and monitoring of possible drug or alcohol impaired work performance.

The transit industry is affected by many USDOT legislative sources including the National Highway Traffic Safety Administration (NHTSA), the Federal Transit Administration (FTA), Federal Motor Carrier Safety Administration (FMCSA), U.S. Coast Guard (USCG) and Federal Railroad Administration (FRA), etc.

In addition to the current legislation to which the transit industry must adhere, any additional laws which become in effect throughout the remainder of the contract must be identified and incorporated into the program.

Problem Statement

The public transit industry is heavily regulated. Keeping abreast of all the relevant legislation is a challenge. Transit management must make many compliance related decisions for their organizations. These decisions can have serious organizational consequences, such as increasing risk and liability, requiring major policy adjustments, seriously impacting public relations (and consequently local funding), and affecting Union relations or bargaining issues.

Implementation of the federal drug and alcohol legislation has created a challenge for transit providers in a time of increasing needs and decreasing resources. These transit providers have limited time and funding to administer the mandated organizational drug and alcohol programs. The required outside resources that must be identified, trained, and monitored, as well as the many procedural details that must be correctly followed to be in compliance, is a formidable challenge.

There are approximately 150 transit agencies statewide that must comply with these federally mandated drug and alcohol programs. In addition to providing technical assistance to these agencies, the Michigan Department of Transportation (MDOT) is legally responsible for ensuring that a portion of these agencies are in compliance with the regulations.

It is critical that the third-party administrator be extremely knowledgeable of and able to analyze, as well as explain all of the legal documents which must be carefully followed by each transit agency in order to be considered in compliance by the U.S. Department of Transportation, as well as the State of Michigan and any other current/future legislation. This includes overall general guidelines, as well as the myriad of specific requirements which are stated or indicated. MDOT will not be providing regulatory information to the third-party administrator. It is the responsibility of the third-party administrator to identify and access all of the federal and state legislation which is relevant to the drug and alcohol compliance programs for the Michigan transit agencies.



Project Goal

The goal of this project is to ensure legally sound compliance for all the Michigan transit agencies regarding the USDOT Drug and Alcohol Testing Regulations during the calendar years of 2005-2009.

Project Objectives

1. Minimize the compliance costs
2. Simplify the compliance procedure
3. Identify and provide compliance resources
4. Educate, clarify and advise
5. Reduce state administration and involvement
6. Assist in certification of transit agencies receiving federal funds

1.1 Scope of Work and Deliverables

1.101 IN SCOPE

The scope of this contract is for a third party administrator to develop, organize, and administer a statewide consortium, and provide services to MDOT, as well as to transit agency consortium members and non members.

The following services will be provided to **all transit agencies** (and also to MDOT where indicated):

1. Consultation/Expert Advice

NDI will provide "expert" advice, as requested by individual transit systems regarding their programs and procedures.

- Policy Formulation - The consultant will: a) provide to each transit agency a model policy which meets the applicable USDOT standards (NHTSA, and FTA or FHWA), as well as optional additions, and b) consult with each agency individually regarding their policy as needed.

Jerry Stewart, J.D.

NDI will provide each participating transit agency a new, revised model policy, electronically, which meets the minimum FTA standards, as set forth in 49CFR Part 655 well as optional policy items which may be utilized to customize individual agency policies.

NDI will provide consultation services available to each system on an individual basis for policy review and revision, well as provide advise and insight into policy elements which have significantly affected union, public and employee relations liability, and will provide training as required.

- Regulation Update/Bulletins - The consultant must develop (or obtain from other resources) and distribute timely written bulletins for each transit agency regarding any relevant changes the in law as needed as well as any clarifications which may be needed, based on identified areas of confusion. These bulletins need to receive MDOT approval prior to distribution. NDI will keep abreast and keep MDOT informed of any significant regulatory changes.
- Programs and procedures advice - The consultant will provide expert advice as requested by individual transit agencies regarding their programs and procedures.
- Clarify regulations - The consultant will clarify regulations jointly with MDOT. NDI will clarify regulations jointly with MDOT.



- Union /Management Issues - The consultant will advise regarding Union/Management issues as needed. NDI will advise regarding Union/Management issues as needed.
- Legislative changes - The consultant will keep abreast and inform transit authorities and MDOT regarding any legislative changes.
- General Consultation - The consultant will consult with transit agencies and MDOT regarding areas of confusion as needed.
- NDI will consult with transit agencies, as well as MDOT, to clarify areas of confusion, as needed.

2. **Management/Supervision Education and Training**

The consultant will provide, when requested, training sessions as deemed necessary by MDOT. These sessions will focus on the legal requirements, as well as the recommended strategy for compliance. The consultant must show they have a qualified, experienced trainer with drug/alcohol program management expertise and experience to teach the participants about strategies for compliance activities, which maximize organizational efficiency and effectiveness. This training must include development of the supervisory skills needed for their role, including intervention techniques. The trainer provided must be a nationally recognized expert in FTA drug and alcohol regulations and training. They must have conducted training at local, state and federal levels, and have experience with FTA drug and alcohol programs and training. Trainer must also have knowledge of Part 655, Part 40, Rx/OTC, new FTA initiatives and interpretation of those initiatives. All trainers must receive MDOT approval prior to conducting any training sessions.

Robbie L. Sarles, RLS and Associates, Inc.
Jerry Stewart, J.D., NDI

NDI will provide, when requested, training sessions for management supervisors and union officers focusing on the four topics described below.

Substance Abuse Management Training - The consultant will provide a Substance Abuse Management training course geared towards new and experienced transit operators. The training will include comprehensive overview of the FTA Drug and Alcohol Testing Program. The training will cover topics such as policy compliance and updating, drug and alcohol testing procedures, procurement of testing services, employee and supervisor training, and recordkeeping, among others. The 12-hour module will be interactive among the instructor and the participants. In addition, the session will include exercises to facilitate mastery of the concepts.

Reasonable Suspicion Train-the-Trainer Workshop - The consultant will provide a Reasonable Suspicion Training course. The FTA Drug and Alcohol Testing Program regulation states that an employer must require a covered employee to submit to a drug and alcohol test when the employer has reasonable suspicion to believe that the employee has used a prohibited drug or misused alcohol as defined in the regulations. The reasonable suspicion determination must be made by a supervisor that is trained in detecting the symptoms of drug use and alcohol misuse. This 8 hour training module is provided for transit system employees that may be responsible for making reasonable suspicion determinations. The class participants will be trained in the facts, circumstances, physical evidence, physical signs and symptoms or patterns and/or behaviors that are associated with prohibited drug use or alcohol misuse. Train-the-trainer information will also be provided for transit management staff who will use the material to train their own supervisors.

Prescription and Over-The-Counter Medication - The consultant will provide Prescription and Over-The-Counter Medication use in the Transit Industry training. This 2 hour training module is designed to increase awareness of the potential hazards of prescription and OTC medications in the transit industry. The presentation summarizes the FTA challenge to the transit industry, employer responsibilities, employee responsibilities, policy recommendations, model procedures for implementing the policy, and training efforts within the transit industry. An appendix to the presentation summarizes major classifications of Rx and OTC medications and possible side effects that could adversely affect an employee's ability to safely perform safety-sensitive job duties.



Post-Accident Drug and Alcohol Testing - The consultant will provide a 2-hour training module geared toward decision making following a transit accident in which drug and alcohol testing is required. The course describes in detail the FTA regulation concerning post-accident testing as well as forms and documentation required to ensure the transit system maintains compliance. The course also includes a real-life scenario section where participants must decide if a post-accident test is required based on accident reports.

3. **Account Management**

Consortium Membership – Annually, the consultant will provide a formal open enrollment period for transit agencies to join or continue membership in the consortium for the next calendar year (through MDOT). This may include developing and mailing brochures during the open enrollment period.

NDI will extend voluntary consortium membership, as well as, develop and distribute information during the annual open enrollment periods. NDI staff will subsequently follow-up to contact non-responsive agencies to determine their interests in joining the consortium. NDI will set-up programs for any transit agencies interested in joining the consortium. NDI will update MDOT on the status of enrollment changes. Open enrollment will be performed during the last quarter annually.

FTA Reports - The consultant will review and verify (for accuracy) on-line FTA annual drug and alcohol testing reports from Section 5311 recipients, as well as advise as needed.

The following services will be provided to consortium members (and also to MDOT where indicated):

1. **Collection Site identification, training, and quality control**

- a) The consultant will work with each transit agency to identify local collection sites, which meet its needs, making every effort to keep the current resources unless unacceptable. Each transit agency will have available to them collection site(s) with both urine collection personnel as well as breath alcohol technicians unless there are no high quality dual testing sites in existence in the geographical area. The consultant will also train collection site personnel, and do ongoing quality control. An unsatisfactory collection site should be reported to the transit agency.
- b) The consultant will also, if needed, serve as a liaison between the collection sites and the transit agencies, identifying, recommending, and replacing collection sites as needed. In most cases, collection sites should be in the same county as the transit agency office where the employee is located.
- c) Some collection sites must be available 24 hours a day. If a collection site is needed outside the normal business hours of 8:00am - 5:00pm, (usually post-accident or reasonable cause) the consultant will be available and able to advise the collection site of the arrival of the employee at the transit agency's request. This service must be provided 24 hours a day, 7 days a week with a free telephone line.
- d) The consultant will provide Breath Alcohol Technician (BAT) program management services and BAT location management fees for quality control.

Jamie Sumner

NDI has established a network of 15,000 nationwide collection sites and has an additional pool of over 30,000 physicians, clinics and hospitals available throughout the United States and Canada where collections can be coordinated. Typically, these third-party collection locations are primary care medical clinics and laboratory service centers whose personnel have had training and experience in NIDA/SAMHSA collections for forensic toxicology.



NDI has already established a network of 200 clinics for MDOT. National Diagnostics will coordinate with each transit agency to determine the most convenient locations for specimen collections and breath alcohol testing. NDI customarily coordinates urine drug collections and breath alcohol testing with client's existing workcomp providers or medical centers where pre-existing relationships are established. Where new collection sites are necessary, NDI will attempt to identify collection sites and breath alcohol testing locations situated within 20 minutes of the transit agency employee location.

The following collection site management and training protocols have been established at NDI for setting up collection sites for each client location:

- Identify collection sites by zip code matching or customer referral
- 49 CFR Part 40 collection protocols, color collection brochures and training materials are forwarded to each collection site
- Chain-of-custody templates are made available to simplify form completion and reduce costly errors
- Collection site agreement forms
- Proper shipping, handling and billing protocols are established

Proper specimen collection is critically important to assure the validity and integrity of the continuous chain-of-custody process and to protect the rights and interests of all parties involved.

From a legal perspective, specimen collection is the weakest link in the entire testing process. Since your program administrator and MRO ultimately receive all documentation and information from all parties---the collection site, the laboratory, the employer and the donor---it is the ultimate responsibility of your MRO to assure the integrity and accuracy of the entire testing process by closely monitoring and reviewing all phases.

NDI's on-going collection site management includes a continuous, detailed review of the chain-of-custody documentation to monitor and detect the source of any collection site errors. This relieves the client of the following burdensome responsibilities:

- Chain-of-custody review
 - collection personnel errors
 - new and part-time collection personnel errors
- Collection site performance audits
- Periodic performance reports documenting
 - Number of collections
 - Turn around time characteristics
 - Documentation error type by collection site
 - Shipping and handling characteristics

As NDI performs collection site audits, in addition to providing on-going support for collection sites when they have questions regarding pre-established protocols, NDI is also available to immediately assist whenever more difficult circumstances arise, such as:

- Shy Bladder
- Observed collections
- Attempts to adulterate
- Temperature discrepancies



To satisfy the requirement of 24-hour collection sites, NDI will locate at least collection facility in each county, as convenient as possible to the testing agency location that will perform urine sample collections and breath alcohol testing 24 hours per day.

The NDI 24 Hour Post-Accident Testing Hotline is particularly helpful for after hours testing. This service was created to establish a method by which employers, specifically those covered under the DOT, could arrange for testing of employees immediately following DOT reportable accidents. Generally, these accidents require special efforts for specimen collection and shipping to the laboratory.

With a staff of professionals who are on-call 24 hours per day, NDI quickly and effectively coordinates post-accident specimen collections through a network of over 15,000 different collection locations nationwide, anywhere, anytime, day or night through its toll-free number.

In addition to post-accident testing, many companies have now begun to utilize this service to coordinate specimen collection for on-the-road-random testing and mobile crews.

For DOT required post-accident testing, NDI provides complete documentation for the employer in the form a Post-Accident Report.

NDI has established a highly sophisticated management system to monitor breath alcohol testing services and to provide quality assurance over all aspects of regulatory compliance requirements. NDI also offers an administrative documentation and procedural review for positive breath alcohol tests. These services are already being provided for MDOT and are included in this proposal.

2. Medical Review Officer (MRO) identification, receipt and communication of test results, coordination, and quality control

- a) The consultant will identify medical review officer(s).
- b) The consultant will receive test results from the MRO(s) and communicate them appropriately to the transit agency representative.
- a) The consultant will also ensure that the necessary services occur in a timely and acceptable manner.

Identification, Receipt and Communication of Test Results, Coordination and Quality Control

The following MROs and MROAs will serve MDOT:

Phillip Greene, M.D., President and CEO
H. Dean Belk, M.D., Medical Director and MRO
Lakeesha Randell, Medical Review Officer Assistant (MROA)
Sylvia Rios, Medical Review Officer Assistant (MROA)

The role of the Medical Review Officer is an essential component of federally mandated drug testing programs that follow the DHHS Mandatory Guidelines as adopted for Federal Workplace Drug Testing Program 49 CFR Part 40. Several states have now adopted variations of these regulations and guidelines, and require the use of MRO services for drug testing.

Although most voluntary programs are not required to comply with these federal regulations or these state laws, the rationale behind requiring MRO review on all drug tests can be valuably beneficial and well worth any employer's consideration.

NDI coordinates MRO services through a full-time staff of three MRO certified and licensed physicians. NDI's staff physicians have substantial experience and understanding of substance abuse disorders and drug testing program management in general.

MRO certification of all its physicians, either through the American Association of Medical Review Officers or the American College of Occupational and Environmental Medicine, is required by NDI.



NDI also maintains a staff of licensed nurses in positions of Medical Review Officer Assistants (MROAs). The MROAs provide support to the MRO by gathering documentation and coordinating interviews with donors whose preliminary lab test result is reported as positive. Necessary information on laboratory troubled specimens such as affidavits are obtained, when appropriate, so that testing of a specimen or MRO services may be completed.

Medical review of all test results will be conducted at:

National Diagnostics, Incorporated
6407 Idlewild Rd., Suite 211
Charlotte, North Carolina 28212
(800) 272-3350

Receipt of Negative and Positive Test Results and Communications

All test results from testing laboratories will be downloaded to NDI's computer system in Charlotte, North Carolina.

Immediately following NDI's computerized documentation review, negative test results will immediately be reported to the appropriate transit agency contact person.

Negative test results are normally reported from the laboratory to NDI immediately following conclusion of the testing process. This generally occurs within 24 hours of specimen collection. Minor delays may occur in reporting of negative test results from the laboratory due to the occurrence of non-fatal flaws in the chain of custody documentation or testing process. In these situations, the laboratory informs the MRO of the problem specimen and suspends testing until steps have been taken to correct the problem. In many situations, the MRO may obtain and forward an affidavit to the laboratory to correct the problem, so that testing may be completed. In those situations where an affidavit is not acceptable, the problem specimen will be invalidated by the MRO and testing will be suspended indefinitely.

Positive test results are generally reported by the testing laboratory to the MRO immediately following confirmation testing and signature of the certifying scientist, which is normally within 48 hours of specimen testing.

The MRO will review and interpret adulterated, substituted, invalid or positive urinalysis test results to assure a scientifically valid result and to determine whether a legitimate medical explanation could account for the confirmed adulterated, substituted, invalid or positive result.

The MRO will review all pertinent medical information and conduct an interview before reporting a positive result. In the absence of an exculpatory explanation, or where the donor refuses to contact the MRO 5 days after having been instructed to do so, the result will be reported as adulterated, substituted, invalid or positive.

In some instances, NDI will require additional confirmation tests on laboratory confirmed amphetamine and opiate positives in order to properly evaluate a particular test result. These additional confirmation tests, 6MAM and D&L, must be performed only in situations where a donor does not provide medical documentation which explains a positive test result. The 6MAM test will provide the MRO information regarding the presence of acetylmorphine in the urine, indicating heroine use. A D&L confirmation test indicates the presence of a prescribed drug, referred to as the (D), or an illicit drug, referred to as the (L).

NDI may also provide donor assistance to find a Referral Physician that can help evaluate any donor explanations for adulterated or substituted test results.

NDI will report all drug and alcohol test results to the appropriate agency contact person via an approved method, i.e. secure fax or telephone.

NDI will retain all documentation, physically and electronically, for five years. All information in NDI's computer system is backed-up on a daily basis and is stored in a fire proof location each business day.

Though the role of the MRO is based upon a thorough knowledge of the pharmacology and toxicology of illicit drugs, the scope of an MRO's responsibilities are more fully appreciated when one considers his or her role and involvement in the day-to-day management of programs.



In addition to reviewing test results, NDI's physician staff responds to many different employer concerns:

- Medical consultation
 - Medications
 - Illnesses
 - Physical examination qualification
- Collection site inquiries regarding:
 - Shy bladder
 - Observed collections
 - Adulterated and substituted specimens
 - Temperature discrepancies
 - Recollections
- Laboratory inquiries
 - Disposition of tests with documentation errors
 - Establishing client specific testing protocols
- Problem specimens
 - Laboratory rejected
 - MRO invalidated
- Special test requests
 - Retest of positive samples by the same laboratory or, at the donor's request, an outside laboratory
 - Quantitative analysis
 - Additional confirmation tests
 - 6-MAM
 - D & L
 - Identification tests for substances submitted by employers
- Legal proceedings
 - Administrative hearings
 - Workman's Compensation
 - Unemployment
 - Equal Employment Opportunity Commission
 - Expert testimony
 - Litigation support packages
- Americans with Disabilities Act

Language barriers provide additional difficulties for MROs when verifying positive test results. NDI employs a physician assistant who is fluent in Spanish.

3. **Laboratory identification, coordination, and quality control**

- a) The consultant will identify laboratories that meet USDOT criteria, and coordinate services as well as do quality control. The laboratory must process specimens in a timely manner.
- b) The consultant will also negotiate a competitive pricing system (available due to the volume) with the laboratories for the transit agencies to pay for their employee testing.

Randall Wilson
Jamie Sumner

National Diagnostics coordinates testing only through those labs, which have been certified by NIDA/SAMHSA, as approved for mandated programs under DOT.



NDI has the ability to coordinate testing through any NIDA/SAMHSA approved laboratory and assists clients in selecting a NIDA/SAMHSA certified laboratory that will best serve their program needs. NDI will coordinate testing through Laboratory Corporation of America for those participating Michigan transit agencies.

4. **Testing** - Additional specific services to assist with the following required types of drug and alcohol testing are:
- a) Random - Maintain and generate employee numbers for bimonthly testing, with a separate pool for each transit agency if desired, notify each transit system of each draw, and follow-up with reminder calls if test results are not received within a reasonable time after notification.

Mary Ann Knuckles

To insure the accuracy, reliability and legal defensibility of its random selection program, NDI specially retained, and worked closely with, a computer-consulting group to develop an unbiased computerized random selection program specifically for the drug testing industry. The Department of Transportation (DOT) considers our methodology and computer selection process as the most accurate and legally supportable method available.

NDI's random drug testing management program satisfies all DOT regulations regarding random drug testing.

NDI's random program management services include the following:

- Computerized set-up and maintenance of employee pools
- Selection frequency and dates
- Selection rate and number of alternates
- Initial set-up and maintenance of employee rosters/updates and selection notification via:
 - Fax
 - Mail
 - Modem
 - Diskette
 - E-Mail
 - Web
- Compliance tracking and testing history
 - Selection dates
 - Year-to-date tested
 - Percent to date tested
 - Current employee list
 - Prior selections
 - Add/drop history
- Periodic and year end adjustments

A separate random selection pool will be maintained for each participating transit system. Each transit system will be set-up according to their preferred schedule, notified of those covered employees selected for the random selection and given follow-up reminder calls when test results are not received within a reasonable time period following notification.

- b) Random - Maintain and generate employee numbers for bimonthly testing, with a separate pool for each transit agency if desired, notify each transit system of each draw, and follow-up with reminder calls if test results are not received within a reasonable time after notification.
- c) Follow-up - Schedule and notify transit agencies according to Substance Abuse Professional's guidelines, track, remind if test results are not reported within a reasonable time after notification, reiterate mandatory procedures as required by drug regulations should the employee fail a drug and/or alcohol test.



Medical Review Officers

NDI's MROs will schedule follow-up testing of covered employees and notify transit agencies of testing dates, according to SAP guidelines. NDI will track and contact the transit agency if test results are not received within a reasonable time following agency notification.

- c) Blind performance - Provide, submit, track, and do quality control

Jamie Sumner

NDI conducts all employer blind performance testing as required by the regulations or requested by its clients.

Specimens are collected under proper chain-of-custody and submitted to the laboratory under each client's specific account number. Spiked (positive) samples are purchased by NDI on behalf of the client and randomly submitted to the testing laboratory, as required.

Results are verified and discrepancies reported to all appropriate authorities.

- d) Post-Accident - Consult by telephone with transit agency management at their request, regarding individual cases.

Jonathan Johnston
Rick Buskirk

Through the 24 Hour Post-Accident Testing Hotline, NDI quickly and effectively coordinates post-accident specimen collections and breath alcohol testing, 24 hours a day, through a network of collection locations anywhere, anytime, day or night.

- e) Reasonable cause - Consult by telephone with transit agency management at their request, regarding individual cases.

Jonathan Johnston
Rick Buskirk

NDI will consult with transit agency management at their request, regarding individual cases of reasonable cause testing situations. This consultation will be available, toll-free, 24 hours per day on the 24 Hour Post-Accident Testing Hotline.

- f) Return to duty - Reiterate mandatory procedures according to regulations should the employee fail the drug and/or alcohol test.

Medical Review Officers

NDI will advise the transit agency and coordinate return-to-duty testing should an employee fail a drug and/or alcohol test.

- g) Pre-Employment - Reiterate mandated procedures if applicant fails the test.

Medical Review Officers
Medical Review Officer Assistants

NDI will notify the donor of the status of the test result following MRO review and verification steps. NDI will consult with the appropriate agency following an applicant's failure of a pre-employment drug test and will provide the agency with a suitable Substance Abuse Professional (SAP) to assist the agency in complying with DOT mandates, if necessary.



5. **Recordkeeping/Reporting** - The consultant will a) maintain and provide for each transit agency the necessary testing records, and, b) provide for each transit agency the testing statistics needed for annual FTA reporting.

*Randall Wilson
Jenny Westbrook*

Reporting and recordkeeping capabilities are functions of account set-up. During account set-up NDI will coordinate with the lab to assign a unique account number to transit agency location.

NDI will maintain all negative test results for a period of one year and all positive test results and related records for a period of five years.

All records and reports as required by DOT will be prepared and provided, on an individual basis, to each participating transit agency.

6. **Billing** - The consultant will submit and collect periodic invoices to each transit agency for their drug testing, including laboratory and MRO charges.

*Joel Peterson
Angela Johnson*

NDI will submit monthly invoices to each appropriate contracting agency's designated representative, showing by location or district, the social security number of the tested individual, completed date of test, type of test performed (i.e., breath alcohol or urine drug test), reason for test and test fee.

Contracting agencies will not be charged for specimen adulteration assays and will not be charged for handling of rejected specimens or those otherwise unfit for testing.

NDI's payment terms are net 30 days.

7. **24 hour toll free consultation service** - The consultant will make this service available to transit agency managers and MDOT in reference to drug or alcohol program questions and concerns that may arise. The consultant must be able to give recommendations and answer questions about legally correct compliance procedures to be followed regarding the drug program. Included in this assistance must be solutions regarding reasonable cause referrals.

*Jonathan Johnston
Rick Buskirk*

NDI will provide consultation service to transit agency managers and MDOT in reference to drug program questions and concerns. Recommendations and suggestions about legally correct compliance procedures to be followed will be offered at the transit agency's request. NDI will supply all transit agencies the available toll-free office numbers.

8. **Recommend modifications** to improve efficiency/effectiveness/quality of compliance programs (also to MDOT).

*Randall Wilson
Mary Ann Knuckles
Jerry Stewart, J.D.*

NDI will recommend modifications to improve efficiency, effectiveness, and quality of compliance programs as necessary.

9. **Litigation Assistance** - The consultant will, for a fee, provide legal representation and expert testimony as requested by individual transit agencies.



Jerry Stewart, J.D.

NDI will provide, upon request, litigation packages and expert testimony.

10. **Audit Assistance** - The consultant will, for a fee, provide audit assistance as requested by individual transit agencies.

Jerry Stewart, J.D.
Randall Wilson

NDI will provide, upon request, audit assistance for DOT substance abuse and alcohol misuse testing for participating transit agencies. Audit assistance will be performed from NDI's office.

11. **Keep MDOT informed** of deliberate repetitive non-compliance that continues after correction and assistance has been given. This applies to transit agencies, as well as any of the resources utilized, such as collection sites.

Randall Wilson
Jerry Stewart, J.D.
Mary Ann Knuckles

NDI will track and offer assistance to those transit agencies who show noncompliance. If after repetitive noncompliance, and following corrective assistance from NDI, transit agencies fail to comply with DOT mandates, NDI will inform MDOT of the situation and the efforts made by NDI to correct the situation.

All supervisors will receive training manuals containing information and materials specific to DOT requirements for supervisors.

Reports

NDI will distribute to each transit agency participating in the MDOT consortium an annual statistical report identifying the FTA drug and alcohol testing performed by that agency during the calendar year. NDI will also monitor the MDOT's on-line system for completing on-line statistical reports and follow-up with MDOT agencies that have not completed the report to ensure they do so. NDI will also be available to advise and assist each agency as needed. NDI will interface with MDOT staff as needed.

1.102 OUT OF SCOPE

Reserved.

1.103 TECHNICAL ENVIRONMENT

The Contractor will be solely responsible for having the knowledge and ability to access and use FTA's on-line reporting system, and for assisting transit agencies with use of the system.

Information Technology Systems

Critically essential to the effective management of any substance abuse testing program is a strong Information Technology (IT) System, and vitally important to that system is the ability to interface electronically with the testing laboratory and the end-user.

National Diagnostics has made a significant commitment in this area and has developed an integrated, proprietary software system to support its drug testing activities and business needs.

NDI's IT Capabilities Include:

- Electronic interfaces with testing laboratories
- Automates test result importation
- Eliminates data entry and errors
- Reduces personnel costs, a savings which is passed along to the end-user



- Timely analysis of negative specimens for immediate result reporting to the end-user
- Identification of troubled specimens for immediate MRO / legal review and intervention (i.e., when a test is invalidated, the employer can be immediately notified to have the donor resubmit).
- Identification of all positive specimens for immediate initiation of the MRO process
- Password protected for confidentiality and security
- Automated communication of account information between NDI and testing laboratories to expedite account set-up
- Electronic invoicing from laboratories for automated reconciliation with NDI records

National Diagnostics has also developed a web-based application to assist the end-user in administering their employment screening programs in-house. This Web-based application has the following capabilities:

- Maintains electronic interface with NDI's management information system – “Real Time”
- Automates result reporting (Drug Tests, Alcohol Tests, Physical Exams, Background Investigations)
- Produces result summary letters
- Produces achieved results
- Expedites reporting, record keeping, management and redistribution of results
- Facilitates the retrieval of results alphabetically by location, numerically by social security number, chronologically by date, or alphabetically by name
- Produces management and statistical reports
- Produces collection site network reports
- Provides collection site search functions
- Provides client with contact management control
- Maintains and manages user passwords for confidentiality and security
- CCF, BAT, and physical examination document images
- Electronic random rosters
- Random testing compliance reports – “Real Time”

NDI's management information systems are continually upgraded by our staff and outside computer consulting experts. Upgrades are introduced in the employer's complementary version as developed.

These capabilities can be made available as a reporting option for each transit agency.

NDI does not anticipate any need to involve MDOT technology staff in its delivery of services to MDOT transit agencies.

1.104 WORK AND DELIVERABLE

Contractor shall provide Services and staff, and otherwise do all things necessary for or incidental to the performance of work, as set forth below.

Except where specified, numbers represent totals for a one-year period of the consortium. Actual numbers may vary during the term of the contract. Joining the MDOT consortium is an option, and not all transit agencies will elect this option.

- Number of safety sensitive employees covered: *2,000*
- Number of random selection pools: *up to 50*
- Location of organizations affected: *Statewide*



- Number of breath alcohol tests: 400
- Number of drug tests: 1,000
- Number of collection sites: 100
- Number of FTA/FMCSA transit agencies: 132
- Number of agencies for Annual Open Enrollment Period: 132
- Number of requests from transit agencies for consultation, "expert" advice, program modification recommendations: 200 at 1-hour each

Consultation/Expert Advice and Training will be delivered on an as-needed basis, in a timely fashion, to the transit agencies or MDOT. Training dates will be set by MDOT at least 60 days prior to the training.

Corporate Counsel

Our in-house legal counsel is C-SAPA certified and has served as a member of the National Institute for a Drug-Free Workplace's Legal Advisory Council. NDI's legal counsel provides the following services for NDI and clients:

- Coordinates with and provides clients with necessary drug testing documentation for upcoming hearings
- Counsels and updates NDI's MROs on proper protocols to maintain compliance with local, state or federal laws, rules and regulations
- Coordinates with NDI's MROs when special collections or documentation issues arise
- Assists clients in obtaining interpretations from DOT or other government agencies
- Informs clients concerning upcoming legislation that may affect their drug testing program
- Addresses issues related to the development of company policies or changes in company policies for clients
- Corresponds with collection sites regarding:
 - Deceptive donor practices
 - Regulatory changes
 - Affidavits to correct documentation deficiencies

NDI also maintains a library of in-house reference resources, which are available to its staff and client relationships.

Account Management will be done on an on-going basis. The consortium membership drive is to be conducted annually to allow transit agencies to continue or join for the next calendar year. FTA Reports are due at the beginning of each calendar year following the year the reporting is for. Reporting is now done on-line.

Account Set-Up

NDI will consult with each MDOT transit agency's designated key contact person(s) to review and confirm the substance abuse testing program components and requirements.

This analysis will involve a review of each MDOT transit agency's particular needs including, specimen collection site preferences, preferred reporting methodology, special service needs and information technology capabilities.

During this process, NDI will work with each MDOT transit agency to more specifically:



- Assess logistic and geographic requirements
- Create database of each MDOT transit agency location
- Create database of designated key contacts
- Establish substance abuse testing compliance protocols
- Establish reporting protocols
- Establish record management protocols and procedures
- Establish laboratory protocols
- Establish collection site(s) for each MDOT transit agency location
- Distribute forms and supplies to each collection site provider
- Forward each MDOT transit agency protocols & procedures to collection site providers
- Establish invoicing protocols

To initiate the account setup process, NDI will provide a format to gather necessary demographics. Each MDOT transit agency would gather the requested information and, upon completion, provide NDI a copy for account set-up purposes. NDI's implementation team would support each MDOT transit agency in this process.

All services provided to consortium members will be delivered on an as-needed basis and in a timely fashion.

Laboratory Services

NDI has established current laboratory services for MDOT agencies with Laboratory Corporation of America ("LabCorp") and would anticipate continuing providing services through LabCorp upon approved by each MDOT transit agency. However, in the event that other laboratory services should be considered, NDI has contractual service agreements with over 20 SAMHSA certified laboratories for reliable testing and enjoys excellent working relationships with its laboratory vendors. NDI does not own or have any financial interest in any of its laboratory relationships.

Computer links, contracts, protocols and operating procedures have been established with these laboratories for NDI to protect client interests and to more effectively provide substance abuse testing services.

Collection Site Selection

NDI has already established collection site services for 71 MDOT transit agencies. NDI will work with these and other additional MDOT transit agencies to identify and select the most appropriate, capable, cost-effective and geographically convenient collection sites available. Services will be coordinated through NDI's Preferred Provider Network (PPN) wherever possible to ensure the consistency and quality of services on the local, State and national level, when required.

NDI's PPN of over 15,000 collection sites includes laboratory patient service centers; occupational medical facilities, hospitals and other qualified medical facilities to provide specimen collections for its clients.

NDI will establish the appropriate protocols within its information technology system for MDOT and each MDOT transit agency collection location and forward to the MDOT transit agency location or collection sites, as required, the appropriate chain of custody and control forms, specimen collection kits, shipping materials, particular MDOT transit agency and NDI operating and billing protocols, and, if applicable, contractual agreements.



Once collection sites have been established, NDI provides on-going specimen collection management, including a continuous, detailed review of the chain-of-custody documentation to monitor and detect the source of any collection site errors. NDI's quality assurance and medical department staff contacts those collectors failing to properly collect, complete chain of custody documentation, package and ship specimens to help ensure a thorough understanding and compliance with the required procedures.

MRO Services

Medical Review Officer (MRO) services will be performed in accordance with DOT guidelines for all federally mandated programs as well as for any voluntary drug testing programs that may be authorized and approved by MDOT and implemented by any transit agencies.

Each MRO employed by NDI is a licensed physician certified by either the American Association of Medical Review Officers or the American College of Occupational and Environmental Medicine. Dr. Greene, NDI's President/CEO, served on both the credentialing and review committees with the American Association of Medical Review Officers for the preparation of the MRO certification and re-certification examinations.

Dr. Belk, NDI's Corporate Medical Director, served as the Associate General Medical Director of Western Electric Company. He also served as Corporate Medical Director of Aluminum Company of America (ALCOA) for 15 years. In addition, Dr. Belk served as president of the American College of Environmental and Occupational Medicine.

NDI's MRO will provide and/or manage the following:

- Administrative review of negative drug test results
- Medical review of all positive drug and alcohol test results
- Medical, legal and administrative review of troubled specimens
- Establishing close working relationships with Company officials, laboratories and clinics to gather documentation and provide a timely review and reporting of positive test results
- Administrative review of all positive drug and/or alcohol test documents
- Medical interview of all donors who have a positive drug test to determine if an acceptable medical explanation exists
- Contacting Physician's offices, hospitals and/or pharmacies to gather medical records when necessary to conduct the medical review process
- Reporting of all verified positive drug and alcohol test results to the Company's designated representative
- Coordinating additional testing when indicated
- Working with NDI legal staff to prepare and obtain affidavits for troubled specimens when appropriate
- Coordinating Shy Bladder and Shy Lung evaluations when indicated
- Consultation with Company on substance abuse issues
- Coordinating physical examinations when appropriate on donors suspected of opiate abuse
- Providing return to work recommendations when applicable
- Determining post-rehabilitation follow up testing schedule when applicable
- Quality control monitoring of collection sites and laboratories
- Recordkeeping in accordance with regulatory and Company requirements

In addition to providing on-going support for collection sites when they have questions regarding pre-established protocols, NDI is also available to immediately assist whenever more difficult circumstances arise, such as:



- Shy bladder
- Shy lung
- Observed collections
- Attempts to adulterate
- Temperature discrepancies
- Various medical / legal consultations

Each step in the MRO process including data gathering, donor contact and the interview process are recorded and documented for DOT and client auditing purposes. DOT guidelines are followed by NDI MRO's for medical review, medical evaluations and other donor issues

Random Selection Services

NDI's random drug and alcohol testing management program satisfies all DOT regulations regarding random testing.

The management of each MDOT transit agency's random program would include:

- Computerized set-up and maintenance of employee pools
- Selection frequency and dates
- Selection rate and number of alternates
- Initial set-up and maintenance of employee rosters / updates and selection notification via:
 - Fax
 - Modem
 - Diskette
 - Mail
 - E-Mail
 - Web
- Compliance tracking and testing history
 - Selection dates
 - Year-to-date tested
 - Percent to date tested
 - Current employee list
 - Prior selections
 - Add/drop history
- Periodic and year end adjustments

Various reports, generated as necessary, for random selection program management can be made available to MDOT and each MDOT transit agency upon request.

Alcohol Testing Services

NDI's programs are customized to fit each company's specific needs and include the following components for MDOT and each transit agency:

- DOT alcohol rules & regulations, applicable to FTA and/or FHWA
- Supervisory training materials
- Employee notification handbook materials
- Procedures & management system
- Record keeping system
- Documentation & quality assurance forms



- Alcohol testing services management
- Testing site recruitment
- Technician training
- Management for Alcohol testing devices (*breath & saliva*)
- Fitness-for-duty vs. / fitness-for-employment considerations

Record Keeping

NDI will retain all of MDOT and each MDOT transit agency's documentation, physically and electronically, for one, two or five years, in accordance with applicable federal regulations and state laws. NDI's information management systems are continually backed up and maintained overnight by a professional record keeping management company in a secure off-site location. All computer records may be immediately accessed in the event of an employer request, federal or state audit, or court order.

All hard copy test results are either maintained at NDI offices or stored in secure warehousing for protection in accordance with NDI's record retention management system schedule, which incorporates applicable record keeping requirement time periods.

NDI is particularly sensitive to, and fully appreciates the confidential nature of all the information that is either communicated through our office or handled by members of our staff for clients. This applies to our maintenance of records related to client programs and test results, as well. To maintain that high level of protection for the confidentiality of all these records, NDI has established numerous safeguards in the form of manual and computerized security systems and procedures to help ensure that confidentiality is protected.

NDI will not release any employee drug testing information without the express written consent of the donor. NDI requires that each donor requesting information complete and return to our office a notarized NDI request form.

NDI will, otherwise, only release donor test result information as directed by the employer to decision makers in the event of a lawsuit, grievance or other proceeding initiated by or on behalf of the tested employee.

1.2 Roles and Responsibilities

1.201 CONTRACTOR STAFF, ROLES, AND RESPONSIBILITIES

The State reserves the right to approve personnel for this project and to require replacement of personnel found to be unacceptable at any time during the project.

Time Chart Identifying Staff and Sub Contractors

The following chart provides a task completion flow chart for accomplishing the work identified in the RFP.



	2005	2006	2007	2008	2009	2010	
<p><u>POLICY FORMULATION</u></p> <p>Jerry Stewart, J.D</p>	<i>On-going support – Time dependent on request requirements</i>						
<p><u>OPEN ENROLLMENT OF CONSORTIUM TO DOT AGENCIES</u></p> <p>Mary Ann Knuckles Jerry Stewart, J.D</p>	50 hours	50 hours	50 hours	50 hours	50 hours	50 hours	
<p><u>ACCEPT AND PROCESS CONSORTIUM MEMBERSHIP APPLICATIONS</u></p> <p>Jenny Westbrook</p>	10 hours	10 hours	10 hours	10 hours	10 hours	10 hours	<i>Additional time, on-going, as requested</i>
<p><u>MANAGEMENT/ SUPERVISION EDUCATION & TRAINING</u></p> <p>Jerry Stewart, J.D Robbie L. Sarles</p>	<i>Tri annually (or as scheduled by MDOT)</i>						
<p><u>ADVISE RE: AGENCY PROGRAMS AND PROCEDURES</u></p> <p>Jerry Stewart, J.D. Randall Wilson</p>	120 hours	120 hours	120 hours	120 hours	120 hours	120 hours	
<p><u>CLARIFICATION OF REGULATIONS & AREAS OF CONFUSION</u></p> <p>Jerry Stewart, J.D. Randall Wilson</p>	<i>On-going as requested – time dependent on request requirements.</i>						
<p><u>DISTRIBUTION & COLLECTION OF FTA ANNUAL DRUG AND ALCOHOL TESTING REPORTS</u></p> <p>Mary Ann Knuckles</p>	20 hours	20 hours	20 hours	20 hours	20 hours	20 hours	
<p><u>COLLECTION SITE IDENTIFICATION, TRAINING & QUALITY CONTROL</u></p> <p>Jamie Sumner</p>	<i>Initial setup – 2 hours per site. On-going – 240 hours per year.</i>						



<p><u>MRO IDENTIFICATION, RECEIPT AND COMMUNICATION OF TEST RESULTS, COORDINATION AND QUALITY CONTROL</u></p> <p>Phillip Greene, M.D. President and CEO H. Dean Belk, M.D.</p>								
<p><u>TESTING – RANDOM</u></p> <p>Mary Ann Knuckles</p>		150 hours	150 hours	150 hours	150 hours	150 hours	150 hours	
<p><u>TESTING – BREATH ALCOHOL</u></p> <p>Mary Ann Knuckles</p>		30 hours	30 hours	30 hours	30 hours	30 hours	30 hours	
<p><u>TESTING – REASONABLE CAUSE</u></p> <p>Johnathan Jonston Rick Buskirk</p>	<i>On-going as requested, 2-3 hours per request.</i>							
<p><u>TESTING – RETURN TO DUTY</u></p> <p>Medical Review Officers</p>		1-5 hours	1-5 hours	1-5 hours	1-5 hours	1-5 hours	1-5 hours	



<p><u>TESTING – BLIND PERFORMANCE</u></p> <p>Jamie Sumner</p>	<p><i>Semi-Annual review – 10 hours per year.</i></p>
<p><u>TESTING – POST ACCIDENT</u></p> <p>Jonathan Jonston Rick Buskirk</p>	<p><i>On-going as requested, 2-3 hours per request</i></p>
<p><u>REPORTING AND RECORD-KEEPING</u></p> <p>Jenny Westbrook</p>	<p><i>Included in MRO hours above.</i></p>
<p><u>PAYMENTS</u></p> <p>Joel Peterson Angela Harris</p>	<p><i>On-going as requested, 2-3 hours per month.</i></p>
<p><u>24 HOUR CONSULTATION SERVICE</u></p> <p>Jonathan Jonston Rick Buskirk</p>	<p><i>On-going as requested, 2-3 hours per request</i></p>
<p><u>RECOMMEND MODIFICATIONS</u></p> <p>NDI</p>	<p><i>On-going, as requested. Time dependent on request requirements.</i></p>
<p><u>LITIGATION ASSISTANCE</u></p> <p>Jerry Stewart, J.D.</p>	<p><i>On-going, as requested. Time dependent on request requirements.</i></p>
<p><u>AUDIT ASSISTANCE</u></p> <p>Jerry Stewart, J.D. Mary Ann Knuckles</p>	<p><i>On-going, as requested. Time dependent on request requirements.</i></p>
<p><u>KEEP MDOT INFORMED</u></p> <p>Jerry Stewart, J.D. Randall Wilson</p>	<p><i>On-going, as requested. 2-3 hours monthly.</i></p>

1.202 STATE STAFF, ROLES, AND RESPONSIBILITIES

Kathy Urda, Drug & Alcohol Program Coordinator, Technical Assistance Unit (TAU), Passenger Transportation Division (PTD), Multi-Modal Transportation Services Bureau (MMTSB), has been designated as the contact person for the project, and Al Johnson, Supervisor, TAU, PTD, MMTSB will be the backup contact person.



1.203 OTHER ROLES AND RESPONSIBILITIES

Reserved

1.3 Project Plan

1.301 PROJECT PLAN MANAGEMENT

The contractor shall carry out this project under the direction and control of MDOT. There will be open communication between the contractor and the MDOT project coordinator.

Within ten (10) working days after the award of the contract, the contractor shall submit a finalized work plan to the project coordinator for approval. The work plan shall include all tasks to be completed, time frames for each task, and personnel assigned to each task.

The work shall be carried out to the satisfaction of MDOT. All correspondence and major work elements shall be provided for MDOT to review prior to finalizing, and be acceptable to MDOT. MDOT will not be the legal information source for the consultant regarding the drug regulations. Instead, it is imperative that the consultant be an expert in the content of current related legislation, as well as any future developments. The work must be accomplished by staff acceptable to MDOT.

1.302 REPORTS

Reports using data being collected by the Contractor will be provided to MDOT on an as-needed basis. MDOT will periodically ask for reports needed to monitor the transit agencies or Contractor.

Electronic Reporting Options

Test results can be reported to the MDOT transit agency designated representative(s) by the following pre-established methods:

- Electronic data interchange (electronic transmission)
- Voice retrieval system
- Demand fax (voice-automated fax on demand)
- Secure fax
- E – mail
- Internet
- Mail
- Web

1.4 Project Management

1.401 ISSUE MANAGEMENT

All issues that arise between MDOT and/or the transit agencies and/or the consultant will be discussed by Passenger Transportation Division administration, MDOT project manager and the consultant's project manager. MDOT, in conjunction with DMB, will make a final decision.

1.402 RISK MANAGEMENT

Reserved.

1.403 CHANGE MANAGEMENT

Any requested changes to this contract must be prior approved by MDOT before submitting to DMB.



1.5 Acceptance
1.501 CRITERIA

The following criteria will be used by the State to determine Acceptance of the Services and/or Deliverables provided under this SOW.

The work shall be carried out to the satisfaction of MDOT. All correspondence and major work elements shall be provided for MDOT to review prior to finalizing, and be acceptable to MDOT. MDOT will not be the legal information source for the consultant regarding the drug regulations. Instead, it is imperative that the consultant be an expert in the content of current related legislation, as well as any future developments. The work must be accomplished by staff acceptable to MDOT.

1.502 FINAL ACCEPTANCE

Final acceptance will occur upon successful completion of the final contract year's reporting requirements.

1.6 Compensation and Payment

Prices are on as per item (or hourly) basis and are fixed for the duration of the contract. Estimates included in the above table should be based on information given in Section 1.104.

Billing

NDI will provide MDOT, or each transit agency where directed or as applicable, a consolidated and unified billing and accounting service. Invoices and billing reconciliation reports will normally be provided by hard copy. A monthly summary will be generated and attached to each invoice. Invoices and statements will not include individual test results or other donor specific information.

The monthly summary will be provided by business location and will include the following information:

- Employer location
- Donor social security number
- Donor name
- Test number
- Complete date
- Reason to test
- Specimen sample
- Test fee
- Total fee

Service	Estimated Hours	Estimated Hourly Cost	Estimated Yearly Cost
Consultation/Expert Advice	16	\$250.00	\$4,000.00
Account Mgmt.	Included in Test Fee		
Collection Site Identification	2	\$25.00/Set Up	\$50.00
MRO Identification	Included in Test Fee		

TERMS AND CONDITIONS

CONTRACT NO. 071B5200152



Laboratory Identification	Included in Test Fee		
Record Keeping/Reporting	Included in Test Fee		
Billing	Included in Test Fee		
Recommend Modifications	Included in Test Fee		
Litigation Assistance		\$250.00	
Audit Assistance		\$250.00	
Keep MDOT Informed	Included in Test Fee		

Testing Services	MDOT's Proposed # of tests needed (annually)	Price per Test	Estimated Yearly Cost
Random	1000	\$28.00	\$28,000.00
Follow-up	25	\$28.00	\$700.00
Blind Performance	25	\$28.00	\$700.00
Post-Accident	100	\$28.00	\$2,800.00
Reasonable Cause	25	\$28.00	\$700.00
Return to Duty	50	\$28.00	\$1,400.00
Pre-Employment	400	\$28.00	\$11,200.00
Breath Alcohol Tests	150	\$10.00	\$1,500.00

Testing Service Fees include Random management fees, BAT Maintenance fees, lab fees, MRO fees, account management, record keeping, reporting, and reports.

Service	MDOT's Proposed # of Trainings	Cost per Training (including trainer fees, travel and subsistence)	Estimated Yearly Cost
Transit Agency Training	Three 3-day sessions per year	\$10,650.00*	\$31,950.00*

*Estimated costs include, Trainer/Consultant and support cost, overhead, Trainer TML, material costs, telephone, misc., but exclude extraordinary guest room, function room and banquet food & services.

Service	MDOT's Proposed # of calls (annually)	Cost per call	Estimated Yearly Cost
24 hour toll-free consultation	50	\$50.00	\$2,500.00
Annual Membership Renewal			\$1,000.00
Annual MIS Report Management			\$1,000.00

Total price bid for the project including administrative or overhead expressed as a percent of labor.

NDI's labor cost represent about 10% of NDI total revenues.

Authorized Negotiator/Expeditor:

Jerry Stewart, J.D. – Executive Vice President and General Counsel

(980)-235-1011 - Phone

1.7 Additional Terms and Conditions Specific to this SOW

Reserved.



Article 2 – General Terms and Conditions

2.0 Introduction

2.001 GENERAL PURPOSE

The Contract is for Drug and Alcohol Compliance Assistance for the State of Michigan. Orders will be issued directly to the Contractor by various State Agencies on the Purchase Order Contract Release Form.

2.002 ISSUING OFFICE AND CONTRACT ADMINISTRATOR

The Contract is issued by Acquisition Services, State of Michigan, Department of Management and Budget, hereinafter known as Acquisition Services, for the Michigan Department of Transportation, hereinafter known as (MDOT). Where actions are a combination of those of Acquisition Services and the State agencies, the authority will be known as the State.

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

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

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

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

2.003 NOTICE

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

2.004 CONTRACT TERM

The term of this Contract will be for three (3) years and will commence with the issuance of a Contract. This will be approximately through January 1, 2005 through December 31, 2007.

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

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



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

2.005 GOVERNING LAW

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

2.006 APPLICABLE STATUTES

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

MI Uniform Commercial Code (MIUCC) MCL 440. (All sections unless otherwise altered by agreement)

MI OSHA MCL §§ 408.1001 – 408.1094

Freedom of Information Act (FIOA) MCL §§ 15.231, et seq.

Natural Resources and Environmental Protection Act MCL §§ 324.101, et seq.

MI Consumer Protection Act MCL §§ 445.901 – 445.922

Laws relating to wages, payments of wages, and fringe benefits on state projects MCL §§ 408.551 – 408.558, 408.471 – 408.490, 1965 PA 390.

Department of Civil Service Rules and regulations

Elliot Larsen Civil Rights Act MCL §§ 37.2201, et seq.

Persons with disabilities Civil Rights Act MCL §§ 37.1101, et seq.

MCL §§ 423.321, et seq.

MCL § 18.1264 (law regarding debarment)

Davis-Bacon Act (DBA) 40 USCU §§ 276(a), et seq.

Contract Work Hours and Safety Standards Act (CWHSA) 40 USCS § 327, et seq.

Business Opportunity Act for Persons with Disabilities MCL §§ 450.791 – 450.795

Rules and regulations of the Environmental Protection Agency

Internal Revenue Code

Rules and regulations of the Equal Employment Opportunity Commission (EEOC)

The Civil Rights Act of 1964, USCS Chapter 42

Title VII, 42 USCS §§ 2000e et seq.

The Americans with Disabilities Act (ADA), 42 USCS §§ 12101 et seq.

The Age Discrimination in Employment Act of 1967 (ADEA), 29 USCS §§ 621, 623 et seq.

The Old Workers Benefit and Protection Act of 1990 (OWBPA), 29 USCS §§ 626, et seq.

The Family Medical Leave Act of 1993 (FMLA), 29 USC §§ 651 et seq.

The Fair Labor Standards Act (FLSA), 29 USC §§ 201 et seq.

Pollution Prevention Act of 1990 (PPA) 42 U.S.C. §13106

Sherman Act, 15 U.S.C.S. § 1 et seq.

Robinson-Patman Act, 15 U.S.C.S. § 13 et. seq.

Clayton Act, 15 U.S.C.S. § 14 et seq.

2.007 RELATIONSHIP OF THE PARTIES

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

**2.008 HEADINGS**

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

2.009 MERGER

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

2.010 SEVERABILITY

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

2.011 SURVIVORSHIP

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

2.012 NO WAIVER OF DEFAULT

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

2.013 PURCHASE ORDERS

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

2.1 Vendor/Contractor Obligations**2.101 ACCOUNTING RECORDS**

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

2.102 NOTIFICATION OF OWNERSHIP

The Contractor shall make the following notifications in writing:

1. When the Contractor becomes aware that a change in its ownership or officers has occurred, or is certain to occur, that could result in changes in the valuation of its capitalized assets in the accounting records, the Contractor shall notify Acquisition Services within 30 days.
2. The Contractor shall also notify the Acquisition Services within 30 days whenever changes to asset valuations or any other cost changes have occurred or are certain to occur as a result of a change in ownership or officers.



The Contractor shall:

1. Maintain current, accurate, and complete inventory records of assets and their costs;
2. Provide Acquisition Services or designated representative ready access to the records upon request;
3. Ensure that all individual and grouped assets, their capitalized values, accumulated depreciation or amortization, and remaining useful lives are identified accurately before and after each of the Contractor's ownership or officer changes; and
4. Retain and continue to maintain depreciation and amortization schedules based on the asset records maintained before each Contractor ownership or officer change.

2.103 SOFTWARE COMPLIANCE

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

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

2.104 IT STANDARDS

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://michigan.gov/dit>.
2. PM METHODOLOGY STANDARDS. The State has adopted a standard documented Project Management Methodology (PMM) for use on all Information Technology (IT) based projects. This policy is referenced in the document titled "Project Management Methodology" – DMB Administrative Guide Procedure 1380.02 issued June 2000. Vendors may obtain a copy of this procedure, as well as the State of Michigan Project Management Methodology, from the Department of Information Technology's website at <http://www.michigan.gov/projectmanagement>.

The contractor shall use the State's PPM to manage State of Michigan Information Technology (IT) based projects. The Requesting agency will provide the applicable documentation and internal agency processes for the methodology. If the vendor requires training on the methodology, those costs shall be the responsibility of the vendor, unless otherwise stated.

3. ADHERENCE TO PORTAL TECHNOLOGY TOOLS. The State of Michigan, Department of Information Technology, has adopted the following tools as its Portal Technology development efforts:
 - Vignette Content Management and personalization Tool
 - Inktomi Search Engine
 - E-Pay Payment Processing Module
 - Websphere Commerce Suite for e-Store applications



Vendors must use the Portal Technology Tools to implement web content management and deployment efforts for agencies. Tools used for web-based application development must work in conjunction with Vignette and Inktomi. The interaction with Vignette and Inktomi must be coordinated with the Department of Information Technology, Enterprise Application Services Office, e-Michigan Web Development team.

Under special circumstances vendors that are compelled to use alternate tools must submit an exception request to the Department of Information Technology, Enterprise Application Services Office, e-Michigan Web Development team, for evaluation and approval of each alternate tool prior to proposal evaluation by the State.

2.105 PERFORMANCE AND RELIABILITY EVALUATION (PARE)

Reserved.

2.106 PREVAILING WAGE

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

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

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

2.107 PAYROLL AND BASIC RECORDS

Payrolls and basic records relating to the performance of this contract shall be maintained by the Contractor during the course of the work and preserved for a period of 3 years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made, and actual wages paid. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

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

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



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

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

2.108 COMPETITION IN SUB-CONTRACTING

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

2.109 CALL CENTER DISCLOSURE

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

2.2 Contract Performance

2.201 TIME IS OF THE ESSENCE

Contractor/Vendor is on notice that time is of the essence in the performance of this contract. Late performance will be considered a material breach of this contract, giving the State a right to invoke all remedies available to it under this contract.

2.202 CONTRACT PAYMENT SCHEDULE

All invoices should reflect actual work done. Specific details of invoices and payments will 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 Acquisition Services, Department of Management & Budget. This activity will occur only upon the specific written direction from Acquisition Services.

2.203 POSSIBLE PROGRESS PAYMENTS

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.

2.204 POSSIBLE PERFORMANCE-BASED PAYMENTS (Actual performance rendered)

Reserved.

2.205 ELECTRONIC PAYMENT AVAILABILITY

Electronic transfer of funds is available to State contractors. Vendors are encouraged to register with the State of Michigan Office of Financial Management so the State can make payments related to this Contract electronically at www.cpexpress.state.mi.us.

2.206 PERFORMANCE OF WORK BY CONTRACTOR

Reserved.



2.3 Contract Rights and Obligations

2.301 INCURRING COSTS

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

2.302 CONTRACTOR RESPONSIBILITIES

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

2.303 ASSIGNMENT AND DELEGATION

The Contractor shall not have the right to assign this Contract, to assign its rights under this contract, or delegate any of its duties or obligations under the Contract to any other party (whether by operation of law or otherwise), without the prior written consent of the State. Any purported assignment in violation of this Section shall be null and void. Further, the Contractor may not assign the right to receive money due under the Contract without the prior written consent of the Director of Acquisition Services.

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

Bidder must obtain the approval of the Director of Acquisition Services before using a place of performance that is different from the address that bidder provided in the bid.

2.304 TAXES

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

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

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

2.305 INDEMNIFICATION

General Indemnification

To the fullest extent permitted by law, the Contractor shall indemnify, defend and hold harmless the State, its departments, divisions, agencies, sections, commissions, officers, employees and agents, from and against all losses, liabilities, penalties, fines, damages and claims (including taxes), and all related costs and expenses (including reasonable attorneys' fees and disbursements and costs of investigation,



litigation, settlement, judgments, interest and penalties), arising from or in connection with any of the following:

1. Any claim, demand, action, citation or legal proceeding against the State, its employees and agents arising out of or resulting from (1) the product provided or (2) performance of the work, duties, responsibilities, actions or omissions of the Contractor or any of its subcontractors under this Contract.
2. Any claim, demand, action, citation or legal proceeding against the State, its employees and agents arising out of or resulting from a breach by the Contractor of any representation or warranty made by the Contractor in the Contract;
3. Any claim, demand, action, citation or legal proceeding against the State, its employees and agents arising out of or related to occurrences that the Contractor is required to insure against as provided for in this Contract;
4. Any claim, demand, action, citation or legal proceeding against the State, its employees and agents arising out of or resulting from the death or bodily injury of any person, or the damage, loss or destruction of any real or tangible personal property, in connection with the performance of services by the Contractor, by any of its subcontractors, by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable; provided, however, that this indemnification obligation shall not apply to the extent, if any, that such death, bodily injury or property damage is caused solely by the negligence or reckless or intentional wrongful conduct of the State;
5. Any claim, demand, action, citation or legal proceeding against the State, its employees and agents which results from an act or omission of the Contractor or any of its subcontractors in its or their capacity as an employer of a person.

Patent/Copyright Infringement Indemnification

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

Code Indemnification

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



Indemnification Obligation Not Limited

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

Continuation of Indemnification Obligation

The duty to indemnify will continue in full force and affect notwithstanding the expiration or early termination of the Contract with respect to any claims based on facts or conditions, which occurred prior to termination.

Indemnification Procedures

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

- (a) After receipt by the State of notice of the action or proceeding involving a claim in respect of which it will seek indemnification, the State shall promptly notify Contractor of such claim in writing and take or assist Contractor in taking, as the case may be, any reasonable action to avoid the imposition of a default judgment against Contractor. No failure to so notify Contractor shall relieve Contractor of its indemnification obligations except to the extent that Contractor can demonstrate damages attributable to such failure. Within ten (10) days following receipt of written notice from the State relating to any claim, Contractor shall notify the State in writing whether Contractor agrees to assume control of the defense and settlement of that claim (a "Notice of Election"). After notifying Contractor of a claim and prior to the State receiving Contractor's Notice of Election, the State shall be entitled to defend against the claim, at Contractor's expense, and Contractor will be responsible for any reasonable costs incurred by the State in defending against the claim during such period.
- (b) If Contractor delivers a Notice of Election relating to any claim: (i) the State shall be entitled to participate in the defense of such claim and to employ counsel at its own expense to assist in the handling of such claim and to monitor and advise the State about the status and progress of the Defense; (ii) Contractor shall, at the request of the State, demonstrate to the reasonable satisfaction of the State, Contractor's financial ability to carry out its defense and indemnity obligations under this Contract; (iii) Contractor shall periodically advise the State about the status and progress of the defense and shall obtain the prior written approval of the State before entering into any settlement of such claim or ceasing to defend against such claim and (iv) to the extent that any principles of Michigan governmental or public law may be involved or challenged, the State shall have the right, at its own expense, to control the defense of that portion of such claim involving the principles of Michigan governmental or public law. Notwithstanding the foregoing, the State may retain control of the defense and settlement of a claim by written notice to Contractor given within ten (10) days after the State's receipt of Contractor's information requested by the State pursuant to clause (ii) of this paragraph if the State determines that Contractor has failed to demonstrate to the reasonable satisfaction of the State Contractor's financial ability to carry out its defense and indemnity obligations under this Section. Any litigation activity on behalf of the State of Michigan, or any of its subdivisions pursuant to this Section, must be coordinated with the Department of Attorney General. In the event the insurer's attorney represents the State pursuant to this Section, the insurer's attorney may be required to be designated as a Special Assistant Attorney General by the Attorney General of the State of Michigan.



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

2.306 LIMITATION OF LIABILITY

The Contractor's liability for damages to the State shall be limited to two times the value of the Contract or \$200,000 (*for low risk contracts – Select a higher amount for moderate to high risk contracts*) which ever is higher. The foregoing limitation of liability shall not apply to claims for infringement of United States patent, copyright, trademarks or trade secrets; to claims for personal injury or damage to property caused by the gross negligence or willful misconduct of the Contractor; to claims covered by other specific provisions of this Contract calling for liquidated damages; to Contractor's indemnification obligations (2.305); or to court costs or attorney's fees awarded by a court in addition to damages after litigation based on this Contract.

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

2.307 CONTRACT DISTRIBUTION

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

2.308 FORM, FUNCTION, AND UTILITY

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

2.309 ASSIGNMENT OF ANTITRUST CAUSE OF ACTION

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

2.310 RESERVED

2.311 TRANSITION ASSISTANCE

If this Contract is not renewed at the end of this term, or is canceled prior to its expiration, for any reason, the Contractor must provide for up to 180 days after the expiration or cancellation of this Contract, all reasonable transition assistance requested by the State, to allow for the expired or canceled portion of the Services to continue without interruption or adverse effect, and to facilitate the orderly transfer of such services to the State or its designees. Such transition assistance will be deemed by the parties to be governed by the terms and conditions of this Contract, (notwithstanding this expiration or cancellation) except for those Contract terms or conditions that do not reasonably apply to such transition assistance. The State shall pay the Contractor for any resources utilized in performing such transition assistance at the most current rates provided by the Contract for Contract performance.

2.312 WORK PRODUCT

Work Products shall be considered works made by the Contractor for hire by the State and shall belong exclusively to the State and its designees, unless specifically provided otherwise by mutual agreement of the Contractor and the State.



If by operation of law any of the Work Product, including all related intellectual property rights, is not owned in its entirety by the State automatically upon creation thereof, the Contractor agrees to assign, and hereby assigns to the State and its designees the ownership of such Work Product, including all related intellectual property rights. The Contractor agrees to provide, at no additional charge, any assistance and to execute any action reasonably required for the State to perfect its intellectual property rights with respect to the aforementioned Work Product.

Notwithstanding any provision of this Contract to the contrary, any preexisting work or materials including, but not limited to, any routines, libraries, tools, methodologies, processes or technologies (collectively, the "Development Tools") created, adapted or used by the Contractor in its business generally, including any and all associated intellectual property rights, shall be and remain the sole property of the Contractor, and the State shall have no interest in or claim to such preexisting work, materials or Development Tools, except as necessary to exercise its rights in the Work Product. Such rights belonging to the State shall include, but not be limited to, the right to use, execute, reproduce, display, perform and distribute copies of and prepare derivative works based upon the Work Product, and the right to authorize others to do any of the foregoing, irrespective of the existence therein of preexisting work, materials and Development Tools, except as specifically limited herein. The Contractor and its subcontractors shall be free to use and employ their general skills, knowledge and expertise, and to use, disclose, and employ any generalized ideas, concepts, knowledge, methods, techniques or skills gained or learned during the course of performing the services under this Contract, so long as the Contractor or its subcontractors acquire and apply such information without disclosure of any confidential or proprietary information of the State, and without any unauthorized use or disclosure of any Work Product resulting from this Contract.

2.313 PROPRIETARY RIGHTS

Reserved.

2.314 WEBSITE INCORPORATION

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

2.4 Contract Review and Evaluation

2.401 CONTRACT COMPLIANCE INSPECTOR

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

Kathy Urda, Drug & Alcohol Coordinator
Michigan Department of Transportation
Passenger Transportation Division
P.O. Box 30050, Lansing, MI 48909
urdak@michigan.gov (517) 335-2575

2.402 PERFORMANCE REVIEWS

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



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

2.403 AUDIT OF CONTRACT COMPLIANCE/ RECORDS AND INSPECTIONS

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

2.5 Quality and Warranties

2.501 PROHIBITED PRODUCTS

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

2.502 RESERVED

2.503 RESERVED

2.504 GENERAL WARRANTIES (goods)

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

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

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

2.505 CONTRACTOR WARRANTIES

The Contract will contain customary representations and warranties by the Contractor, including, without limitation, the following:

1. The Contractor will perform all services in accordance with high professional standards in the industry;
2. The Contractor will use adequate numbers of qualified individuals with suitable training, education, experience and skill to perform the services;
3. The Contractor will use its best efforts to use efficiently any resources or services necessary to provide the services that are separately chargeable to the State;



4. The Contractor will use its best efforts to perform the services in the most cost effective manner consistent with the required level of quality and performance;
5. The Contractor will perform the services in a manner that does not infringe the proprietary rights of any third party;
6. The Contractor will perform the services in a manner that complies with all applicable laws and regulations;
7. The Contractor has duly authorized the execution, delivery and performance of the Contract;
8. The Contractor is capable in all respects of fulfilling and shall fulfill all of its obligations under this contract.
9. The contract appendices, attachments, and exhibits identify all equipment and software services necessary for the deliverable(s) to perform and operate in compliance with the contract's requirements.
10. The Contractor is the lawful owner or licensee of any Deliverable licensed or sold to the state by Contractor or developed by Contractor under this contract, and Contractor has all of the rights necessary to convey to the state the ownership rights or license use, as applicable, of any and all Deliverables.
11. If, under this Contract, Contractor procures any equipment, software or other Deliverable for the State (including equipment, software and other Deliverables manufactured, re-marketed or otherwise sold by Contractor under Contractor's name), then in addition to Contractor's other responsibilities with respect to such items as set forth in this Contract, Contractor shall assign or otherwise transfer to the State or its designees, or afford the State the benefits of, any manufacturer's warranty for the Deliverable.
12. The contract signatory has the power and authority, including any necessary corporate authorizations, necessary to enter this contract, on behalf of Contractor.
13. The Contractor is qualified and registered to transact business in all locations where required.
14. Neither the Contractor nor any Affiliates, nor any employee of either, has, shall have, or shall acquire, any contractual, financial, business, or other interest, direct or indirect, that would conflict in any manner or degree with Contractor's performance of its duties and responsibilities to the State under this Contract or otherwise create an appearance of impropriety with respect to the award or performance of this Agreement. Contractor shall notify the State within two (2) days of any such interest that may be incompatible with the interests of the State.
15. All financial statements, reports, and other information furnished by Contractor to the State as part of its response to the ITB or otherwise in connection with the award of this Contract fairly and accurately represent the business, properties, financial condition, and results of operations of Contractor as of the respective dates, or for the respective periods, covered by such financial statements, reports, other information. Since the respective dates or periods covered by such financial statements, reports, or other information, there have been no material adverse changes in the business, properties, financial condition, or results of operations of Contractor. All written information furnished to the State by or behalf of Contractor in connection with this Contract, including its bid, is true, accurate, and complete, and contains no untrue statement of material fact or omits any material fact necessary to make such information not misleading.

2.506 STAFF

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



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

2.507 SOFTWARE WARRANTIES

(a) Performance Warranty

The Contractor represents and warrants that Deliverables, after Final Acceptance, will perform and operate in compliance with the requirements and other standards of performance contained in this Contract (including all descriptions, specifications and drawings made a part of the Contract) for a period of ninety (90) days. In the event of a breach of this warranty, Contractor will promptly correct the affected Deliverable(s) at no charge to the State.

(b) No Surreptitious Code Warranty

The Contractor represents and warrants that no copy of licensed Software provided to the State contains or will contain in any Self-Help Code or any Unauthorized Code as defined below. This warranty is referred to in this Contract as the "No Surreptitious Code Warranty."

As used in this Contract, "Self-Help Code" means any back door, time bomb, drop dead device, or other software routine designed to disable a computer program automatically with the passage of time or under the positive control of a person other than the licensee of the software. Self-Help Code does not include Software routines in a computer program, if any, designed to permit an owner of the computer program (or other person acting by authority of the owner) to obtain access to a licensee's computer system(s) (e.g. remote access via modem) for purposes of maintenance or technical support.

As used in this Contract, "Unauthorized Code" means any virus, Trojan horse, spyware, worm or other Software routines or components designed to permit unauthorized access to disable, erase, or otherwise harm software, equipment, or data; or to perform any other such actions. The term Unauthorized Code does not include Self-Help Code.

In addition, Contractor will use up-to-date commercial virus detection software to detect and remove any viruses from any software prior to delivering it to the State.

(c) Calendar Warranty

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

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



(d) Third-party Software Warranty

The Contractor represents and warrants that it will disclose the use or incorporation of any third-party software into the Deliverables. At the time of Delivery, the Contractor shall provide in writing the name and use of any Third-party Software, including information regarding the Contractor's authorization to include and utilize such software. The notice shall include a copy of any ownership agreement or license that authorizes the Contractor to use the Third-party Software.

2.508 EQUIPMENT WARRANTY

Reserved.

2.509 PHYSICAL MEDIA WARRANTY

Contractor represents and warrants that each licensed copy of the Software provided by the Contractor is free from physical defects in the media that tangibly embodies the copy. This warranty does not apply to defects discovered more than thirty (30) days after that date of Final Acceptance of the Software by the State. This warranty does not apply to defects arising from acts of Excusable Failure. If the Contractor breaches this warranty, then the State shall be entitled to replacement of the non-compliant copy by Contractor, at Contractor's expense (including shipping and handling).

2.6 Breach of Contract

2.601 BREACH DEFINED

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

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

2.602 NOTICE AND THE RIGHT TO CURE

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

2.603 EXCUSABLE FAILURE

1. Neither party shall be liable for any default or delay in the performance of its obligations under the Contract if and to the extent such default or delay is caused, directly or indirectly, by: fire, flood, earthquake, elements of nature or acts of God; riots, civil disorders, rebellions or revolutions in any country; the failure of the other party to perform its material responsibilities under the Contract (either itself or through another contractor); injunctions (provided the injunction was not issued as a result of any fault or negligence of the party seeking to have its default or delay excused); or any other cause beyond the reasonable control of such party; provided the non-performing party and its subcontractors are without fault in causing such default or delay, and such default or delay could not have been prevented by reasonable precautions and cannot reasonably be circumvented by the non-performing party through the use of alternate sources, workaround plans or other means, including disaster recovery plans. In such event, the non-performing party will be excused from any further performance or observance of the obligation(s) so affected for as long as such circumstances prevail and such party continues to use its best efforts to recommence performance or observance whenever and to whatever extent possible without delay provided such party promptly notifies the other party in writing of the inception of the excusable failure occurrence, and also of its abatement or cessation.



2. If any of the above enumerated circumstances substantially prevent, hinder, or delay performance of the services necessary for the performance of the State's functions for more than 14 consecutive days, and the State determines that performance is not likely to be resumed within a period of time that is satisfactory to the State in its reasonable discretion, then at the State's option: (a) the State may procure the affected services from an alternate source, and the State shall not be liable for payments for the unperformed services under the Contract for so long as the delay in performance shall continue; (b) the State may cancel any portions of the Contract so affected and the charges payable hereunder shall be equitably adjusted to reflect those services canceled; or (c) the Contract will be canceled without liability of the State to the Contractor as of the date specified by the State in a written notice of cancellation to the Contractor. The Contractor will not have the right to any additional payments from the State as a result of any excusable failure occurrence or to payments for services not rendered as a result of the excusable failure condition. Defaults or delays in performance by the Contractor which are caused by acts or omissions of its subcontractors will not relieve the Contractor of its obligations under the Contract except to the extent that a subcontractor is itself subject to any excusable failure condition described above and the 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.

2.7 Remedies

2.701 CANCELLATION

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

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

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

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

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

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



3. Non-Appropriation. In the event that funds to enable the State to effect continued payment under this Contract are not appropriated or otherwise made available. The Contractor acknowledges that, if this Contract extends for several fiscal years, continuation of this Contract is subject to appropriation or availability of funds for this project. If funds are not appropriated or otherwise made available, the State shall have the right to cancel this Contract at the end of the last period for which funds have been appropriated or otherwise made available by giving written notice of cancellation to the Contractor. The State shall give the Contractor written notice of such non-appropriation or unavailability within 30 days after it receives notice of such non-appropriation or unavailability.
4. Criminal Conviction. In the event the Contractor, an officer of the Contractor, or an owner of a 25% or greater share of the Contractor, is convicted of a criminal offense incident to the application for or performance of a State, public or private Contract or subcontract; or convicted of a criminal offense including but not limited to any of the following: embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, attempting to influence a public employee to breach the ethical conduct standards for State of Michigan employees; convicted under State or federal antitrust statutes; or convicted of any other criminal offense which in the sole discretion of the State, reflects upon the Contractor's business integrity.
5. Approvals Rescinded. The State may terminate this Contract without further liability or penalty in the event any final administrative or judicial decision or adjudication disapproves a previously approved request for purchase of personal services pursuant to Constitution 1963, Article 11, section 5, and Civil Service Rule 7. Termination may be in whole or in part and may be immediate as of the date of the written notice to Contractor or may be effective as of the date stated in such written notice.

2.702 RIGHTS UPON CANCELLATION

A. Rights and Obligations Upon Termination

- (1) If this Contract is terminated by the State for any reason, Contractor shall (a) stop all work as specified in the notice of termination, (b) take any action that may be necessary, or that the State may direct, for preservation and protection of Deliverables or other property derived or resulting from this Contract that may be in Contractor's possession, (c) return all materials and property provided directly or indirectly to Contractor by any entity, agent or employee of the State, (d) in the event that the Contractor maintains title in equipment and software that is intended to be transferred to the State at the termination of the Contract, Contractor will transfer title in, and deliver to, the State, unless otherwise directed, all Deliverables and other Developed Materials intended to be transferred to the State at the termination of the Contract and which are resulting from the Contract (which shall be provided to the State on an "As-Is" basis except to the extent the amounts paid by the State in respect of such items included compensation to Contractor for the provision of warranty services in respect of such materials), and (e) take any action to mitigate and limit any potential damages, or requests for Contractor adjustment or termination settlement costs, to the maximum practical extent, including terminating or limiting as otherwise applicable those subcontracts and outstanding orders for material and supplies resulting from the terminated Contract.
- (2) In the event the State terminates this Contract prior to its expiration for its own convenience, the State shall pay Contractor for all charges due for Services provided prior to the date of termination and, if applicable, as a separate item of payment pursuant to this Contract, for partially completed Deliverables, on a percentage of completion basis. All completed or partially completed Deliverables prepared by Contractor pursuant to this Contract shall, at the option of the State, become the State's property, and Contractor shall be entitled to receive equitable fair compensation for such Deliverables. Regardless of the basis for the termination, the State shall not be obligated to pay, or otherwise compensate, Contractor for any lost expected future profits, costs or expenses incurred with respect to Services not actually performed for the State.
- (3.) If any such termination by the State is for cause, the State shall have the right to set-off against any amounts due Contractor the amount of any damages for which Contractor is liable to the State under this Contract or pursuant to law or equity.



- (4.) Upon a good faith termination, the State shall have the right to assume, at its option, any and all subcontracts and agreements for services and materials provided under this Contract, and may further pursue completion of the Services under this Contract by replacement contract or otherwise as the State may in its sole judgment deem expedient.

B. Termination Assistance

If the Contract (or any Statement of Work issued under it) is terminated for any reason before completion, Contractor agrees to provide for up to two-hundred seventy (270) calendar days after the termination all reasonable termination assistance requested by the State to facilitate the orderly transfer of such Services to the State or its designees in a manner designed to minimize interruption and adverse effect. Such termination assistance will be deemed by the parties to be governed by the terms and conditions of the Contract (notwithstanding its termination) other than any terms or conditions that do not reasonably apply to such termination assistance. The State shall compensate Contractor for such termination assistance at the same rates and charges set forth in the Contract on a time and materials basis in accordance with the Labor Rates indicated within Contractors pricing section. If the Contract is terminated by Contractor under **Section 20**, then Contractor may condition its provision of termination assistance under this Section on reasonable assurances of payment by the State for such assistance, and any other amounts owed under the Contract.

C. Reservation of Rights

Any termination of the Contract or any Statement of Work issued under it by a party shall be with full reservation of, and without prejudice to, any rights or remedies otherwise available to such party with respect to any claims arising prior to or as a result of such termination.

D. End of Contract Transition

In the event the Contract is terminated, for convenience or cause, or upon expiration, the Contractor agrees to comply with direction provided by the State to assist in the orderly transition of equipment, services, software, leases, etc. to the State or a third party designated by the State. In the event of termination or the expiration of the Contract, the Contractor agrees to make all reasonable efforts to effect an orderly transition of services within a reasonable period of time that in no event will exceed 270 calendar days. These efforts shall include, but are not limited to, the following:

- (1) **Personnel** - The Contractor shall work with the State, or a specified third party, to develop a transition plan setting forth the specific tasks and schedule to be accomplished by the parties, to effect an orderly transition. The Contractor shall allow as many personnel as practicable to remain on the job to help the State, or a specified third party, maintain the continuity and consistency of the services required by the Contract. In addition, during or following the transition period, in the event the State requires the Services of the Contractor's subcontractors, as necessary to meet its needs, Contractor agrees to reasonably, and with good-faith, work with the State to use the Services of Contractor's subcontractors.
- (2) **Knowledgeable Personnel**. Contractor will make available to the State or a Third Party Provider knowledgeable personnel familiar with the operational processes and procedures used to deliver products and services to the State. The Contractor personnel will work with the State or third party to help develop a mutually agreeable transition plan, work to transition the process of ordering, shipping and invoicing equipment and services to the State.
- (3) **Information** - The Contractor agrees to provide reasonable detailed specifications for all Services needed by the State, or specified third party, to properly provide the services required under the Contract. The Contractor will also provide any licenses required to perform the Services under the Contract.
- (4) **Software**. - The Contractor shall reasonably assist the State in the acquisition of any Contractor software required to perform the Services under the Contract. This shall include any documentation being used by the Contractor to perform the Services under the Contract.



If the State transfers any software licenses to the Contractor, those licenses shall, upon expiration of the Contract, transfer back to the State at their current revision level.

- (5) Payment - If the transition results from a termination for any reason, reimbursement shall be governed by the termination provisions of the Contract. If the transition results from expiration, the Contractor will be reimbursed for all reasonable transition costs (i.e. costs incurred within the agreed period after Contract expiration that result from transition operations). The hourly rates or fixed price to be charged will be agreed upon prior to the work commencing.
- (6) Single Point of Contact. Contractor will maintain a Single Point of Contact (SPOC) for the State after termination of the Contract until all product and service obligations have expired.

E. Transition out of this Contract

- (1) In the event that this Contract is terminated, dissolved, voided, rescinded, nullified, or otherwise rendered unenforceable, the Contractor agrees to perform the following obligations, and any others upon which the State and the Contractor agree:
 - (i) Cooperating with any contractors, vendors, or other entities with whom the State contracts to meet its telecommunication needs, for at least two hundred and seventy (270) days after the termination of this Contract;
 - (ii) Reserved.
 - (iii) Providing the State with all asset management data generated from the inception of this Contract through the date on which this Contract is terminated, in a comma-delimited format unless otherwise required by the Program Office;
 - (iv) Reconciling all accounts between the State and the Contractor;
 - (v) Allowing the State to request the winding up of any pending or ongoing projects at the price to which the State and the Contractor agreed at the inception of the project;
 - (vi) Freezing all non-critical software changes;
 - (vii) Notifying all of the Contractor's subcontractors of procedures to be followed during the transition out phase;
 - (viii) Assisting with the communications network turnover, if applicable;
 - (ix) Assisting in the execution of a parallel operation until the effective date of termination of this Contract
 - (x) Answering questions regarding post-migration services;
 - (xi) Delivering to the State any remaining owed reports and documentation still in the Contractor's possession.
- (2) In the event that this Contract is terminated, dissolved, voided, rescinded, nullified, or otherwise rendered unenforceable, the State agrees to perform the following obligations, and any others upon which the State and the Contractor agree:
 - (i) Reconciling all accounts between the State and the Contractor;
 - (ii) Completing any pending post-project reviews.

2.703 LIQUIDATED DAMAGES

Reserved.

2.704 STOP WORK

1. The State may, at any time, by written stop work order to the Contractor, require that the Contractor stop all, or any part, of the work called for by this Contract for a period of up to 90 days after the stop work order is delivered to the Contractor, and for any further period to which the parties may agree. The stop work order shall be specifically identified as such and shall indicate that it is issued under this section. Upon receipt of the stop work order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the stop work order during the period of work stoppage. Within the period of the stop work order, the State shall either:



- a) Cancel the stop work order; or
 - b) Cancel the work covered by the stop work order as provided in the cancellation section of this Contract.
2. If a stop work order issued under this section is canceled or the period of the stop work order or any extension thereof expires, the Contractor shall resume work. The State shall make an equitable adjustment in the delivery schedule, the contract price, or both, and the Contract shall be modified, in writing, accordingly, if:
- a) The stop work order results in an increase in the time required for, or in the Contractor's costs properly allocable to the performance of any part of this Contract; and
 - b) The Contractor asserts its right to an equitable adjustment within 30 days after the end of the period of work stoppage; provided, that if the State decides the facts justify the action, the State may receive and act upon a proposal submitted at any time before final payment under this Contract.
3. If the stop work order is not canceled and the work covered by the stop work order is canceled for reasons other than material breach, the State shall allow reasonable costs resulting from the stop work order in arriving at the cancellation settlement.
4. If a stop work order is not canceled and the work covered by the stop work order is canceled for material breach, the State shall not allow, by equitable adjustment or otherwise, reasonable costs resulting from the stop work order.

An appropriate equitable adjustment may be made in any related contract of the Contractor that provides for adjustment and is affected by any stop work order under this section. The State shall not be liable to the Contractor for loss of profits because of a stop work order issued under this section.

2.705 SUSPENSION OF WORK

The Contract Administrator may order the Contractor, in writing, to suspend, delay, or interrupt all or any part of the work of this contract for the period of time that the Contract Administrator determines appropriate for the convenience of the Government.

If the performance of all or any part of the work is, for an unreasonable period of time, suspended, delayed, or interrupted (1) by an act of the Contract Administrator in the administration of this contract, or (2) by the Contract Administrator's failure to act within the time specified in this contract (or within a reasonable time if not specified), an adjustment shall be made for any increase in the cost of performance of this contract (excluding profit) necessarily caused by the unreasonable suspension, delay, or interruption, and the contract modified in writing accordingly. However, no adjustment shall be made under this clause for any suspension, delay, or interruption to the extent that performance would have been so suspended, delayed, or interrupted by any other cause, including the fault or negligence of the Contractor, or for which an equitable adjustment is provided for or excluded under any other term or condition of this contract.

A claim under this clause shall not be allowed:

- (1) For any costs incurred more than 20 days before the Contractor shall have notified the Contract Administrator in writing of the act or failure to act involved (but this requirement shall not apply as to a claim resulting from a suspension order); and
- (2) Unless the claim, in an amount stated, is asserted in writing as soon as practicable after the termination of the suspension, delay, or interruption, but not later than the date of final payment under the contract.

2.8 Changes, Modifications, and Amendments

2.801 APPROVALS

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

**2.802 TIME EXTENTIONS**

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

2.803 MODIFICATION

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

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

2.804 AUDIT AND RECORDS UPON MODIFICATION

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

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

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

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

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

2.805 CHANGES

- (a) The Contract Administrator may, at any time, without notice to the sureties, if any, by written order designated or indicated to be a change order, make changes in the work within the general scope of the contract, including changes:
 - (1) In the specifications (including drawings and designs);
 - (2) In the method or manner of performance of the work;
 - (3) In the Government-furnished facilities, equipment, materials, services, or site; or
 - (4) Directing acceleration in the performance of the work.



- (a) Any other written or oral order (which, as used in this paragraph (b), includes direction, instruction, interpretation, or determination) from the Contract Administrator that causes a change shall be treated as a change order under this clause; Provided, that the Contractor gives the Contract Administrator written notice stating:
 - (1) The date, circumstances, and source of the order; and
 - (2) That the Contractor regards the order as a change order.

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



Article 3 – Certifications and Representations

Responses to Article 3 are contained in the bidder’s original submitted proposal. All terms and conditions in Article 3 apply to this contract.

All bidders shall complete this section and submit with their bid or proposal. Failure or refusal to submit any of the information requested in this section may result in the bidder being considered non-responsive and therefore ineligible for award consideration. The State may also pursue debarment vendors that fail or refuse to submit any of the requested information.

In addition, if it is determined that a business purposely or willfully submitted false information, the bidder will not be considered for award, the State will pursue debarment of the vendor, and any resulting contract that was established will be cancelled.

3.0 Vendor/Contractor Information

3.001 TAXPAYER IDENTIFICATION NUMBER (TIN)

Vendor Name: _____

() TIN: _____

() TIN has been applied for

() TIN is not required because:

() Vendor/Contractor is a nonresident, alien, foreign business that does not have income effectively connected with the conduct of a trade or business in the U.S. and does not have an office or place of business or a fiscal agent in the U.S.

() Vendor/Contractor is an agency or instrumentality of a foreign government. If checked, which foreign government _____

() Vendor/Contractor is an agency or instrumentality of a federal, state, or local government. If checked, which government _____

() Other basis: _____

() Bidder is not owned or controlled by a common parent as described below. Common Parent means a corporate entity that owns or controls an affiliated group of corporations that files its Federal income tax returns on a consolidated basis, and of which bidder is a member.

() Bidder is owned or controlled by a common parent

() Name and TIN of common parent

Name: _____

TIN: _____

3.002 EXPATRIATED BUSINESS ENTITY

DEFINITIONS: “Expatriated business entity” means a corporation or an affiliate of the corporation incorporated in a tax haven country after September 11, 2001, but with the United States as the principal market for the public trading of the corporation’s stock, as determined by the Director of the Department of Management and Budget

“Tax haven country” means each of the following: Barbados, Bermuda, British Virgin Islands, Cayman Islands, Commonwealth of the Bahamas, Cyprus, Gibraltar, Isle of Man, the Principality of Liechtenstein, the Principality of Monaco, and the Republic of the Seychelles.



Vendor hereby certifies that it IS _____, IS NOT _____ an expatriated business entity located in a tax haven country.

Vendor hereby certifies that it IS _____, IS NOT _____ an affiliate of an expatriated business located in a tax haven country.

3.003 DATA UNIVERSAL NUMBERING SYSTEM (DUNS) NUMBER

Vendor is not required to have a DUNS number. If vendor does have a DUNS number it must be listed below.

DUNS No.: _____
(nine digit number assigned by Dun & Bradstreet)

DUNS+4 No.: _____
(DUNS + a 4-character suffix)

If the contractor/vendor does not have a DUNS number and would like to, it should contact Dun & Bradstreet directly to obtain one. Contractor may obtain a DUNS number by calling Dun & Bradstreet at 1-866-705-5711 or via the Internet at www.dnb.com.

3.004 RESERVED for Vendor Registration Into a Central Database

3.005 RESERVED for annual certifications and representations in Central Data Base

The bidder has (check the appropriate block):

() Submitted to the contracting office issuing this solicitation, annual representations and certifications dated _____ (*insert date of signature on submission*), which are incorporated herein by reference, and are current, accurate, and complete as of the date of this bid, except as follows (*insert changes that affect only this solicitation; if "none," so state*):

() Enclosed its annual representations and certifications.

3.006 EXTENDED PURCHASING TO LOCAL UNITS OF GOVERNMENT/INSTITUTIONS OF HIGHER LEARNING

Act Number 431 of the Public Acts of 1984 permits the State of Michigan, Department of Management and Budget, to provide purchasing services to any city, village, county, township, school district, intermediate school district, nonprofit hospital, institution of higher learning, or community or junior colleges. As a result of the enactment of this legislation, the Extended Purchasing Program has been developed. This program extends the use of State contracts to program members. The governmental agency must enter into an agreement with the State of Michigan to become authorized to participate, thus ensuring that local units of government secure a greater return for the expenditure of public funds. It is the policy of Acquisition Services, Department of Management and Budget, that the final approval to utilize any such Contract in this manner must come from the Contract vendor.

In such cases, Contract vendors supply merchandise at the established State of Michigan Contract prices and terms. Inasmuch as these are non-State agencies, all purchase orders will be submitted by, invoices will be billed to, and the authorized Extended Purchasing member on a direct and individual basis in accordance with Contract terms will remit payment.

Therefore, it is required that all bidders indicate, by checking the appropriate box below, whether they will (first box) or will not (second box) honor orders on any Contract resulting from this Request for Quotation from State of Michigan authorized Extended Purchasing members. It is the responsibility of the Contractor to ensure the non-State agency is an authorized Extended Purchasing member prior to extending the State Contract price.



BIDDER 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 Extended Purchasing Program members in accordance with the terms and prices quoted. Upon request, a complete listing of eligible participants in the Extended Purchasing 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 Extended Purchasing members. We will supply to State of Michigan departments and agencies only.

Authorized Agent Name (print or type)

Authorized Agent Signature

Please Visit Mi DEAL at www.mi.gov/localgov.

3.1 Disclosure Issues

3.101 CONFIDENTIALITY

Contractor and the State each acknowledge that the other possesses and will continue to possess confidential information that has been developed or received by it. As used in this Section, "Confidential Information" of Contractor shall mean all non-public proprietary information of Contractor (other than Confidential Information of the State as defined below) that is marked confidential, restricted, proprietary, or with a similar designation. "Confidential Information" of the State shall mean any information which is retained in confidence by the State (or otherwise required to be held in confidence by the State pursuant to applicable federal, state and local laws and regulations) or which, in the case of tangible materials provided to Contractor by the State pursuant to its performance under this Contract, is marked as confidential, proprietary or with a similar designation by the State. In the case of information of either Contractor or the State "Confidential Information" shall exclude any information (including this Contract) that is publicly available pursuant to the Michigan FOIA.

Protection of Confidential Information

The State and Contractor will each use at least the same degree of care to prevent is closing to third parties the Confidential Information of the other as it employs to avoid unauthorized disclosure, publication or dissemination of its own confidential information of like character, but in no event less than reasonable care. Neither Contractor nor the State will (i) make any use of the Confidential Information of the other except as contemplated by this Contract, (ii) acquire any right 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 to the other party. Each party will limit disclosure of the other party's Confidential Information to employees and Subcontractors who must have access thereto in order to fulfill the purposes of this Contract. Disclosure to, and use by, a Subcontractor is permissible where (A) use of a Subcontractor is authorized under this Contract, (B) such disclosure is necessary or otherwise naturally occurs in connection with work that is within such Subcontractor's scope of responsibility, and (C) 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 or continued access to the State's Confidential Information may be required to execute an acknowledgment that the employee has been advised of Contractor's and the Subcontractor's obligations under this Section and of the employee's obligation to Contractor or Subcontractor, as the case may be, to protect such Confidential Information from unauthorized use or disclosure.



News releases

News releases (including promotional literature and commercial advertisements) pertaining to the ITB and Contract or project to which it relates shall not be made without prior written State approval, and then only in accordance with the explicit written instructions from the State. No results of the activities associated with the ITB and Contract are to be released without prior written approval of the State and then only to persons designated.

Exclusions

Notwithstanding the foregoing, the provisions of this Section will not apply to any particular information which the State or Contractor can demonstrate (i) was, at the time of disclosure to it, in the public domain; (ii) after disclosure to it, is published or otherwise becomes part of the public domain through no fault of the receiving party; (iii) was in the possession of the receiving party at the time of disclosure to it without an obligation of confidentiality; (iv) was received after disclosure to it from a third party who had a lawful right to disclose such information to it without any obligation to restrict its further disclosure; or (v) was independently developed by the receiving party without reference to Confidential Information of the furnishing party. Further, the provisions of this Section will not apply to any particular Confidential Information to the extent the receiving party is required by law to disclose such 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 such disclosure as reasonably requested by the furnishing party.

No Implied Rights

Nothing contained in this Section shall be construed as obligating a party to disclose any particular Confidential Information to the other party, or as granting to or conferring on a party, expressly or impliedly, any right or license to the Confidential Information of the other party.

Remedies

Each party acknowledges that, if it breaches (or attempts or threatens to breach) its obligations under this Section, the other party may be irreparably harmed. Accordingly, if a court of competent jurisdiction should find that a party has breached (or attempted or threatened to breach) any such obligations, the non-breaching party shall be entitled to seek an injunction preventing such breach (or attempted or threatened breach).

Survival

The parties' respective obligations under this Section shall survive the termination or expiration of this Contract for any reason.

Destruction of Confidential Information

Promptly upon termination or cancellation of the Contract for any reason, Contractor shall certify to the State that Contractor has destroyed all State Confidential Information.

_____ (Initial)

3.102 FREEDOM OF INFORMATION ACT

All information in a bidder's proposal and the Contract is subject to the provisions of the Freedom of Information Act, 1976 Public Act No. 442, as amended, MCL 15.231, et seq

_____ (Initial)



3.103 DISCLOSURE OF LITIGATION

The Contractor shall notify the State in its bid proposal, if it, or any of its subcontractors, or their officers, directors, or key personnel under this Contract, have ever been convicted of a felony, or any crime involving moral turpitude, including, but not limited to fraud, misappropriation or deception. Contractor shall promptly notify the State of any criminal litigation, investigations or proceeding which may have arisen or may arise involving the Contractor or any of the Contractor's subcontractor, or any of the foregoing entities' then current officers or directors during the term of this Contract and three years thereafter.

The Contractor shall notify the State in its bid proposal, and promptly thereafter as otherwise applicable, of any civil litigation, arbitration, proceeding, or judgments that may have arisen against it or its subcontractors during the five years preceding its bid proposal, or which may occur during the term of this Contract or three years thereafter, which involve (1) products or services similar to those provided to the State under this Contract and which either involve a claim in excess of \$250,000 or which otherwise may affect the viability or financial stability of the Contractor, or (2) a claim or written allegation of fraud by the Contractor or any subcontractor hereunder, arising out of their business activities, or (3) a claim or written allegation that the Contractor or any subcontractor hereunder violated any federal, state or local statute, regulation or ordinance. Multiple lawsuits and or judgments against the Contractor or subcontractor, in any amount less than \$250,000 shall be disclosed to the State to the extent they affect the financial solvency and integrity of the Contractor or subcontractor.

All notices under subsection 1 and 2 herein shall be provided in writing to the State within fifteen business days after the Contractor learns about any such criminal or civil investigations and within fifteen days after the commencement of any proceeding, litigation, or arbitration, as otherwise applicable. Details of settlements, which are prevented from disclosure by the terms of the settlement, shall be annotated as such. Semi-annually, during the term of the Contract, and thereafter for three years, Contractor shall certify that it is in compliance with this Section. Contractor may rely on similar good faith certifications of its subcontractors, which certifications shall be available for inspection at the option of the State.

Assurances - In the event that such investigation, litigation, arbitration or other proceedings disclosed to the State pursuant to this Section, or of which the State otherwise becomes aware, during the term of this Contract, causes the State to be reasonably concerned about:

- a. The ability of the Contractor or its subcontractor to continue to perform this Contract in accordance with its terms and conditions, or
- b. Whether the Contractor or its subcontractor in performing services is engaged in conduct which is similar in nature to conduct alleged in such investigation, litigation, arbitration or other proceedings, which conduct would constitute a breach of this Contract or violation of Michigan or Federal law, regulation or public policy, then

The Contractor shall be required to provide the State all reasonable assurances requested by the State to demonstrate that: (a) the Contractor or its subcontractors hereunder will be able to continue to perform this Contract in accordance with its terms and conditions, (b) the Contractor or its subcontractors will not engage in conduct in performing services under this Contract which is similar in nature to the conduct alleged in any such litigation, arbitration or other proceedings.

*** The Contractor's failure to fully and timely comply with the terms of this section, including providing reasonable assurances satisfactory to the State, may constitute a material breach of this Contract.

_____ (Initial)



3.2 Vendor/Contractor Compliance with Laws

3.201 GENERALLY

Contractor/vendor shall keep informed of federal, state, and local laws, ordinances, rules, regulations, orders, and decrees of bodies or tribunals having any jurisdiction/authority that in any manner affects those engaged in or employed on the work done under this agreement or that in any manner affects the conduct of the work done under this agreement. Contractor shall observe and comply with such laws, ordinances, rules, regulations, orders, and decrees. Contractor shall indemnify the state for any civil claim or liabilities arising from a violation of such laws, ordinances, rules, regulations, orders, or decrees, whether by itself or its employees, even if wholly or in part caused by a violation of such laws, ordinances, rules, regulations, orders, or decrees by the state or its agents or representatives.

3.202 INDEPENDENT PRICE DETERMINATION

1. By submission of a proposal, the bidder certifies, and in the case of a joint proposal, each party thereto certifies as to its own organization, that in connection with this proposal:
 - a. The prices in the proposal have been arrived at independently, without consultation, communication, or agreement, for the purpose of restricting competition as to any matter relating to such prices with any other bidder or with any competitor; and
 - b. Unless otherwise required by law, the prices which have been quoted in the proposal have not been knowingly disclosed by the bidder and will not knowingly be disclosed by the bidder prior to award directly or indirectly to any other bidder or to any competitor; and
 - c. No attempt has been made or will be made by the bidder to induce any other person or firm to submit or not submit a proposal for the purpose of restricting competition.
2. Each person signing the proposal certifies that she/he:
 - a. Is the person in the bidder's organization responsible within that organization for the decision as to the prices being offered in the proposal and has not participated (and will not participate) in any action contrary to l. a., b., and c. above; or
 - b. Is not the person in the bidder's organization responsible within that organization for the decision as to the prices being offered in the proposal but has been authorized, in writing, to act as agent for the persons responsible for such decision in certifying that such persons have not participated (and will not participate) in any action contrary to l. a., b., and c. above.
3. Should a bidder be awarded a Contract resulting from this ITB, and be found to have failed to abide by the provisions set forth in this section, said entity will be in default of the Contract. Consequences may include cancellation of the Contract (see section I-U Cancellation).

3.203 VENDOR/CONTRACTOR COMPLIANCE WITH STATE AND FEDERAL LAW AND DEBARMENT

The bidder certifies, to the best of its knowledge that within the past (3) years, the bidder, an officer of the bidder, or an owner of a 25% or greater interest in the vendor:

- 1) Has _____, Has Not _____ been convicted of a criminal offense incident to the application for or performance of a state contract or subcontract;
- 2) Has _____, Has Not _____ been convicted of any offense which negatively reflects on the vendor's business integrity, including but not limited to embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, state or federal antitrust statutes;



- 3) Has _____, Has Not _____ been convicted of any other offense, violated any other state or federal law, as determined by a court of competent jurisdiction or an administrative proceeding, which, in the opinion of the Department, indicates that the vendor is unable to perform responsibly or which reflects a lack of integrity that could negatively impact or reflect upon the State of Michigan. An offense or violation under this paragraph may include, but is not limited to, an offense under or violation of: Natural Resources and Environmental Protection Act, 1994 PA 451, MCL §§ 324.101 – 324.90106; the Michigan Consumer Protection Act, 1976 PA 331, MCL §§ 445.901 – 445.922; 1965 PA 390 (law relating to prevailing wages on state projects), MCL §§ 408.551 – 408.558; 1978 PA 390 (law relating to payment of wages and fringe benefits) MCL §§ 408.471 – 408.490; or a willful or persistent violation of the Michigan Occupational Safety and Health Act, 1974 PA 154, MCL §§ 408.1001 – 408.1094;
- 4) Has _____, Has Not _____ failed to substantially perform a state contract or subcontract according to its terms, conditions, and specifications within specified time limits;
- 5) Has _____, Has Not _____ violated Department bid solicitation procedures or violated the terms of a solicitation after bid submission;
- 6) Has _____, Has Not _____ refused to provide information or documents required by a contract including, but not limited to information or document necessary for monitoring contract performance;
- 7) Has _____, Has Not _____ failed to respond to requests for information regarding vendor performance, or accumulated repeated substantiated complaints regarding performance of a contract/purchase order; and
- 8) Has _____, Has Not _____ failed to perform a state contract or subcontract in a manner consistent with any applicable state or federal law, rule, regulation, order, or decree.
- 9) The vendor certifies and represents, to the best of his knowledge that the supplier and/or any of it's Principles:
 - A. Are _____, Are Not _____ presently debarred, suspended, proposed for debarment, or declared ineligible for the award of a purchase by any state or federal agency
 - B. Has _____, Has Not _____ not with in a 3-year period preceding this bid, been convicted or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) purchase.
 - C. Are _____, Are Not _____ presently indicted for, or otherwise criminally or civilly charged by a governmental entity with, the commission of the any of the offenses enumerated in section 3.1(c) of this contract.
 - D. The vendor Has _____, Has Not _____ within a 3-year period preceding this solicitation had one or more purchases terminated for default by any state or federal agency.

3.204 CERTIFICATION REGARDING DEBARMENT AND PROPOSED DEBARMENT

- 1) Principals for purposes of section 3.203(9) means officers, directors, owners, partners, and any other persons having primary management or supervisory responsibilities within a business entity
- 2) The supplier shall provide immediate written notice to the state if, at any time before the purchase award, the supplier learns that its certification was erroneous when submitted or has since become erroneous because of changed circumstances



- 3) A certification that any of the items in paragraph 3.203(9)(A) of this provision exists will not necessarily result in withholding an award under this solicitation. However, the certification will be considered in connection with a determination of the supplier's responsibility. Failure to furnish the certification or provide such information as requested by the state may render the supplier non-responsive
- 4) Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the certification required by paragraph 3.203(9)(a) of this provision. The knowledge and information of a supplier is not required to exceed that which is normally possessed by a prudent person in the ordinary course of commercially reasonable dealings.
- 5) If it is later determined that supplier knowingly rendered an erroneous certification under this provision, in addition to the other remedies available to the state, the state may terminate this purchase for default.

VENDOR CAN REVIEW THE STATE'S DEBARMENT POLICY AT: www.michigan.gov/doingbusiness
(click on the link to Debarment Policy)

3.205 DEBARMENT OF SUB-CONTRACTORS

Contractor shall require each primary sub-contractor, whose sub contract will exceed \$25,000, to disclose to the contractor, in writing, whether as of the time of the award of the sub contract, the sub-contractor, or its principals, is or is not debarred, suspended, or proposed for debarment by the State of Michigan. The contractor shall then inform the state of the sub-contractor's status and reasons for contractor's decision to use such sub-contractor, if contractor so decides.

3.206 ETHICS: GRATUITIES and INFLUENCE

Gratuities

The right of the contractor to proceed may be terminated by written notice, if the contracting agency head or contract administrator determines that the contractor, its agent, or its representative has offered or gave a gratuity, kickback, money, gift, or any thing of value to an officer, official, or employee of the state intended, by the gratuity, to obtain a contract or favorable treatment under a contract.

Vendor/Contract Has _____, Has Not _____ given or offered to give a gratuity, kickback, money, gift, or any thing of value to a state official, officer, or employee intended to effectuate the awarding of a contract or favorable treatment under a contract.

Influence

The vendor/contractor by signing its proposal/bid hereby certifies to best of his or her knowledge that no funds have been given to any state officer, official, or employee for influencing or attempting to influence such officer, official, or employee of the state.

3.3 Vendor/Contractor Workplace Fitness

3.301 DRUG-FREE WORK PLACE

The vendor/contractor certifies and agrees that it will provide a drug-free workplace by:

- A. Publishing and providing to all of its employees a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the vendor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; and



- B. Establishing a drug-free awareness program to inform employees about (1) the dangers of drug abuse in the workplace; (2) the vendor’s policy of maintaining a drug-free workplace; (3) any available drug counseling, rehabilitation, and employee assistance programs; and (4) the penalties that may be imposed upon an employee for drug abuse violations occurring in the work place; and
- C. Notifying all employees in the statement required by subparagraph (A) above that as a condition of continued employment the employee will (1) abide by the terms of the statement; and (2) notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five days after such conviction; and
- D. Notifying the contracting state agency with in 15 days after receiving notice from an employee under subdivision (C)(2) above, or otherwise receiving actual notice of such conviction; and
- E. Within 30 days after receiving notice under subdivision (C)(2), imposing the proper sanctions as communicated to the employee through the statement required by subparagraph (A); and
- F. Making a good-faith effort to maintain a drug-free work place through the implementation of sub paragraphs (A) through (E) above.

_____ (Initial)

3.302 WORKPLACE SAFETY

- 1. In performing work under this Contract on State premises, the Contractor shall conform to any specific safety requirements contained in the Contract or as required by law or regulation. The Contractor shall take any additional precautions as the State may reasonably require for safety and accident prevention purposes. Any violation by the Contractor of such safety requirements, rules, laws or regulations shall be a material breach of the Contract subject to the cancellation provisions contained herein.
- 2. In performing services for the State pursuant to this Contract, the Contractor shall comply with Department of Civil Service Rules 2-20 regarding Workplace Safety and 1-8.3 regarding Discriminatory Harassment. In addition, the Contractor shall comply with Civil Service Regulations governing workplace safety and discriminatory harassment and any applicable state agency rules on these matters that the agency provides to the Contractor. Department of Civil Service Rules and Regulations can be found on the Department of Civil Service website at www.michigan.gov/mdcs.

_____ (Initial)

3.303 WORKPLACE DISCRIMINATION

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

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

_____ (Initial)



3.304 LABOR RELATIONS

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

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

_____ (Initial)

3.305 RESERVED

3.306 AFFIRMATIVE ACTION

Vendor represents that it Has _____, Has Not _____ developed and has on file an entity wide affirmative action program.

3.307 LIABILITY INSURANCE

A. Insurance

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

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

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

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

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

See www.michigan.gov/cis

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

Before both parties sign the Contract or before the purchase order is issued by the State, the Contractor must furnish to the Director of Acquisition Services, certificate(s) of insurance verifying insurance coverage ("Certificates"). The Certificate must be on the standard "accord" form or equivalent.



THE CONTRACT OR PURCHASE ORDER NO. MUST BE SHOWN ON THE CERTIFICATE OF INSURANCE TO ASSURE CORRECT FILING. All Certificate(s) are to be prepared and submitted by the Insurance Provider. All Certificate(s) shall contain a provision indicating that coverage afforded under the policies WILL NOT BE CANCELLED, MATERIALLY CHANGED, OR NOT RENEWED without THIRTY (30) days prior written notice, except for ten (10) days for non-payment of premium, having been given to the Director of Acquisition Services, Department of Management and Budget. The notice must include the Contract or Purchase Order number affected and be mailed to: Director, Acquisition Services, Department of Management and Budget, P.O. Box 30026, Lansing, Michigan 48909. Failure to provide evidence of coverage, may, at the State's sole option, result in this Contract's termination.

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

- 1. Commercial General Liability with the following minimum coverage:

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

The 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.

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

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

- 3. Workers' compensation coverage must be provided in accordance with applicable laws governing the employees and employers work activities in the state of the Contractor's domicile. If a self-insurer provides the applicable coverage, proof must be provided of approved self-insured authority by the jurisdiction of domicile. For employees working outside of the state of qualification, Contractor must provide appropriate certificates of insurance proving mandated coverage levels for the jurisdictions where the employees' activities occur.

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

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

- 4. Employers liability insurance with the following minimum limits:

\$100,000	each accident
\$100,000	each employee by disease
\$500,000	aggregate disease



- 5. Employee Fidelity, including Computer Crimes, insurance naming the State as a loss payee, providing coverage for direct loss to the State and any legal liability of the State arising out of or related to fraudulent or dishonest acts committed by the employees of Contractor or its Subcontractors, acting alone or in collusion with others, in a minimum amount of one million dollars (\$1,000,000.00) with a maximum deductible of fifty thousand dollars (\$50,000.00).
- 6. Umbrella or Excess Liability Insurance in a minimum amount of ten million dollars (\$10,000,000.00), which shall apply, at a minimum, to the insurance required in Subsection 1 (Commercial General Liability) above.
- 7. Professional Liability (Errors and Omissions) Insurance with the following minimum coverage: Two hundred thousand dollars (\$200,000.00) each occurrence and six hundred thousand dollars (\$600,000.00) annual aggregate.
- 8. Fire and Personal Property Insurance covering against any loss or damage to the office space used by Contractor for any reason under this Contract, and the equipment, software and other contents of such office space, including without limitation, those contents used by Contractor to provide the Services to the State, up to the replacement value thereof, where such office space and its contents are under the care, custody and control of Contractor. Such policy shall cover all risks of direct physical loss or damage, including without limitation, flood and earthquake coverage and coverage for computer hardware and software. The State shall be endorsed on the policy as a loss payee as its interests appear.

B. Subcontractors

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

C. Certificates of Insurance and Other Requirements

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

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



the State may deduct the entire cost (or part thereof) from any payment due Contractor, or Contractor shall pay the entire cost (or any part thereof) upon demand by the State.

3.308 ENVIRONMENTAL AWARENESS

Definition - 'Environmentally preferable products' means products that have a lesser or reduced effect on human health and the environment when compared with competing products that serve the same purpose. This comparison may consider raw materials acquisition, production, manufacturing, packaging, distribution, reuse, operation, maintenance, or disposal of the product.

Environmental Purchasing Policy - Bidders able to supply products containing recycled and environmentally preferable materials that meet performance requirements are encouraged to offer them in bids and proposals.

- A. Recycled Packaging.** Bidders may offer some or all of the following items listed below or provide alternative proposal as to how packaging materials can be reduced, eliminated or otherwise made more environmentally preferable. It is desirable that Bidders offer packaging which:
 - a. is made from recycled content which meets or exceeds all federal and state recycled content guidelines (currently 35% post-consumer for all corrugated cardboard)
 - b. minimizes or eliminates the use of polystyrene or other difficult to recycle materials
 - c. minimizes or eliminates the use of disposable containers such as cardboard boxes
 - d. provides for a return program where packaging can be returned to a specific location for recycling
 - e. contains materials which are easily recyclable in Michigan..

- B. Recycled Content of Products Offered.** Bidders are expected to offer products using recovered materials suitable for the intended use whenever possible. The following definitions apply to 'Recovered Material':

'Post-Consumer Waste', is defined as any products generated by a business or consumer which have served their intended end use, and which have been separated or diverted from solid waste for the purpose of recycling into a usable commodity or product

'Secondary Waste', is defined as industrial by-products and wastes generated after completion of a manufacturing process that would normally be disposed.

All Bidders are requested to indicate below an estimate of the percentage of recycled materials, if any, contained in each item bid. Higher percentages of recycled materials are preferred. All recycled products and packaging are required to perform at the level outlined in bid requests.

_____ % (Total estimated percentage of recovered material)

_____ % (Estimated percentage of post-consumer material)

_____ % (Estimated percentage of secondary waste)

Certification

I, _____ (name of certifier), am an officer or employee responsible for the performance of this contract and hereby certify that the percentage of recovered material content for EPA-designated products met the applicable contract specifications.

_____ (Initial)

- C. Clean Air and Water**

Vendor certifies that any facility to be used in the performance of this contract IS _____, IS NOT _____ listed on the Environmental Protection Agency (EPA) List of Violating facilities.



The vendor will immediately notify the state, before award, of the receipt of any communication from the EPA or the state, indicating that any facility that the vendor proposes to use in the performance of this contract is under consideration to be listed on the EPA List of Violating Facilities or any enforcement action.

D. Mercury Content. It is the clear intent of state agencies to avoid purchasing products that contain mercury whenever possible. Bidders shall offer mercury-free products when available. Should mercury-free alternatives not exist, as presently is the case with fluorescent lamps, bidders shall offer the lowest mercury content available. Bidders shall disclose whenever products contain added mercury by using the following format.

- () Product does not contain Mercury
- () Product does contain Mercury (attach an explanation that includes: the amount or concentration of mercury, and justification as to why that particular product is being proposed)

Bidders shall ensure that mercury added products containing mercury in excess of 1 gram or 250 ppm, shall be labeled: “contains mercury”.

E. Polybrominated Flame Retardents (BFR). Bidders shall disclose whether the products being offered contain toxic flame retardants. Bidders are encouraged to provide BFR-free alternatives when available.

- () Product does not contain BFR’s
- () Product does contain BFR’s (attach an explanation)

F. Hazardous Material Identification. ‘Hazardous material’, as used in this clause, includes any material defined as hazardous under the latest version of Federal Standard No. 313 (including revisions adopted during the term of the contract).

(1) The bidder must list any hazardous material, as defined in paragraph (a) of this clause, to be delivered under this contract. The hazardous material shall be properly identified and include any applicable identification number, such as National Stock Number or Special Item Number. This information shall also be included on the Material Safety Data Sheet submitted under this contract.

Material (if none, insert ‘None’)	Identification Number

- (2) This list must be updated during performance of the contract whenever the Contractor determines that any other material to be delivered under this contract is hazardous.
- (3) The apparently successful bidder agrees to submit, for each item as required prior to award, a **Material Safety Data Sheet** for all hazardous material identified in paragraph (1) of this clause. Data shall be submitted in accordance with Federal Standard No. 313, whether or not the apparently successful bidder is the actual manufacturer of these items. Failure to submit the Material Safety Data Sheet prior to award may result in the apparently successful bidder being considered non-responsive and ineligible for award.



- (4) If, after award, there is a change in the composition of the item(s) or a revision to Federal Standard No. 313, which renders incomplete or inaccurate the data submitted under paragraph (3) of this clause, the Contractor shall promptly notify the Contracting Officer and resubmit the data.
- (5) Neither the requirements of this clause nor any act or failure to act by the Government shall relieve the Contractor of any responsibility or liability for the safety of Government, Contractor, or subcontractor personnel or property.
- (6) Nothing contained in this clause shall relieve the Contractor from complying with applicable Federal, State, and local laws, codes, ordinances, and regulations (including the obtaining of licenses and permits) in connection with hazardous material.
- (7) The Government's rights in data furnished under this contract with respect to hazardous material are as follows:
 - (a) To use, duplicate and disclose any data to which this clause is applicable. The purposes of this right are to:
 - (i) Apprise personnel of the hazards to which they may be exposed in using, handling, packaging, transporting, or disposing of hazardous materials;
 - (ii) Obtain medical treatment for those affected by the material; and
 - (iii) Have others use, duplicate, and disclose the data for the Government for these purposes.
 - (b) To use, duplicate, and disclose data furnished under this clause, in precedence over any other clause of this contract providing for rights in data.
 - (c) The Government is not precluded from using similar or identical data acquired from other sources.

G. Waste Reduction Program. Contractor shall establish a program to promote cost-effective waste reduction in all operations and facilities covered by this contract. The Contractor's programs shall comply with applicable Federal, State, and local requirements, specifically including Section 6002 of the Resource Conservation and Recovery Act (42 U.S.C. 6962, *et seq.*). The following definitions apply to 'Waste Reduction':

'Recycling', means the series of activities by which materials that are no longer useful to the generator are collected, sorted, processed, and converted into raw materials and used in the production of new products." This definition excludes the use of these materials as a fuel substitute or for energy production.

'Waste prevention', means any action undertaken to eliminate or reduce the amount, or the toxicity, of materials before they enter the waste stream. This action is intended to conserve resources, promote efficiency, and reduce pollution." Waste prevention includes reduction and reuse, but not recycling.

'Waste reduction', means any practice, such as an equipment or technology modification, a process or procedure modification, a reformulation or redesign of a produce, a substitution of raw materials, or improved management, training, or inventory control, which practice is undertaken by a person to directly or indirectly reduce the volume or quantity or toxicity of waste that may be released into the environment or that is treated at a location other than the location where it is produced.

'Pollution Prevention', is defined as the practice of minimizing the generation of waste at the source and, when wastes can not be prevented, utilizing environmentally sound on-site or off-site recycling or reuse. The term includes equipment or technology modifications, process or procedure modifications, product reformulation or redesign, and raw material substitutions. Waste treatment, control, management, and disposal are not considered pollution prevention,



per the definitions under Part 143, Waste Minimization, of the Natural Resources and Environmental Protection Act (NREPA), 1994 PA 451, as amended.

H. Ozone Depleting Substances

'Ozone-depleting substance', as used in this clause, means any substance the Environmental Protection Agency designates in 40 CFR part 82 as:

- (1) Class I, including, but not limited to, chlorofluorocarbons, halos, carbon tetrachloride, and methyl chloroform; or
- (2) Class II, including, but not limited to, hydro chlorofluorocarbons.

The Contractor shall label products which contain or are manufactured with ozone-depleting substances in the manner and to the extent required by 42 U.S.C. 7671j (b), (c), and (d) and 40 CFR part 82, Subpart E, as follows:

'Warning: Contains (or manufactured with, if applicable) _____ (insert the name of the substance(s).), a substance(s) which harm(s) public health and environment by destroying ozone in the upper atmosphere.'

I. Refrigeration and Air Conditioning

The Contractor shall comply with the applicable requirements of Sections 608 and 609 of the Clean Air Act (42 U.S.C. 7671g and 7671h) as each or both apply to this contract.

J. Emergency Planning and Community Right-to-Know Reporting - By signing this offer, the bidder certifies that:

- (1) The owner or operator of facilities that will be used in the performance of this contract is in compliance with the filing and reporting requirements described in sections 302, 304, 311, 312 and 313 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) (42 U.S.C. 11001, et. seq.) and section 6607 of the Pollution Prevention Act of 1990 (PPA) (42 U.S.C. 13101, et. seq.). EPCRA filing and reporting requirements include emergency planning notification, release reporting, hazardous chemical inventory reporting, and toxic chemical release inventory (TRI) reporting.
- (2) The owner or operator of facilities that will be used in the performance of this contract will maintain compliance with the filing and reporting requirements described in sections 302, 304, 311, 312 and 313 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) (42 U.S.C. 11001, et. seq.) and section 6607 of the Pollution Prevention Act of 1990 (PPA) (42 U.S.C. 13101, et. seq.) for the life of the contract.

_____ (Initial)

3.309 KNOWLEDGE OF CHILD LABOR FOR LISTED END PRODUCTS

- (a) '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 pursuant to a contract the enforcement of which can be accomplished by process or penalties.



(b) *Listed end products.* The following end product(s) being acquired under this solicitation is (are) included in the List of Products Requiring Contractor Certification as to Forced or Indentured Child Labor, identified by their country of origin. There is a reasonable basis to believe that listed end products from the listed countries of origin may have been mined, produced, or manufactured by forced or indentured child labor.

Listed End Product	Listed Country of Origin

(c) *Certification.* The State will not make award to a bidder unless the bidder, by checking the appropriate block, certifies to one of the following:

- () The bidder will not supply any end product listed in paragraph (b) of this provision that was mined, produced, or manufactured in a corresponding country as listed for that end product.
- () The bidder may supply an end product listed in paragraph (b) of this provision that was mined, produced, or manufactured in the corresponding country as listed for that product. The bidder certifies that it has made a good faith effort to determine whether forced or indentured child labor was used to mine, produce, or manufacture such end product. On the basis of those efforts, the bidder certifies that it is not aware of any such use of child labor.

3.310 FORCED LABOR, CONVICT LABOR, OR INDENTURED SERVITUDE MADE MATERIALS

Contractor hereby represents and certifies that, to the best of his /her knowledge and belief no foreign (outside of the U.S.) made equipment, materials, or supplies, furnished to the state under this agreement, have been produced in whole or in part by forced labor, convict labor, or indentured servitude.

_____ (Initial)

3.4 Vendor/Contractor Demographics

3.401 SMALL BUSINESS REPRESENTATION

The vendor represents and certifies that it IS _____, IS NOT _____ a small business concern and that all _____, NOT ALL _____ end items to be furnished will be manufactured or produced by a small business concern in the US, its territories or possessions, Puerto Rico, or the Trust Territory of the Pacific Islands

Provide the following information:

_____ (Estimate # of employees)

\$ _____ (Estimate of annual revenue)

3.402 WOMEN, MINORITY, OR VETERAN-OWNED SMALL BUSINESS REPRESENTATION

DEFINITIONS:

'Women-owned business', means a small business that is at least 51% owned by a woman or women who are US citizens and who control and operate the business

The vendor represents that it IS _____, IS NOT _____ a women-owned small business.



'Minority-owned business', means a small business that is at least 51% owned by a minority or minorities who are US citizens and who control and operate the business

The vendor represents that it IS _____, IS NOT _____ a minority owned small business.

'Veteran-owned business', means a small business that is at least 51% owned by a veteran or veterans who are U.S. citizens and who control and operate the business

The vendor represents that it IS _____, IS NOT _____ a veteran owned small business.

The Contractor represents and warrants that the company meets the above (when checked) and can provide supportive documentation upon request.

3.403 OWNERS AND OFFICERS

Vendor must list all owners or officers that hold a 25% interest or more in the company (use attachment if necessary):

Name and Title	% of Interest or Ownership

3.404 RESERVED

3.5 State Concerns

3.501 GENERAL COMPANY DEMOGRAPHICS

1. Company Name: _____
2. Company Address: _____

3. Principle Place of Business (zip code): _____
4. Organization type
 - () Limited Liability Company
 - () Limited Liability partnership
 - () Corporation
 - () Partnership
 - () Health Care Provider
 - () Hospital or extended care facility
 - () Sole Proprietorship
 - () Other: _____
5. Year of establishment _____

3.502 BUSINESS OWNED BY PERSONS WITH DISABILITIES

DEFINITION: 'Business owned by persons with disabilities', means a business in which all of the following apply:



1. More than 50% of the voting shares or interest in the business is owned, controlled, and operated by 1 or more persons with disabilities
2. More than 50% of the net profit or loss is attributable to the business accrues to shareholders who are persons with disabilities
3. More than 50% of the employees of the business are residents of this State of Michigan DMB

The vendor represents that it IS _____, IS NOT _____ a small business owned by persons with disabilities.

Fraudulently representing information about the use of businesses owned by persons with disabilities to procure this contract is a violation of the Business Opportunity Act For Persons with Disabilities of 1988, PA 112, MCL 450.791 – 450.795. A person who knowingly violated this act is guilty of a felony, punishable by imprisonment up to 2 years in prison, or a fine not less than \$5,000. A person found guilty of violating this act shall be barred from obtaining future contracts with the state.

3.503 COMMUNITY REHABILITATION ORGANIZATION (Formerly Sheltered workshops)

DEFINITION: ‘Community rehabilitation organization’, means a charitable organization or institution conducted not for profit, but for the purpose of carrying out a recognized program of rehabilitation for handicapped workers, which provides those individuals with remunerative employment or other occupational rehabilitating activity of an educational or therapeutic nature.

The vendor represents that it IS _____, IS NOT _____ a community rehabilitation organization

3.504 CERTIFICATION OF A MICHIGAN BASED BUSINESS

DEFINITION: To qualify as a Michigan business, vendor must have during the 12 months immediately preceding this bid deadline, or if the business is newly established, for the period the business has been in existence, it has (check all that apply):

- () Filed a Michigan single business tax return showing a portion or all of the income tax base allocated or apportioned to the State of Michigan pursuant to the Michigan Single Business Tax Act, 1975 PA 228, MCL §§ 208.1 – 208.145; or
- () Filed a Michigan income tax return showing income generated in or attributed to the State of Michigan; or
- () Withheld Michigan income tax from compensation paid to the bidder's owners and remitted the tax to the Department of Treasury; or

I certify that **I have personal knowledge** of such filing or withholding, that it was more than a nominal filing for the purpose of gaining the status of a Michigan business, and that it indicates a significant business presence in the state, considering the size of the business and the nature of its activities.

I authorize the Michigan Department of Treasury to verify that the business has or has not met the criteria for a Michigan business indicated above and to disclose the verifying information to the procuring agency.

Authorized Agent Name (print or type)

Authorized Agent Signature

Fraudulent Certification as a Michigan business is prohibited by MCL 18.1268 § 268. A BUSINESS THAT PURPOSELY OR WILLFULLY SUBMITS A FALSE CERTIFICATION THAT IT IS A MICHIGAN BUSINESS OR FALSELY INDICATES THE STATE IN WHICH IT HAS ITS PRINCIPAL PLACE OF BUSINESS IS GUILTY OF A FELONY, PUNISHABLE BY A FINE OF NOT LESS THAN \$25,000.



Bidder shall also indicate one of the following:

- Bidder qualifies as a Michigan business (provide zip code: _____)
- Bidder does not qualify as a Michigan business (provide name of State: _____)
- Principle place of business is outside the State of Michigan, however service/commodity provided by a location within the State of Michigan (provide zip code: _____)

3.505 PLACE OF PERFORMANCE

Bidder must obtain the approval of the Director of Acquisition Services before using a place of performance that is different from the address that bidder provided in their bid.

- (a) The bidder, in the performance of the contract, INTENDS _____, DOES NOT INTEND _____ to use one or more plants or facilities located at a different address from the address of the bidder as indicated in this bid.
- (b) If the bidder checks "intends" in paragraph (a) of this provision, it shall insert in the spaces provided below the required information:

Place of Performance Full address	Owner/Operator of facility to be used	Percent (%) of Contract value to be Performed at listed Location

3.506 FORMER STATE EMPLOYEES

Vendor certifies that there ARE _____, ARE NOT _____ former state employees involved in the performance of this contract.

If former state employees are involved in the performance of this contract, vendor must provide the following information

Vendor hereby represents that the following employees involved in the performance of this contract are former state employees (use attachment if necessary).

Name	Department, Division	Date of Employment



3.507 DOMESTIC END PRODUCT

DEFINITION: ‘Domestic end product’, means one that is manufactured within the United States and the cost of the domestic components exceeds 50% of the cost of all the components.

The vendor hereby certifies that the product to be provided, **except those listed below**, are a domestic end product, and that components of unknown origin have not been mined, produced, or manufactured outside the United States (use attachment if needed):

Excluded End Products	Country of Origin

_____ (Initial)

3.508 USE TAX

Companies (and their affiliated organizations) that are awarded contracts are required to be registered and to remit sales and use taxes on taxable sales of tangible personal property or services **delivered into the state of Michigan**. This is required of all companies that are awarded contracts. Those companies that lack sufficient “presence” in Michigan to be required to register and pay tax must do so as a “volunteer”. This requirement extends to: (1) ALL MEMBERS OF ANY CONTROLLED GROUP AS DEFINED IN § 1563(A) OF THE Internal Revenue Code and applicable regulations of which the company is a member, and (2) all organizations under common control as defined in § 414(c) of the Internal Revenue Code and applicable regulations of which the company is a member that make **sales at retail for delivery into the state of Michigan** are registered with the State of Michigan for the collection and remittance of sales and use taxes. In applying treasury regulations defining “two or more trades or businesses under common control” the term “organization” means sole proprietorship, a partnership (as defined in § 701(a)(2) of the Internal Revenue Code), a trust, an estate, a corporation, or a limited liability company.

The requirement of remittance could be limited to the bidder only without including affiliate companies.

Contractors and their affiliates as defined in the paragraph above must register for and remit sales and use tax on all taxable sales of tangible personal property or services **delivered to the state of Michigan**.

_____ (Initial)

3.509 TAX EXCLUDED FROM PRICE

Contract price excludes all State and local taxes levied on or measured by the contract or sales price of the services or completed supplies furnished under this contract. The Contractor shall state separately on its invoices taxes excluded from the contract price, and the Government agrees either to pay the amount of the taxes to the Contractor or provide evidence necessary to sustain an exemption.

_____ (Initial)

3.510 TAX PAYMENT

Contractors are expected to collect and pay all applicable federal, state, and local employment taxes for all persons involved in the resulting Contract.

The State may refuse to award a contract to any vendor who has failed to pay any applicable state taxes. The State may refuse to accept vendor’s bid, if vendor has any outstanding debt with the State of Michigan. Prior to any award, the State will verify whether vendor has any outstanding debt with the State.



Vendor hereby certifies that all applicable state taxes are paid as of the date of bid submission, and that vendor owes no outstanding debt to the State of Michigan.

_____ (Initial)

3.511 USE OF OTHER SOURCES AS SUBCONTRACTORS

The State has sources of supply and services that are mandatory. The state may use the information provided under this section and 3.502 and 3.503 in determining future awards and vendor standing with the state.

(1) Persons with disabilities

See Paragraph 3.502 for definition and penalty for fraudulent represents this information.

Vendor IS _____, IS NOT _____ purchasing supplies and/or service from a business owned by persons with disabilities in the performance of this contract.

Vendor has contracted for _____% of supplies and services needed for the performance of this contract, which equals \$_____, from a business owned by persons with disabilities (estimates or approximates are acceptable).

Vendor(s) Name: _____

(2) Community Rehabilitation Organizations (CRO) (formerly sheltered workshops)

See Paragraph 3.503 for definition.

Vendor IS _____, IS NOT _____ purchasing supplies and/or service from a community rehabilitation organization in the performance of this contract.

Vendor has contracted for _____% of supplies and services needed for the performance of this contract, which equals \$_____, from a community rehabilitation organization (estimates or approximates are acceptable).

Vendor(s) Name: _____

3.512 UTILIZATION OF BUSINESS CONCERNS

It is the policy of the State of Michigan that small business concerns, veteran-owned small business concerns, persons with disabilities-owned small business concerns, small disadvantaged business concerns, minority-owned small business concerns, and women-owned small business concerns shall have the maximum practicable opportunity to participate in performing contracts let by any state agency, including contracts and subcontracts for subsystems, assemblies, components, and related services for major systems.

The Contractor hereby agrees to carry out this policy in the awarding of subcontracts to the fullest extent consistent with efficient contract performance. The Contractor further agrees to cooperate in any studies or surveys as may be conducted by the State of Michigan or the awarding agency of the State of Michigan as may be necessary to determine the extent of the Contractor's compliance with this clause.

3.513 RESERVED

3.514 RESERVED



3.515 PLACE OF SUBCONTRACTING

Indicate below **ALL** work to be subcontracted under this agreement (use additional attachment if necessary; estimates are acceptable):

Description of Work to be sub-contracted	Percent (%) of total contract value to be sub-contracted	Sub-contractor's name and principal place of business (City and State)

3.516 RESERVED

3.517 SERVICES NEEDED IN PERFORMANCE

Vendor hereby certifies that services to be purchased to enable vendor to perform this agreement will be purchased from a business having its principle place of business in the State of Michigan, **except those listed below** (use additional attachment if necessary; estimates are acceptable):

Description of Service to be purchased	Percent (%) of total contract value to be purchased	Service providers principal place of business (City and State)

3.518 EMPLOYEE AND SUBCONTRACTOR CITIZENSHIP

Vendor hereby certifies that all employees, contractors, subcontractors, and any other individual involved in the performance of this contract, **except those listed below**, are citizens of the United States, legal resident aliens, or individuals with valid visa (use additional attachment if necessary; estimates are acceptable):

Employee Name	Title



3.6 Changes to Disclosures

If any of the certifications, representations, or disclosures indicated in this document change after awarding of a contract, the Contract is required to report those changes immediately to the Department of Management and Budget, Acquisition Services.

3.7 State Assertions

If the state finds that grounds to debar exist, it shall send notice to the vendor of proposed debarment indicating the grounds for proposed debarment and the procedures for requesting a hearing. If the vendor does not respond with a written request for a hearing within twenty (20) calendar days, the state shall issue the decision to debar without a hearing. The debarment period may be of any length up to eight (8) years. After the debarment period expires, the vendor may reapply for inclusion on bidder lists through the regular application process. Authority given by Executive order 2003-1.

ANY FALSE CERTIFICATION OF ANY OF THE PRECEEDING PROVISIONS IS GROUNDS FOR DEBARMENT AND WILL GIVE THE STATE THE RIGHT TO INVOKE ALL REMEDIES AVAILBLE TO IT UNDER THIS CONTRACT.

I HEREBY CERTIFY TO THE BEST OF MY KNOWLEDGE AND BELIEF, THAT THE REPRESENTATIONS AND CERTIFICATIONS MADE HEREIN BY THE VENDOR/CONTRACTOR/SUPPLIER ARE ACCURATE AND CURRENT AS OF THE DATE INDICATED BELOW

Name of Vendor/contractor/supplier

Address of supplier

Telephone and fax No. of supplier

Signature of supplier's authorized representative

Title of Supplier representative

Date



Appendix A. General Outlines for Training

Substance Abuse Management and Reasonable Suspicion Training

Day One - Substance Abuse

I.	Introduction	8:00am – 8:30am
	<ul style="list-style-type: none"> A. Michigan Department of Transportation B. RLS Representative C. Course Objectives D. Housekeeping Announcements/Intros Around Room 	
	II. Available Technical Assistance Materials	8:30am – 8:45am
	III. Audit Process and Common Problems Found	8:45am – 9:45am
	Break	9:45am – 10:00am
	IV. Policy Content	10:00am – 11:30pm
	<ul style="list-style-type: none"> A. Requirement Review B. Formal Approval C. Communication/Distribution D. Common Problem Areas E. Checklist Overview 	
	Lunch	12:00pm – 1:00pm
	V. Contractor Oversight	1:00pm – 1:45pm
	<ul style="list-style-type: none"> A. Checklist Review and Action Plan 	
	VI. Drug Testing Procedures	1:45pm – 2:30pm
	<ul style="list-style-type: none"> A. Specimen Collection Procedures B. DHHS Certified Lab 	
	Break	2:30pm – 2:45pm
	VII. Medical Review Officer Procedures	2:45pm - 3:30pm
	VIII. Checklist Review and Action Plan	3:30pm - 4:00pm

Day Two - Substance Abuse

I.	Alcohol Test Procedures	8:00am – 10:00am
	<ul style="list-style-type: none"> A. Breath Test B. Saliva Test C. Checklist Review and Action Plan 	
	Break	10:00am - 10:15am
II.	Substance Abuse Professional Procedures	10:15am – 10:45am
III.	Testing Categories	10:45am – 12:00pm



- A. Pre-employment
- B. Reasonable Suspicion
- C. Post Accident
- D. Random
- E. Return to Duty
- F. Follow-up
- G. Checklist Review and Action Plan

Lunch 12:00pm – 1:00pm

IV. Training Requirement 1:00pm – 1:30pm

- A. Safety-Sensitive Employees
- B. Supervisor – Reasonable Suspicion

V. Recordkeeping 1:30pm – 2:30pm

- A. Record Retention
- B. General Records
- C. Negative Test Results by Testing Category
- D. Records Maintained by Individual

Break 2:30pm – 2:45pm

- E. Information Disclosure 2:45pm - 3:30pm
- F. Reporting
- G. Checklist Review and Action Plan

VI. Conclusion 3:30 pm - 4:00pm

- A. Wrap Up
- B. Course Evaluation

Day Three- Reasonable Suspicion

I. Introduction 8:00am - 8:30am

- A. Course Objectives

II. Testing Procedures 8:30am - 10:00am

- A. Requirements
- B. Qualifications/Training
- C. Procedures/Forms/Standard

Break 10:00am - 10:15am

Testing Procedures – Continued 10:15am - 12:00pm

- D. MROs
- E. Alcohol Testing
- F. Reporting Procedures
- G. EBT/Saliva Testing
- H. BATs/STTs
- I. Testing Flaws & Corrective Actions
- J. SAP Roles & Responsibilities

Lunch 12:00pm - 1:00pm



- | | | |
|------|--|-------------------|
| III. | Vendor Oversight | 1:00pm - 1:30pm |
| | A. Employer Requirements | |
| | B. Vendors and C/TPAs | |
| | C. Public Interest Exclusion | |
| IV. | Testing Categories | 1:30pm - 2:15pm |
| | A. Pre-employment Testing | |
| | B. Previous Employer Checks | |
| | C. Reasonable Suspicion | |
| | D. Post Accident | |
| | E. Random, Return-to-duty, & Follow-up testing | |
| | Break | 2:15pm - 2:30pm |
| V. | Training | 2:30pm - 3:00pm |
| | A. Safety-Sensitive Employees | |
| | B. Supervisory Training | |
| VI. | Recordkeeping & Reporting Procedures | 3:00pm - 3:45pm |
| | A. Five, Three, and One-Year Requirements | |
| | B. Documentation Procedures | |
| | C. MIS Reporting | |
| | D. Confidentiality | |
| VII. | Course Wrap-Up | 3:45 pm - 4:00 pm |



Appendix B
HIPAA BUSINESS ASSOCIATE ADDENDUM

The parties to this Business Associate Addendum (“Addendum”) are the State of Michigan, acting by and through the Department of Management and Budget, on behalf of the Department of _____ (“State”) and _____, (“Contractor”). This Addendum supplements and is made a part of the existing contract(s) or agreement(s) between the parties including the following Contract(s): _____ (“Contract”).

For purposes of this Addendum, the State is (check one):

- Covered Entity (“CE”)
 Business Associate (“Associate”)

and Contractor is (check one):

- Covered Entity (“CE”)
 Business Associate (“Associate”)

RECITALS

- A. Pursuant to the terms of the Contract, CE wishes to disclose certain information to Associate, some of which may constitute Protected Health Information (“PHI”) (defined below). In consideration of the receipt of PHI, Associate agrees to protect the privacy and security of the information as set forth in this Addendum.
- B. CE and Associate intend to protect the privacy and provide for the security of PHI disclosed to Associate pursuant to the Contract in compliance with the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 (“HIPAA”) and regulations promulgated thereunder by the U.S. Department of Health and Human Services (the “HIPAA Regulations”) and other applicable laws, as amended.
- C. As part of the HIPAA Regulations, the Privacy Rule and the Security Rule (defined below) requires CE to enter into a contract containing specific requirements with Associate prior to the disclosure of PHI, as set forth in, but not limited to, 45 CFR §§ 160.103, 164.502(e), 164.504(e), and 164.314 and contained in this Addendum.



In consideration of the mutual promises below and the exchange of information pursuant to this Addendum, the parties agree as follows:

1. Definitions.

a. Except as otherwise defined herein, capitalized terms in this Addendum shall have the definitions set forth in the HIPAA Regulations at 45 CFR Parts 160, 162 and 164, as amended, including, but not limited to, subpart A, subpart C (“Security Rule”) and subpart E (“Privacy Rule”).

b. “Agreement” means both the Contract and this Addendum.

c. “Contract” means the underlying written agreement or purchase order between the parties for the goods or services to which this Addendum is added.

d. “Protected Health Information” or “PHI” means any information, whether oral or recorded in any form or medium: (i) that relates to the past, present or future physical or mental condition of an individual; the provision of health care to an individual; or the past, present or future payment for the provision of health care to an individual; and (ii) that identifies the individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual, and shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 CFR § 164.501.

e. “Protected Information” shall mean PHI provided by CE to Associate or created or received by Associate on CE’s behalf.

2. Obligations of Associate.

a. Permitted Uses. Associate shall not use Protected Information except for the purpose of performing Associate’s obligations under the Contract and as permitted under this Agreement. Further, Associate shall not use Protected Information in any manner that would constitute a violation of the HIPAA Regulations if so used by CE, except that Associate may use Protected Information: (i) for the proper management and administration of Associate; (ii) to carry out the legal responsibilities of Associate; or (iii) for Data Aggregation purposes for the Health Care Operations of CE. Additional provisions, if any, governing permitted uses of Protected Information are set forth in Attachment A to this Addendum.

b. Permitted Disclosures. Associate shall not disclose Protected Information in any manner that would constitute a violation of the HIPAA Regulations if disclosed by CE, except that Associate may disclose Protected Information: (i) in a manner permitted pursuant to the Contract and this Addendum; (ii) for the proper management and administration of Associate; (iii) as required by law; (iv) for Data Aggregation purposes for the Health Care Operations of CE; or (v) to report violations of law to appropriate federal or state authorities, consistent with 45 CFR § 164.502(j)(1). To the extent that Associate discloses Protected Information to a third party, Associate must obtain, prior to making any such disclosure: (i) reasonable assurances from such third party that such Protected Information will be held confidential as provided pursuant to this Addendum and only disclosed as required by law or for the purposes for which it was disclosed to such third party; and (ii) an agreement to implement reasonable and appropriate safeguards to protect the Protected Information; and (iii) an agreement from such third party to immediately notify Associate of any breaches of confidentiality of the Protected Information or any Security Incident, to the extent it has obtained knowledge of such breach. Additional provisions, if any, governing permitted disclosures of Protected Information are set forth in Attachment A.



c. Appropriate Safeguards. Associate shall implement appropriate Security Measures as are necessary to protect against the use or disclosure of Protected Information other than as permitted by the Contract or this Addendum. Associate shall maintain a comprehensive written information privacy and security program that includes Security Measures that reasonably and appropriately protect the Confidentiality, Integrity, and Availability of Protected Information relative to the size and complexity of the Associate's operations and the nature and scope of its activities.

d. Reporting of Improper Use or Disclosure. Associate shall report to CE in writing any use or disclosure of Protected Information, whether suspected or actual, other than as provided for by the Contract and this Addendum within ten (10) days of becoming aware of such use or disclosure. If the disclosure is a Major Disclosure, then the improper use or disclosure shall be reported within three (3) days. A Major Disclosure means any improper use or disclosure of over twenty-five percent (25%) of the Protected Information held by the Associate. CE and Associate will cooperate to mitigate the effects of any unauthorized use or disclosure and document the outcome.

e. Associate's Agents. If Associate uses one or more subcontractors or agents to provide services under this Agreement, and such subcontractors or agents receive or have access to Protected Information, each subcontractor or agent shall sign an agreement with Associate containing substantially the same provisions as this Addendum and further identifying CE as a third party beneficiary of the agreement with such subcontractors or agents in the event of any violation of such subcontractor or agent agreement. Associate shall implement and maintain sanctions against agents and subcontractors that violate such restrictions and conditions and shall mitigate the effects of any such violation.

f. Access to Protected Information. Associate shall make Protected Information maintained by Associate or its agents or subcontractors in Designated Record Sets available to CE for inspection and copying within ten (10) days of a request by CE to enable CE to fulfill its obligations to permit individual access to PHI under the Privacy Rule, including, but not limited to, 45 CFR § 164.524.

g. Amendment of PHI. Within ten (10) days of receipt of a request from CE for an amendment of Protected Information or a record about an individual contained in a Designated Record Set, Associate or its agents or subcontractors shall make such Protected Information available to CE for amendment and incorporate any such amendment to enable CE to fulfill its obligations with respect to requests by individuals to amend their PHI under the Privacy Rule, including, but not limited to, 45 CFR § 164.526. If any individual requests an amendment of Protected Information directly from Associate or its agents or subcontractors, Associate must notify CE in writing within ten (10) days of receipt of the request. Any denial of amendment of Protected Information maintained by Associate or its agents or subcontractors shall be the responsibility of CE.

h. Accounting Rights. Within ten (10) days of notice by CE of a request for an accounting of disclosures of Protected Information, Associate and its agents or subcontractors shall make available to CE the information required to provide an accounting of disclosures to enable CE to fulfill its obligations under the Privacy Rule, including, but not limited to, 45 CFR § 164.528. As set forth in, and as limited by, 45 CFR § 164.528, Associate shall not provide an accounting to CE of disclosures made: (i) to carry out treatment, payment or health care operations, as set forth in 45 CFR § 164.506; (ii) to individuals of Protected Information about them as set forth in 45 CFR § 164.502; (iii) pursuant to an authorization as provided in 45 CFR § 164.508; (iv) to persons involved in the individual's care or other notification purposes as set forth in 45 CFR § 164.510; (v) for national security or intelligence purposes as set forth in 45 CFR § 164.512(k)(2); or (vi) to correctional institutions or law enforcement officials as set forth in 45 CFR § 164.512(k)(5). Associate agrees to implement a process that allows for an accounting to be collected and maintained by Associate and its agents or subcontractors for at least six (6) years prior to the request, but not before the compliance date of the Privacy Rule.



At a minimum, such information shall include: (i) the date of disclosure; (ii) the name of the entity or person who received Protected Information and, if known, the address of the entity or person; (iii) a brief description of Protected Information disclosed; and (iv) a brief statement of purpose of the disclosure that reasonably informs the individual of the basis for the disclosure, or a copy of the individual's authorization, or a copy of the written request for disclosure. In the event that the request for an accounting is delivered directly to Associate or its agents or subcontractors, Associate shall within ten (10) days of the receipt of the request forward it to CE in writing. It shall be CE's responsibility to prepare and deliver any such accounting requested. Associate shall not disclose any Protected Information except as set forth in Section 2(b) of this Addendum.

i. Governmental Access to Records. Associate shall make its internal practices, books and records relating to the use and disclosure of Protected Information available to the Secretary of the U.S. Department of Health and Human Services (the "Secretary"), in a time and manner designated by the Secretary, for purposes of determining CE's compliance with the HIPAA Regulations. Associate shall provide to CE a copy of any Protected Information that Associate provides to the Secretary concurrently with providing such Protected Information to the Secretary.

j. Minimum Necessary. Associate (and its agents or subcontractors) shall only request, use and disclose the minimum amount of Protected Information necessary to accomplish the purpose of the request, use or disclosure, in accordance with the Minimum Necessary requirements of the Privacy Rule, including, but not limited to 45 CFR §§ 164.502(b) and 164.514(d).

k. Data Ownership. Unless otherwise specified in the Contract, Associate acknowledges that Associate has no ownership rights with respect to the Protected Information. The CE retains all rights with respect to ownership of the Protected Information.

l. Retention of Protected Information. Notwithstanding Section 5(d) of this Addendum, Associate and its subcontractors or agents shall retain all Protected Information throughout the term of the Contract and shall continue to maintain the information required under Section 2(h) of this Addendum for a period of six (6) years from the date of creation or the date when it last was in effect, whichever is later, or as required by law. This obligation shall survive the termination of the Contract.

m. Destruction of Protected Information. Associate agrees to implement policies and procedures for the final disposition of electronic Protected Information and/or the hardware and equipment on which it is stored, including but not limited to, removal before re-use.

n. Notification of Breach. During the term of the Contract or this Addendum, Associate shall notify CE within twenty-four (24) hours of any suspected or actual breach of security, intrusion, or unauthorized use or disclosure of PHI and/or any actual or suspected use or disclosure of data in violation of any applicable federal or state laws or regulations. Associate shall take (i) prompt corrective action to cure any such deficiencies and (ii) any action pertaining to such unauthorized disclosure required by applicable federal and state laws and regulations. CE and Associate will cooperate to mitigate the effects on any breach, Security Incident, intrusion, or unauthorized use and document the Security Incident and its outcome.

o. Audits, Inspection and Enforcement. Within ten (10) days of a written request by CE, Associate and its agents or subcontractors shall allow CE to conduct a reasonable inspection of the facilities, systems, books, records, agreements, policies and procedures relating to the use or disclosure of Protected Information pursuant to this Addendum for the purpose of determining whether Associate has complied with this Addendum; provided, however, that: (i) Associate and CE shall mutually agree in advance upon the scope, timing and location of such an inspection; (ii) CE shall protect the confidentiality of all confidential and



proprietary information of Associate to which CE has access during the course of such inspection; and (iii) CE or Associate shall execute a nondisclosure agreement, if requested by Associate or CE. The fact that CE inspects, or fails to inspect, or has the right to inspect, Associate's facilities, systems, books, records, agreements, policies and procedures does not relieve Associate of its responsibility to comply with this Addendum, nor does CE's (i) failure to detect or (ii) detection, but failure to notify Associate or require Associate's remediation of any unsatisfactory practices, constitute acceptance of such practice or a waiver of CE's enforcement rights under this Agreement.

p. Safeguards During Transmission. Associate shall be responsible for using Security Measures to reasonably and appropriately maintain and ensure the Confidentiality, Integrity, and Availability of Protected Information transmitted to CE pursuant to this Agreement, in accordance with the standards and requirements of the HIPAA Regulations, until such Protected Information is received by CE, and in accordance with any specifications set forth in Attachment A.

3. Obligations of CE.

a. Safeguards During Transmission. CE shall be responsible for using Security Measures to reasonably and appropriately maintain and ensure the Confidentiality, Integrity, and Availability of Protected Information transmitted to Associate pursuant to this Agreement, in accordance with the standards and requirements of the HIPAA Regulations, until such Protected Information is received by Associate, and in accordance with any specifications set forth in Attachment A.

b. Notice of Changes. CE shall provide Associate with a copy of its notice of privacy practices produced in accordance with 45 CFR § 164.520, as well as any subsequent changes or limitation(s) to such notice, to the extent such changes or limitations may effect Associate's use or disclosure of Protected Information. CE shall provide Associate with any changes in, or revocation of, permission to use or disclose Protected Information, to the extent it may affect Associate's permitted or required uses or disclosures. To the extent that it may affect Associate's permitted use or disclosure of Protected Information, CE shall notify Associate of any restriction on the use or disclosure of Protected Information that CE has agreed to in accordance with 45 CFR § 164.522.

4. Term. This Addendum shall continue in effect as to each Contract to which it applies until such Contract is terminated or is replaced with a new contract between the parties containing provisions meeting the requirements of the HIPAA Regulations, whichever first occurs. However, certain obligations will continue as specified in this Addendum.

5. Termination.

a. Material Breach. In addition to any other provisions in the Contract regarding breach, a breach by Associate of any provision of this Addendum, as determined by CE, shall constitute a material breach of the Agreement and shall provide grounds for termination of the Contract by CE pursuant to the provisions of the Contract covering termination for cause. If the Contract contains no express provisions regarding termination for cause, the following shall apply to termination for breach of this Addendum, subject to 5.b.:

(1) Default. If Associate refuses or fails to timely perform any of the provisions of this Addendum, CE may notify Associate in writing of the non-performance, and if not corrected within thirty (30) days, CE may immediately terminate the Agreement. Associate shall continue performance of the Agreement to the extent it is not terminated.



(2) Associate's Duties. Notwithstanding termination of the Agreement, and subject to any directions from CE, Associate shall take timely, reasonable and necessary action to protect and preserve property in the possession of Associate in which CE has an interest.

(3) Compensation. Payment for completed performance delivered and accepted by CE shall be at the Contract price.

(4) Erroneous Termination for Default. If after such termination it is determined, for any reason, that Associate was not in default, or that Associate's action/inaction was excusable, such termination shall be treated as a termination for convenience, and the rights and obligations of the parties shall be the same as if the contract had been terminated for convenience, as described in this Addendum or in the Contract.

b. Reasonable Steps to Cure Breach. If CE knows of a pattern of activity or practice of Associate that constitutes a material breach or violation of the Associate's obligations under the provisions of this Addendum or another arrangement and does not terminate this Agreement pursuant to Section 5(a), then CE shall take reasonable steps to cure such breach or end such violation, as applicable. If CE's efforts to cure such breach or end such violation are unsuccessful, CE shall either (i) terminate this Agreement, if feasible or (ii) if termination of this Agreement is not feasible, CE shall report Associate's breach or violation to the Secretary of the Department of Health and Human Services.

c. Reserved.

d. Effect of Termination.

(1) Except as provided in paragraph (2) of this subsection, upon termination of this Agreement, for any reason, Associate shall return or destroy all Protected Information that Associate or its agents or subcontractors still maintain in any form, and shall retain no copies of such Protected Information. If Associate elects to destroy the Protected Information, Associate shall certify in writing to CE that such Protected Information has been destroyed.

(2) If Associate believes that returning or destroying the Protected Information is not feasible, including but not limited to, a finding that record retention requirements provided by law make return or destruction infeasible, Associate shall promptly provide CE notice of the conditions making return or destruction infeasible. Upon mutual agreement of CE and Associate that return or destruction of Protected Information is infeasible, Associate shall continue to extend the protections of Sections 2(a), 2(b), 2(c), 2(d) and 2(e) of this Addendum to such information, and shall limit further use of such Protected Information to those purposes that make the return or destruction of such Protected Information infeasible.

6. Reserved.

7. No Waiver of Immunity. No term or condition of this Agreement shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protection, or other provisions of the Michigan Governmental Immunity Act, MCL 691.1401, *et seq.*, the Federal Tort Claims Act, 28 U.S.C. 2671 *et seq.*, or the common law, as applicable, as now in effect or hereafter amended.

8. Reserved.



9. Disclaimer. CE makes no warranty or representation that compliance by Associate with this Addendum, HIPAA or the HIPAA Regulations will be adequate or satisfactory for Associate's own purposes. Associate is solely responsible for all decisions made by Associate regarding the safeguarding of Protected Information.

10. Certification. To the extent that CE determines an examination is necessary in order to comply with CE's legal obligations pursuant to HIPAA relating to certification of its security practices, CE or its authorized agents or contractors, may, at CE's expense, examine Associate's facilities, systems, procedures and records as may be necessary for such agents or contractors to certify to CE the extent to which Associate's security safeguards comply with HIPAA, the HIPAA Regulations or this Addendum.

11. Amendment.

a. Amendment to Comply with Law. The parties acknowledge that state and federal laws relating to data security and privacy are rapidly evolving and that amendment of this Addendum may be required to provide for procedures to ensure compliance with such developments. The parties specifically agree to take such action as is necessary to implement the standards and requirements of HIPAA, the Privacy Rule, the Security Rule and other applicable laws relating to the security or privacy of Protected Information. The parties understand and agree that CE must receive satisfactory written assurance from Associate that Associate will adequately safeguard all Protected Information. Upon the request of either party, the other party agrees to promptly enter into negotiations concerning the terms of an amendment to this Addendum embodying written assurances consistent with the standards and requirements of HIPAA, the Privacy Rule, the Security Rule or other applicable laws. CE may terminate the Agreement upon thirty (30) days written notice in the event (i) Associate does not promptly enter into negotiations to amend this Agreement when requested by CE pursuant to this Section or (ii) Associate does not enter into an amendment to this Agreement providing assurances regarding the safeguarding of PHI that CE, in its sole discretion, deems sufficient to satisfy the standards and requirements of HIPAA, the HIPAA Regulations and other applicable laws.

b. Amendment of Attachment A. Attachment A may be modified or amended by mutual agreement of the parties in writing from time to time without formal amendment of this Addendum.

12. Assistance in Litigation or Administrative Proceedings. Associate shall make itself, and any subcontractors, employees or agents assisting Associate in the performance of its obligations under this Agreement, available to CE, at no cost to CE, to testify as witnesses, or otherwise, in the event of litigation or administrative proceedings being commenced against CE, its directors, officers or employees, departments, agencies, or divisions based upon a claimed violation of HIPAA, the HIPAA Regulations or other laws relating to security and privacy of Protected Information, except where Associate or its subcontractor, employee or agent is a named adverse party.

13. No Third Party Beneficiaries. Nothing express or implied in this Agreement is intended to confer, nor shall anything herein confer, upon any person other than CE, Associate and their respective successors or assigns, any rights, remedies, obligations or liabilities whatsoever.

14. Effect on Contract. Except as specifically required to implement the purposes of this Addendum, or to the extent inconsistent with this Addendum, all other terms of the Contract shall remain in force and effect. This Addendum is incorporated into the Contract as if set forth in full therein. The parties expressly acknowledge and agree that sufficient mutual consideration exists to make this Addendum legally binding in accordance with its terms. Associate and CE expressly waives any claim or defense that this Addendum is not part of the Agreement between the parties under the Contract.



15. Interpretation and Order of Precedence. This Addendum is incorporated into and becomes part of each Contract identified herein. Together, this Addendum and each separate Contract constitute the “Agreement” of the parties with respect to their Business Associate relationship under HIPAA and the HIPAA Regulations. The provisions of this Addendum shall prevail over any provisions in the Contract that may conflict or appear inconsistent with any provision in this Addendum. This Addendum and the Contract shall be interpreted as broadly as necessary to implement and comply with HIPAA and the HIPAA Regulations. The parties agree that any ambiguity in this Addendum shall be resolved in favor of a meaning that complies and is consistent with HIPAA and the HIPAA Regulations. This Addendum supercedes and replaces any previous separately executed HIPAA addendum between the parties. In the event of any conflict between the mandatory provisions of the HIPAA Regulations and the provisions of this Addendum, the HIPAA Regulations shall control. Where the provisions of this Addendum differ from those mandated by the HIPAA Regulations, but are nonetheless permitted by the HIPAA Regulations, the provisions of this Addendum shall control.

16. Effective Date. This Addendum is effective upon receipt of the last approval necessary and the affixing of the last signature required.

17. Survival of Certain Contract Terms. Notwithstanding anything herein to the contrary, Associate’s obligations under Section 5(d) and record retention laws (“Effect of Termination”) and Section 13 (“No Third Party Beneficiaries”) shall survive termination of this Agreement and shall be enforceable by CE as provided herein in the event of such failure to perform or comply by the Associate.

18. Representatives and Notice.

a. Representatives. For the purpose of this Agreement, the individuals identified in the Contract shall be the representatives of the respective parties. If no representatives are identified in the Contract, the individuals listed below are hereby designated as the parties’ respective representatives for purposes of this Agreement. Either party may from time to time designate in writing new or substitute representatives.

b. Notices. All required notices shall be in writing and shall be hand delivered or given by certified or registered mail to the representatives at the addresses set forth below.

Covered Entity Representative:

Name: _____
Title: _____
Department and Division: _____
Address: _____

Business Associate Representative:

Name: _____
Title: _____
Department and Division: _____
Address: _____

Any notice given to a party under this Addendum shall be deemed effective, if addressed to such party, upon: (i) delivery, if hand delivered; or (ii) the third (3rd) Business Day after being sent by certified or registered mail.



IN WITNESS WHEREOF, the parties hereto have duly executed this Addendum as of the Addendum Effective Date.

Associate

Covered Entity

[INSERT NAME]

[INSERT NAME]

By: _____

By: _____

Print Name: _____

Print Name: _____

Title: _____

Title: _____



ATTACHMENT A

This Attachment sets forth additional terms to the HIPAA Business Associate Addendum dated _____, between _____ and _____ (“Addendum”) and is effective as of _____ (the “Attachment Effective Date”). This Attachment applies to the specific contracts listed below covered by the Addendum. This Attachment may be amended from time to time as provided in Section 11(b) of the Addendum.

1. Specific Contract Covered. This Attachment applies to the following specific contract covered by the Addendum: _____

2. Additional Permitted Uses. In addition to those purposes set forth in Section 2(a) of the Addendum, Associate may use Protected Information as follows:

3. Additional Permitted Disclosures. In addition to those purposes set forth in Section 2(b) of the Addendum, Associate may disclose Protected Information as follows:

4. Subcontractor(s). The parties acknowledge that the following subcontractors or agents of Associate shall receive Protected Information in the course of assisting Associate in the performance of its obligations under the Contract and the Addendum:

5. Receipt. Associate’s receipt of Protected Information pursuant to the Contract and Addendum shall be deemed to occur as follows, and Associate’s obligations under the Addendum shall commence with respect to such PHI upon such receipt:

6. Additional Restrictions on Use of Data. CE is a Business Associate of certain other Covered Entities and, pursuant to such obligations of CE, Associate shall comply with the following restrictions on the use and disclosure of Protected Information:



7. Additional Terms. *[This section may include specifications for disclosure format, method of transmission, use of an intermediary, use of digital signatures or PKI, authentication, additional security of privacy specifications, de-identification or re-identification of data and other additional terms.]*

Associate

Covered Entity

[INSERT NAME]

[INSERT NAME]

By: _____

By: _____

Print Name: _____

Print Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

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