

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

March 6, 2009

**CHANGE NOTICE NO. 6 (REVISED)**  
**TO**  
**CONTRACT NO. 071B5200212**  
**between**  
**THE STATE OF MICHIGAN**  
**and**

NAME & ADDRESS OF VENDOR <b>Gen-Probe</b> <b>10210 Genetic Center Drive</b> <b>San Diego, CA 92121</b>  <b>Email: allisonh@gen-probe.com</b>	TELEPHONE (858) 410-8988 <b>Allison Horgan</b>
	VENDOR NUMBER/MAIL CODE
	BUYER/CA (517) 241-1647 <b>Irene Pena</b>
Contract Compliance Inspector: Shirley Martin (517) 241-2305 CS138# <b>Strand Displacement Amplification Assay Kits - Department of Community Health</b>	
CONTRACT PERIOD 3 Years From: <b>February 1, 2005</b> To: <b>January 31, 2010</b>	
TERMS <b>Net 30 Days</b>	SHIPMENT <b>7 Days ARO</b>
F.O.B. <b>Pre-Paid and Add</b>	SHIPPED FROM <b>San Diego, CA</b>
MINIMUM DELIVERY REQUIREMENTS <b>N/A</b>	

**NATURE OF CHANGE(S):**

**Contract Change Notice No. 6 is REVISED per the following:**

**Items 1032 & 1088 are Aptima Combo 2 Assay and Aptima CT ASR Kits**

**Item 1091 Aptima GC ASR Kit at \$682.50 per kit is added to this Contract.**

**AUTHORITY/REASON:**

**Per Agency request and DMB/Purchasing Operations.**

**TOTAL ESTIMATED CONTRACT VALUE REMAINS: \$3,453,240.00**

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

February 11, 2009

**CHANGE NOTICE NO. 6**  
**TO**  
**CONTRACT NO. 071B5200212**  
**between**  
**THE STATE OF MICHIGAN**  
**and**

NAME & ADDRESS OF VENDOR <b>Gen-Probe</b> <b>10210 Genetic Center Drive</b> <b>San Diego, CA 92121</b>  Email: <a href="mailto:allisonh@gen-probe.com">allisonh@gen-probe.com</a>	TELEPHONE (858) 410-8988 <b>Allison Horgan</b>
	VENDOR NUMBER/MAIL CODE
	BUYER/CA (517) 241-1647 <b>Irene Pena</b>
Contract Compliance Inspector: Shirley Martin (517) 241-2305 CS138# <b>Strand Displacement Amplification Assay Kits - Department of Community Health</b>	
CONTRACT PERIOD 3 Years From: <b>February 1, 2005</b> To: <b>January 31, 2010</b>	
TERMS <b>Net 30 Days</b>	SHIPMENT <b>7 Days ARO</b>
F.O.B. <b>Pre-Paid and Add</b>	SHIPPED FROM <b>San Diego, CA</b>
MINIMUM DELIVERY REQUIREMENTS <b>N/A</b>	

**NATURE OF CHANGE(S):**

Effective immediately Item No. 1032 Optima Combo 2 Assay (100 tests) is increased to \$837.90 per kit. In addition, item No. 1088 Optima CT ASR Kit is increased to \$682.50 per kit.

**AUTHORITY/REASON:**

Per Agency request and DMB/Purchasing Operations.

**TOTAL ESTIMATED CONTRACT VALUE REMAINS: \$3,453,240.00**

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

December 22, 2008

**CHANGE NOTICE NO. 5**  
**TO**  
**CONTRACT NO. 071B5200212**  
**between**  
**THE STATE OF MICHIGAN**  
**and**

NAME & ADDRESS OF VENDOR <b>Gen-Probe</b> <b>10210 Genetic Center Drive</b> <b>San Diego, CA 92121</b>  Email: <a href="mailto:allisonh@gen-probe.com">allisonh@gen-probe.com</a>	TELEPHONE (858) 410-8988 <b>Allison Horgan</b>
	VENDOR NUMBER/MAIL CODE
	BUYER/CA (517) 241-1647 <b>Irene Pena</b>
Contract Compliance Inspector: Shirley Martin (517) 241-2305 CS138# <b>Strand Displacement Amplification Assay Kits - Department of Community Health</b>	
CONTRACT PERIOD 3 Years From: <b>February 1, 2005</b> To: <b>January 31, 2010</b>	
TERMS <b>Net 30 Days</b>	SHIPMENT <b>7 Days ARO</b>
F.O.B. <b>Pre-Paid and Add</b>	SHIPPED FROM <b>San Diego, CA</b>
MINIMUM DELIVERY REQUIREMENTS <b>N/A</b>	

**NATURE OF CHANGE(S):**

Effective immediately this Contract is hereby **EXTENDED** through January 31, 2010 and **INCREASED \$700,000.00.**

All other terms, conditions, pricing and specifications of this Contract shall remain the same.

**AUTHORITY/REASON:**

Per Agency request and DMB/Purchasing Operations.

**INCREASE: \$700,000.00**

**TOTAL REVISED ESTIMATED CONTRACT VALUE: \$3,453,240.00**

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 14, 2008

CHANGE NOTICE NO. 4  
 TO  
 CONTRACT NO. 071B5200212  
 between  
 THE STATE OF MICHIGAN  
 and

NAME & ADDRESS OF VENDOR <b>Gen-Probe</b> <b>10210 Genetic Center Drive</b> <b>San Diego, CA 92121</b>  Email: <a href="mailto:allisonh@gen-probe.com">allisonh@gen-probe.com</a>	TELEPHONE (858) 410-8988 <b>Allison Horgan</b>
	VENDOR NUMBER/MAIL CODE
	BUYER/CA (517) 241-1647 <b>Irene Pena</b>
Contract Compliance Inspector: Shirley Martin (517) 241-2305 CS138# <b>Strand Displacement Amplification Assay Kits - Department of Community Health</b>	
CONTRACT PERIOD 3 Years From: <b>February 1, 2005</b> To: <b>February 1, 2009</b>	
TERMS <b>Net 30 Days</b>	SHIPMENT <b>7 Days ARO</b>
F.O.B. <b>Pre-Paid and Add</b>	SHIPPED FROM <b>San Diego, CA</b>
MINIMUM DELIVERY REQUIREMENTS <b>N/A</b>	

**NATURE OF CHANGE(S):**

Effective immediately this Contract is hereby increased \$200,000.00

All other terms, conditions, pricing and specifications of this Contract shall remain the same.

Please Note: The buyer has been changed to Irene Pena.

**AUTHORITY/REASON:**

Per Agency request and DMB/Purchasing Operations.

**TOTAL REVISED ESTIMATED CONTRACT VALUE: \$2,753,240.00**

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

January 11, 2008

**CHANGE NOTICE NO. 3**  
**TO**  
**CONTRACT NO. 071B5200212**  
**between**  
**THE STATE OF MICHIGAN**  
**and**

NAME & ADDRESS OF VENDOR <b>Gen-Probe</b> <b>10210 Genetic Center Drive</b> <b>San Diego, CA 92121</b>  Email: <a href="mailto:allisonh@gen-probe.com">allisonh@gen-probe.com</a>	TELEPHONE (858) 410-8988 <b>Allison Horgan</b>
	VENDOR NUMBER/MAIL CODE
	BUYER/CA (517) 241-2005 <b>Lisa Morrison, Buyer</b>
Contract Compliance Inspector: Shirley Martin (517) 241-2305 CS138# <b>Strand Displacement Amplification Assay Kits - Department of Community Health</b>	
CONTRACT PERIOD 3 Years From: <b>February 1, 2005</b> To: <b>February 1, 2009</b>	
TERMS <p style="text-align: center;"><b>Net 30 Days</b></p>	SHIPMENT <p style="text-align: center;"><b>7 Days ARO</b></p>
F.O.B. <p style="text-align: center;"><b>Pre-Paid and Add</b></p>	SHIPPED FROM <p style="text-align: center;"><b>San Diego, CA</b></p>
MINIMUM DELIVERY REQUIREMENTS <p style="text-align: center;"><b>N/A</b></p>	

**NATURE OF CHANGE(S):**

Effective immediately, new product code and pricing per the following.

Description	Old Product Code #	New Product Code #	New Price
Bleach Enhancer	D301174	302101	\$89.00 per kit

All other terms, conditions, pricing and specifications of this Contract shall remain the same.

**AUTHORITY/REASON:**

Per Agency request and DMB/Purchasing Operations.

**TOTAL ESTIMATED CONTRACT VALUE REMAINS: \$2,553,240.00**

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

December 5, 2007

**CHANGE NOTICE NO. 2 (REVISED)**  
**TO**  
**CONTRACT NO. 071B5200212**  
**between**  
**THE STATE OF MICHIGAN**  
**and**

NAME & ADDRESS OF VENDOR <b>Gen-Probe</b> <b>10210 Genetic Center Drive</b> <b>San Diego, CA 92121</b>  Email: <a href="mailto:allisonh@gen-probe.com">allisonh@gen-probe.com</a>	TELEPHONE (858) 410-8988 <b>Nicholle L. Moody</b>
	VENDOR NUMBER/MAIL CODE
	BUYER/CA (517) 241-2005 <b>Lisa Morrison, Buyer</b>
Contract Compliance Inspector: Shirley Martin (517) 241-2305 CS138# <b>Strand Displacement Amplification Assay Kits - Department of Community Health</b>	
CONTRACT PERIOD 3 Years From: <b>February 1, 2005</b> To: <b>February 1, 2009</b>	
TERMS <b>Net 30 Days</b>	SHIPMENT <b>7 Days ARO</b>
F.O.B. <b>Pre-Paid and Add</b>	SHIPPED FROM <b>San Diego, CA</b>
MINIMUM DELIVERY REQUIREMENTS <b>N/A</b>	

**NATURE OF CHANGE(S):**

Effective immediately this Contract is **EXTENDED** until February 1, 2009 and **INCREASED** by \$255,000.00.

All other terms, conditions, pricing and specifications of this Contract shall remain the same.

**AUTHORITY/REASON:**

Per DMB/Purchasing Operations and Administrative Board approval dated November 13, 2007.

**INCREASE: \$255,000.00**

**TOTAL REVISED ESTIMATED CONTRACT VALUE: \$2,553,240.00**

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

November 26, 2007

**CHANGE NOTICE NO. 2**  
**TO**  
**CONTRACT NO. 071B5200212**  
**between**  
**THE STATE OF MICHIGAN**  
**and**

NAME & ADDRESS OF VENDOR <b>Gen-Probe</b> <b>10210 Genetic Center Drive</b> <b>San Diego, CA 92121</b>  Email: <a href="mailto:allisonh@gen-probe.com">allisonh@gen-probe.com</a>	TELEPHONE (858) 410-8988 <b>Nicholle L. Moody</b>
	VENDOR NUMBER/MAIL CODE
	BUYER/CA (517) 241-2005 <b>Lisa Morrison, Buyer</b>
Contract Compliance Inspector: Shirley Martin (517) 241-2305 CS138# <b>Strand Displacement Amplification Assay Kits - Department of Community Health</b>	
CONTRACT PERIOD 3 Years From: <b>February 1, 2005</b> To: <b>February 1, 2009</b>	
TERMS <b>Net 30 Days</b>	SHIPMENT <b>7 Days ARO</b>
F.O.B. <b>Pre-Paid and Add</b>	SHIPPED FROM <b>San Diego, CA</b>
MINIMUM DELIVERY REQUIREMENTS <b>N/A</b>	

**NATURE OF CHANGE(S):**

Effective immediately this Contract is **EXTENDED** until February 1, 2009 and **INCREASED** by \$225,000.00.

All other terms, conditions, pricing and specifications of this Contract shall remain the same.

**AUTHORITY/REASON:**

Per DMB/Purchasing Operations and Administrative Board approval dated November 13, 2007.

**INCREASE: \$225,000.00**

**TOTAL ESTIMATED CONTRACT VALUE REMAINS: \$2,523,240.00**

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

April 18, 2005

**CHANGE NOTICE NO. 1  
 TO  
 CONTRACT NO. 071B5200212  
 between  
 THE STATE OF MICHIGAN  
 and**

NAME & ADDRESS OF VENDOR <b>Gen-Probe 10210 Genetic Center Drive San Diego, CA 92121</b>	TELEPHONE (858) 410-8988 <b>Nicholle L. Moody</b>
	VENDOR NUMBER/MAIL CODE
	BUYER/CA (517) 373-6535 <b>William C. Walsh, CPPB</b>
Contract Compliance Inspector: Shirley Martin (517) 241-2305 CS138# <b>Strand Displacement Amplification Assay Kits - Department of Community Health</b>	
CONTRACT PERIOD 3 Years From: <b>February 1, 2005</b> To: <b>January 31, 2008</b>	
TERMS <b>Net 30 Days</b>	SHIPMENT <b>7 Days ARO</b>
F.O.B. <b>Pre-Paid and Add</b>	SHIPPED FROM <b>San Diego, CA</b>
MINIMUM DELIVERY REQUIREMENTS <b>N/A</b>	

**NATURE OF CHANGE(S):**

Effective April 15, 2005, this Contract is hereby **AMENDED** as follows:

The new product codes for the Aptima CT and Aptima GC kits are as follows:

Description	Old Product Code #	New Product Code #
Aptima GC (Gonorrhea) 100 Tests \$650.00	5301	301091
Aptima CT (Chlamydia) 100 Tests \$650.00	5302	301088

All other terms, conditions and pricing of this Contract shall remain the same.

**AUTHORITY/REASON:** Per Vendor e-mail dated 4/7/04.

Increase: \$0.00

**TOTAL ESTIMATED CONTRACT VALUE REMAINS: \$2,298,240.00**

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

February 8, 2005

**NOTICE  
 OF  
 CONTRACT NO. 071B5200212  
 between  
 THE STATE OF MICHIGAN  
 and**

NAME & ADDRESS OF VENDOR  <b>Gen-Probe          10210 Genetic Center Drive          San Diego, CA 92121</b>	TELEPHONE (858) 410-8988 <b>Nicholle L. Moody</b>
	VENDOR NUMBER/MAIL CODE
	BUYER/CA (517) 373-6535 <b>William C. Walsh, CPPB</b>
Contract Compliance Inspector: Shirley Martin (517) 241-2305 <b>Strand Displacement Amplification Assay Kits – Department of Community Health</b>	
CONTRACT PERIOD: From: <b>February 1, 2005</b> To: <b>January 31, 2008</b>	
TERMS <p style="text-align: center;"><b>Net 30 Days</b></p>	SHIPMENT <p style="text-align: center;"><b>7 Days ARO</b></p>
F.O.B. <p style="text-align: center;"><b>Pre-Paid and Add</b></p>	SHIPPED FROM <p style="text-align: center;"><b>San Diego, CA</b></p>
MINIMUM DELIVERY REQUIREMENTS <p style="text-align: center;"><b>N/A</b></p>	

The terms and conditions of this Contract are attached.

Estimated Contract Value: **\$2,298,240.00**

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

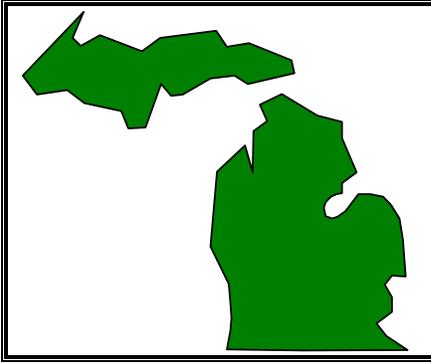
**CONTRACT NO. 071B5200212**  
**between**  
**THE STATE OF MICHIGAN**  
**and**

NAME & ADDRESS OF VENDOR  <b>Gen-Probe</b> <b>10210 Genetic Center Drive</b> <b>San Diego, CA 92121</b>	TELEPHONE (858) 410-8988 <b>Nicholle L. Moody</b> VENDOR NUMBER/MAIL CODE  BUYER/CA (517) 373-6535 <b>William C. Walsh, CPPB</b>
Contract Compliance Inspector: Shirley Martin (517) 241-2305 <b>Strand Displacement Amplification Assay Kits – Department of Community Health</b>	
CONTRACT PERIOD: From: <b>February 1, 2005</b> To: <b>January 31, 2008</b>	
TERMS <p style="text-align: center;"><b>Net 30 Days</b></p>	SHIPMENT <p style="text-align: center;"><b>7 Days ARO</b></p>
F.O.B. <p style="text-align: center;"><b>Pre-Paid and Add</b></p>	SHIPPED FROM <p style="text-align: center;"><b>San Diego, CA</b></p>
MINIMUM DELIVERY REQUIREMENTS <p style="text-align: center;"><b>N/A</b></p>	
MISCELLANEOUS INFORMATION:  <b>The terms and conditions of this Contract are attached.</b>  <b>Estimated Contract Value:            \$2,298,240.00</b>	

**THIS IS NOT AN ORDER:** This Contract Agreement is awarded on the basis of our inquiry and your quote. A Purchase Order Form will be issued only as the requirements of the Department of Community Health are submitted to Acquisition Services. Orders for delivery may be issued directly by the Department of Community Health through the issuance of a Purchase Order Form.

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

<p><b>FOR THE VENDOR:</b></p> <p style="text-align: center;"><b>Gen-Probe</b>          _____          Firm Name</p> <p style="text-align: center;">_____          Authorized Agent Signature</p> <p style="text-align: center;">_____          Authorized Agent (Print or Type)</p> <p style="text-align: center;">_____          Date</p>	<p><b>FOR THE STATE:</b></p> <p style="text-align: center;">_____          Signature  <b>Anthony J. DesChenes, Division Director</b>          _____          Name  <b>Commodities Division</b>  <b>Acquisition Services</b>          _____          Title</p> <p style="text-align: center;">_____          Date</p>
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**STATE OF MICHIGAN**  
**Department of Management and Budget**  
**Acquisition Services**

Invitation to Bid No. 071B5200212  
Strand Displacement Amplification Assay Kits

Buyer Name: William C. Walsh, CPPB  
Telephone Number: (517) 373-6535  
E-Mail Address: walshw@michigan.gov



Strand Displacement Amplification Assay Kits

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## **Article1 – Statement of Work (SOW)**

### **1.0 Introduction**

#### **1.001 DEFINING DOCUMENT**

This document contains or incorporates defined requirements, the specifications and scope of work, and all Contractual terms and conditions.

#### **1.002 PROJECT TITLE AND DESCRIPTION**

This Contract is for Strand Displacement Amplification Assay Kits, for the Michigan Department of Community Health.

#### **1.003 PROJECT CONTROL**

##### Project Control

- a. The Contractor will carry out this project under the direction and control of the Department of Community Health.
- b. Although there will be continuous liaison with the Contractor team, the client agency's project director will meet as necessary, with the Contractor's project manager for the purpose of reviewing progress and providing necessary guidance to the Contractor in solving problems that arise.

#### **1.004 COMMENCEMENT OF WORK**

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

### **1.1 Product Quality**

#### **1.101 SPECIFICATIONS**

Definite Specifications - All commodities and/or services to be furnished hereunder shall conform to the specifications as noted below:

- 1) To the best of their ability Gen-Probe agrees to provide the same lot number for each monthly shipment, with the issuance of a standing order.
- 2) Pricing for the State of Michigan will also be extended to each of the Regional Laboratories in the cities of Saginaw, Kalamazoo, Detroit, Grand Rapids, and Houghton.
- 3) The system must be a nucleic acid amplification test (NAAT). The APTIMA Combo 2 Assay is a target amplification nucleic acid probe test that utilizes target capture for the in vitro qualitative, simultaneous detection and differentiation of ribosomal RNA (rRNA) from *Chlamydia trachomatis* and/or *Neisseria gonorrhoeae*.
- 4) The system must have available a dual assay for GC and chlamydia and a chlamydia only assay. This must either be currently available or already submitted to FDA for approval. The APTIMA CT Analyte Specific Reagent (ASR) and the APTIMA GC ASR are used for the detection of rRNA targets from *Chlamydia trachomatis* or *Neisseria gonorrhoeae*, respectively. The APTIMA ASR products are manufactured under current good manufacturing practices (cGMP) and are currently in FDA, awaiting approval.



- 5) The system must be capable of testing urines, cervical swabs, and urethral swabs. APTIMA Combo 2 is approved for testing endocervical and male urethral swab specimens, and in female and male urine specimens. The assay may be used to test specimens from symptomatic and asymptomatic individuals. Reference: APTIMA Combo 2 Package insert IN0037 Rev. B. Pg. 1. The APTIMA Combo 2 assay is also FDA approved for self-collected vaginal swabs.
- 6) The system must have an FDA approved collection system for samples types listed above.
- 7) Specimen Stability: Swab specimens must be transported to the laboratory in the swab specimen transport medium and tube at 2 to 30 degrees C and tested within 60 days. Urine specimens can be transported to the laboratory at 2 to 30 degrees C in either the primary collection device (any clean, preservative free cup) or in the Gen-Probe urine specimen transport tube. Urine specimens transferred into the Gen-Probe specimen transport tube within 24 hours of collection can be stored at 2 to 30 degrees C for 30 days after collection.
- 8) Ideally the system should offer a confirmatory assay for positive tests. This assay should utilize a different target than the original assay. The APTIMA CT Analyte Specific Reagent (ASR) and the APTIMA GC ASR are used for the detection of rRNA targets from Chlamydia trachomatis or Neisseria gonorrhoeae, respectively. These rRNA targets are distinct from those that are detected with the commercially available APTIMA Combo 2 Assay, allowing them to be utilized as a confirmatory assay for positive APTIMA Combo 2 samples.
- 9) All reagents and supplies should be capable of room temperature storage and have a minimum shelf-life of 6 months. The following reagents are stable when stored at 2 –8 degrees C:

APTIMA Combo 2, CT (ASR), GC (ASR) Enzyme Reagent  
APTIMA Combo 2, CT (ASR), GC (ASR) Amplification Reagent  
APTIMA Combo 2, CT (ASR), GC (ASR) Probe Reagent  
APTIMA Combo 2, CT (ASR), GC (ASR) Target Capture Reagent B  
APTIMA Combo 2, CT (ASR), GC (ASR) Positive Control, CT  
APTIMA Combo 2, CT (ASR), GC (ASR) Positive Control, GC

The Following reagents are stable when stored at 2- 30 degrees C:

APTIMA Combo 2, CT (ASR), GC (ASR) Enzyme Reconstitute Solution  
APTIMA Combo 2, CT (ASR), GC (ASR) Amplification Reconstitute Sol.  
APTIMA Combo 2, CT (ASR), GC (ASR) Probe Reconstitute Solution  
APTIMA Combo 2, CT (ASR), GC (ASR) Selection Reagent  
APTIMA Combo 2, Wash Solution  
APTIMA Combo 2, Buffer for deactivation Fluid  
APTIMA Combo 2, Oil Reagent

The minimum shelf life for all reagents and supplies is three (3) months.

The Following reagents are stable when stored at 2- 30 degrees C:

APTIMA CT (ASR), GC (ASR) Target Capture Reagent

- 10) The system may be automated or manual. An automated or semi-automated system is desirable. The system must have a throughput of 200 combined assays per 8 hour shift per person.

The Semi-automated DTS 400 Systems has the capacity to produce 400 results (200 combined assays) in an 8 hour shift utilizing one technologist.

The automated DTS 800 Systems has the capacity to produce 800 results (400 combined assays) in an 8 hour shift utilizing one technologist.



11) All equipment necessary for testing must be provided by and serviced by the vendor for all six sites. Equipment rental or lease must be included in the reagent cost.

The Gen-Probe Service Organization will provide technical telephone support and troubleshooting, on site response by Field Technical Representatives, Instrument Service repair and management and administration of all TECAN Service Contracts.

#### **Technical Assistance**

The Technical Assistance Center provides seamless service to include problem resolution and documentation via telephone or electronic communication Monday through Friday, 6:00 A.M. to 5 P.M. Pacific Standard Time, excluding company designated holidays.

Gen-Probe Field Technical Service Representatives will provide on-site troubleshooting within 24 hours (except weekends and holidays)

### **1.102 RESEARCH AND DEVELOPMENT**

Gen-Probe may support research studies (i.e. CT sensitivity).

### **1.103 QUALITY ASSURANCE PROGRAM**

Gen-Probe is TUV certified and GMP compliant.

### **1.104 WARRANTY FOR PRODUCTS OR SERVICES**

Gen-Probe warrants that the Reagents shall meet the required performance specifications to perform the desired tests described in the User Manuals. The extent of Gen-Probe's liability under this warranty is limited to replacing any defective Reagent. Gen-Probe does not manufacture the Equipment. The Equipment is fully warranted through manufacturers as described in the Equipment Operator's Manual provided to Customer and such warranties extend to Gen-Probe's customers. Gen-Probe warrants that Gen-Probe may, at its option, repair or replace any defective Equipment. The foregoing warranty shall not apply in the event that: (a) Customer has not used and maintained the Equipment in accordance with the guidelines set forth in the Equipment Operator's Manual provided to Customer; (b) if Customer has used the Equipment with reagents and supplies not expressly authorized by Gen-Probe; (c) if the Equipment is repaired or altered by a party other than Gen-Probe without Gen-Probe's prior written approval; or (d) if the Equipment has been subject to misuse, negligence, or accident. THE FOREGOING WARRANTIES ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, ARISING BY OPERATION OF LAW OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND NONINFRINGEMENT.

## **1.2 Service Capabilities**

### **1.201 CUSTOMER SERVICE/ORDERING**

Orders may be placed by phone, fax and e-mail. Gen-Probe's Customer Phone Number is 800-523-5001 Option 1. The representatives for Customer and Technical Service are listed below.

Tina Baily  
Technical Sales Representative  
Primary Responsibilities: Account management  
Location: (covering the State of MI, including the UP)  
Telephone (800) 523-5001 ext. 5401  
Cell Phone (810) 542-2918



Corlis Little MT(ASCP)  
Field Technical Representative  
Primary Responsibilities: Instrumentation set-up, technical training, continued technical support.  
Location: Grand Rapids, MI (covering the State of MI, including the UP)  
Telephone (800) 523-5001 ext. 5363

Gregg Akin  
Customer Service Representative  
Primary Responsibilities: Administrative assistance, Product ordering, shipping, and billing.  
Location: Gen-Probe's Home Office- San Diego, CA  
Additional support: Gen-Probe's customer service department  
Telephone (800) 523-5001 ext. 8889

Tim Heath  
Technical Service Representative  
Primary Responsibilities: Phone technical support.  
Location: Gen-Probe's Home Office- San Diego, CA  
Additional support: Gen-Probe's technical service department  
Telephone (800) 523-5001 ext. 8896

### 1.202 TRAINING

Gen-Probe Field Technical Service Representatives will provide:

- Pre-Installation site inspections and workflow analysis as required
- On-site training and applications support
- All participants of the APTIMA Combo 2 Assay training program will receive P.A.C.E. Continuing Education Units
- Train and certify testing personnel
- One Customer Care Call per year. During this visit your representative will do an on-site equipment inspection and review Quality Control documentation and do additional training as needed. On-site troubleshooting within 24 hours (except weekends and holidays)

### 1.203 REPORTING

The Sales Representative shall provide all requested reports upon request i.e. quantity reports, open invoice.

### 1.204 SPECIAL PROGRAMS

Gen-Probe has a Return Goods Policy

### 1.205 RESERVED

## 1.3 Delivery Capabilities

### 1.301 TIME FRAMES

Gen-Probe uses multiple carriers depending on the shipment, weight, hazardous material, need for refrigeration etc. Gen-Probe strictly adheres to all Department of Transportation, FDA and International Air Transportation regulations and will ship based on criteria established and set forth by these Agencies.

Time frame for shipment will be dependent on how Michigan places its order. While shipping is pre-paid and added to the customer invoice shipments may be sent ground or air. Ground service will take between 5 and 7 working days and air service will take between 2 and 4 days, depending on weather, in both instances.



**1.302 MINIMUM ORDER**

No minimum order is required.

**1.303 PACKAGING**

Gen-Probe follows guidelines as established by DOT, FDA and IADA. Gen-Probe shall not deviate from our current and regulated means of packaging.

**1.304 RESERVED**

**1.305 DELIVERY TERM**

Gen-Probe uses multiple carriers depending on the shipment, weight, hazardous material, need for refrigeration etc. Gen-Probe strictly adheres to all Department of Transportation, FDA and International Air Transportation regulations and will ship based on criteria established and set forth by these Agencies.

Time frame for shipment will be dependent on how Michigan places its order. While shipping is pre-paid and added to the customer invoice shipments may be sent ground or air. Ground service will take between 5 and 7 working days and air service will take between 2 and 4 days, depending on weather, in both instances.

**1.306 RESERVED FOR ACCEPTANCE OF DELIVERABLES/PARE EXPLANATION**

**1.4 Project Price**

**1.401 PROPOSAL PRICING**

Product Number	Product Description	Price/Kit	Monthly	Extended
			Purchase Quantity	Monthly Price
1032	Aptima Combo2 Assy (100 Tests)	\$798.00	80	\$63,840.00
1040	Aptima Combo2 Urine Collection	No Charge	80	
1040	Aptima Combo2 Urine Collection	\$62.50	As Needed	
1041	Aptima Combo2 Swab Collection	No Charge	80	
1041	Aptima Combo2 Swab Collection	\$62.50	As Needed	
1048	Aptima Combo2 Auto Detect	No Charge	27	
1048	Aptima Combo2 Auto Detect	\$45.00	As Needed	
5302	Aptima CT ASR Kit	\$650.00	As Needed	
5301	Aptima GC ASR Kit	\$650.00	As Needed	
1162	Aptima vaginal Collection Swab	\$62.50	As Needed	
5049	Tips, Pipetman P1000 Style	\$162.00	As Needed	
D301174	Bleach Enhancer	\$40.00	8	\$320.00
71-705NCS	Tecan Tips	\$672.00	2	\$1,344.00

**1.402 QUICK PAYMENT TERMS**

**1.403 PRICE TERM**

Prices quoted are the maximum for a period of 365 days from the date the Contract becomes effective.

Prices are subject to change at the end of each 365-day period. Such changes shall be based on changes in actual costs incurred. Documentation of such changes must be provided with the request for price change in order to substantiate any requested change. Acquisition Services reserves the right to consider various pertinent information sources to evaluate price increase requests (such as the CPI and PPI, US City Average, as published by the US Department of Labor, Bureau of Labor Statistics).



Acquisition Services also reserves the right to consider other information related to special economic and/or industry circumstances, when evaluating a price change request. Changes may be either increases or decreases, and may be requested by either party. Approved changes shall be firm for the remainder of the Contract period unless further revised at the end of the next 365-day period.

Requests for price changes shall be RECEIVED IN WRITING AT LEAST TEN DAYS PRIOR TO THEIR EFFECTIVE DATE, and are subject to written acceptance before becoming effective. In the event new prices are not acceptable, the CONTRACT may be cancelled. The continued payment of any charges due after September 30th of any fiscal year will be subject to the availability of an appropriation for this purpose.

**1.5 Quantity term**

Requirements – Vendor agrees to supply all that the state requires

**1.6 RESERVED**



## Article 2 – General Terms and Conditions

### 2.0 Introduction

#### 2.001 GENERAL PURPOSE

This Contract is for Strand Displacement Amplification Assay Kits, for the State of Michigan, Department of Community Health. Exact quantities to be purchased are unknown, however the Contractor will be required to furnish all such materials and services as may be ordered during the CONTRACT period. Quantities specified if any, are estimates based on prior purchases, and the State is not obligated to purchase in these or any other quantities. Orders for delivery will be issued directly to the Contractor by various State Agencies on the Purchase Order Contract Release Form.

Attached is a listing of State agencies and/or locations that may order from the Contract. The listing shall not limit participation of additional agencies/locations as the need may develop at the same prices, terms and conditions. Units of local government may also issue orders (see attached Non-State Agency Statement).

#### 2.002 ISSUING OFFICE AND CONTRACT ADMINISTRATOR

This Contract is issued by Acquisition Services, State of Michigan, Department of Management and Budget, hereinafter known as Acquisition Services, for the Department of Community Health, hereinafter known as *DCH*. 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: William C. Walsh  
2nd Floor, Mason Building  
P.O. Box 30026  
Lansing, Michigan 48909  
(517) 373-6535  
*walshw@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 February 1, 2005 through January 31, 2008.



**Option.** The State reserves the right to exercise 2 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, this 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 at least 60 days before the Contract expires. The preliminary notice does not commit the State to an extension. If the State exercises this option, the extended Contract shall be considered to include this option clause.

## 2.005 GOVERNING LAW

This 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 (CWHSSA) 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 sub-Contractors 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 sub-Contractors during the performance of this Contract.

**2.008 HEADINGS**

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

**2.011 SURVIVORSHIP**

Any provisions of this 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 this Contract for any reason.

**2.012 NO WAIVER OF DEFAULT**

The failure of a party to insist upon strict adherence to any term of this 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 this 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 sub-Contractors shall maintain all pertinent financial and accounting records and evidence pertaining to this 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. Gen-Probe shall be given three (3) business days notice, which shall be in writing.

**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 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 sub-Contractor, 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](http://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 Sub-Contractors, acting alone or in collusion with others, in a minimum amount of one million dollars (\$1,000,000.00) with a maximum deductible of fifty thousand dollars (\$50,000.00).



6. Umbrella or Excess Liability Insurance in a minimum amount of ten million dollars (\$10,000,000.00), which shall apply, at a minimum, to the insurance required in Subsection 1 (Commercial General Liability) above.
7. Professional Liability (Errors and Omissions) Insurance with the following minimum coverage: three million dollars (\$3,000,000.00) each occurrence and three million dollars (\$3,000,000.00) annual aggregate.
8. Fire and Personal Property Insurance covering against any loss or damage to the office space used by 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. Sub-Contractors**

Except where the State has approved in writing a Contractor sub-Contract with other insurance provisions, Contractor shall require all of its Sub-Contractors 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 Sub-Contractors. Alternatively, Contractor may include any Sub-Contractors under Contractor's insurance on the coverage required in this Section. Sub-Contractor(s) shall fully comply with the insurance coverage required in this Section. Failure of Sub-Contractor(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 this 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 this 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.

**2.104 RESERVED**

**2.105 RESERVED**

**2.106 RESERVED**

**2.107 RESERVED****2.108 COMPETITION IN SUB-CONTRACTING**

The Contractor shall select sub-Contractors (including suppliers) on a competitive basis to the maximum practical extent consistent with the objectives and requirements of this Contract.

**2.109 CALL CENTER DISCLOSURE**

Contractor and/or all sub-Contractors 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 FREEDOM OF INFORMATION ACT**

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

**2.202 CONTRACT PAYMENT SCHEDULE**

All invoices submitted by the Contractor should reflect actual work done by the payment dates, less any penalty cost charges accrued by those dates. As a general policy invoice statements shall be forwarded to the designated representative by the 15th day of the following month.

**2.203 RESERVED****2.204 RESERVED****2.205 ELECTRONIC PAYMENT AVAILABILITY**

Electronic transfer of funds is available to State Contractors. The Contractor is 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](http://www.cpexpress.state.mi.us).

**2.206 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 this Contract. The State fiscal year is October 1st through September 30th. The Contractor 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 this Contract.

**2.302 CONTRACTOR RESPONSIBILITIES**

The Contractor will be required to assume responsibility for all Contractual activities, performed by the Contractor or authorized sub-Contractor. 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 this Contract. If any part of the work is to be sub-Contracted, this Contract must include a list of sub-Contractors, including firm name and address, contact person and a complete description of work to be sub-Contracted. The State reserves the right to approve sub-Contractors and to require the Contractor to replace sub-Contractors found to be unacceptable. The Contractor is totally responsible for adherence by the sub-Contractor to all provisions of this Contract. Any change in sub-Contractors 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 this 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 this Contract without the prior written consent of the Director of Acquisition Services. This consent shall not be unreasonably withheld.

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

**Contractor shall inform the Director of Acquisition Services of any change in location of the production facility that will be used for product supplied under this Contract.**

### 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) negligent performance of the work, duties, responsibilities, actions or omissions of the Contractor or any of its sub-Contractors 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 this 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 sub-Contractors, 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 sub-Contractors 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 sub-Contractors, 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 sub-Contractors, the indemnification obligation under this 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 sub-Contractors under worker's disability compensation acts, disability benefits acts, or other employee benefits acts. This indemnification clause is intended to be comprehensive. Any overlap in sub clauses, or the fact that greater specificity is provided as to some categories of risk, is not intended to limit the scope of indemnification under any other sub clause.

#### Continuation of Indemnification Obligation

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



### Indemnification Procedures

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

- (a) After receipt by the State of notice of the action or proceeding involving a claim in respect of which it will seek indemnification, the State shall promptly notify 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**

Except as set forth herein, neither the Contractor nor the State shall be liable to the other party for indirect or consequential damages, even if such party has been advised of the possibility of such damages. Such limitation as to indirect or consequential damages shall not apply to claims for infringement of United States patent, copyright, trademarks or trade secrets; to claims for personal injury or damage to property caused by the gross negligence or willful misconduct of the 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 this 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 this 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 Contractor 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 RESERVED****2.312 RESERVED****2.313 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, 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:

Shirley Martin  
Michigan Department of Community Health  
Contract Management Section  
320 S. Walnut Street  
Lansing, MI 48913  
*[martins@michigan.gov](mailto:martins@michigan.gov)*

**2.402 PERFORMANCE REVIEWS**

Acquisition Services in conjunction with the DCH may review with the Contractor their performance under this 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 this 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 three (3) business day notice, perform an audit at Contractor's location(s) to determine if the Contractor is complying with the requirements of this 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 this Contract, shall be considered default by the Contractor of the terms and conditions of this Contract and may result in cancellation of this Contract by the State. The brand and product number offered for all items shall remain consistent for the term of this Contract, unless Acquisition Services has approved a change.

#### **2.502 QUALITY ASSURANCE**

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

1. All costs of testing and laboratory analysis.
2. Disposal and/or replacement of all products which fail to meet specifications.

#### **2.503 INSPECTION**

All goods are subject to inspection and testing. In the event goods are defective in material or workmanship, or otherwise fail to meet the requirements of this Contract, the State shall have the right to reject the goods or retain the goods and correct the defects. The Contractor shall pay the State for expenses incurred in correcting defects. Rejected goods will be held for 45 days after delivery. The Contractor must arrange for the return of said goods, including paying for handling, packing, and transportation costs. The State has the authority to dispose of the goods without further liability to the State in the event the Contractor fails to make arrangements within the specified time period.

#### **2.504 GENERAL WARRANTIES (goods)**

*Warranty of Merchantability* – Goods provided by the Contractor 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 Contractor has reason to know or knows any particular purpose for which the goods are required, and the State is relying on the Contractor'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* – Contractor 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 RESERVED**

**2.506 RESERVED**

**2.507 RESERVED**

**2.508 RESERVED**

**2.509 RESERVED**

**2.6 Breach of Contract**

**2.601 BREACH DEFINED**

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

**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 this 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 sub-Contractors 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 this Contract so affected and the charges payable hereunder shall be equitably adjusted to reflect those services canceled;



or (c) this 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 sub-Contractors will not relieve the Contractor of its obligations under this Contract except to the extent that a sub-Contractor is itself subject to any excusable failure condition described above and the Contractor cannot reasonably circumvent the effect of the sub-Contractor'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 this 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 this 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 this 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 this 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 sub-Contract; 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

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

## 2.703 RESERVED

## 2.704 RESERVED

## 2.705 RESERVED

## 2.8 Changes, Modifications, and Amendments

### 2.801 APPROVALS

This 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.

**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 this 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 this 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.