

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 3, 2010

CHANGE NOTICE NO. 3
OF
CONTRACT NO. 071B6200141
between
THE STATE OF MICHIGAN
and

NAME & ADDRESS OF VENDOR National Patent Analytical Systems, Inc. 2541 Ashland Road Mansfield, OH 44905		TELEPHONE (419) 589-8378 John Fusco
		BUYER/CA (517) 373-1455 Laura Gyorkos
Email: jdf@npas.com		
Contract Compliance Inspector: Sgt. Perry Curtis Data Master Breath Tester/Maintenance – Michigan State Police		
CONTRACT PERIOD: From: February 1, 2006 To: January 31, 2010		
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, the State hereby exercises one Contract option year, making the new expiration date January 31, 2011. Funds in the amount of \$600,000.00 are added to this Contract.

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

AUTHORITY/REASON:

Per request of Michigan State Police (PRF dated 1/6/10), vendor agreement (letter dated 2/3/10), Ad Board approval on 3/2/10, and DMB/Purchasing Operations' approval.

TOTAL REVISED ESTIMATED CONTRACT VALUE: \$3,191,717.00

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

April 13, 2009

CHANGE NOTICE NO. 2
OF
CONTRACT NO. 071B6200141
between
THE STATE OF MICHIGAN
and

NAME & ADDRESS OF VENDOR		TELEPHONE (419) 589-8378	
National Patent Analytical Systems, Inc. 2541 Ashland Road Mansfield, OH 44905		John Fusco	
		BUYER/CA (517) 241-1916	
jdf@npas.com		Jim Wilson	
Contract Compliance Inspector: Sgt. Perry Curtis			
Data Master Breath Tester/Maintenance – Michigan State Police			
CONTRACT PERIOD:		From: February 1, 2006	To: January 31, 2010
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 April 13, 2009, the State hereby exercises one Contract option year, making the new expiration date January 31, 2010. Funds in the amount of \$600,000.00 are added to this Contract.

Additionally, the attached Item Listing/Pricing Sheet hereby replaces current Contract Page 41 (see attachment).

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

AUTHORITY/REASON:

Per request of Michigan State Police (PRF dated 2/9/09), vendor agreement (letter dated 2/28/09), Ad Board approval on 4/7/09, and DMB/Purchasing Operations' approval.

REVISED CURRENT AUTHORIZED SPEND LIMIT: \$2,591,717.00

CONTRACT # 071B6200141
REVISED ITEM LISTING / PRICING PAGE

ITEM NUMBER	DESCRIPTION	UNIT PRICE	TIER PRICE	TIER PRICE
001	Repairs, Maintenance & Certification of Breath Alcohol Detecting Devices ; maintenance of the detecting devices per the specifications in Section 1.101	\$912.00	N/A	N/A
002	** Mouthpiece #1, Guth "Ultrap" per the specifications in Section 1.101	\$0.23 per 200	\$0.21 per 400	\$0.19 per 1000
003	** Mouthpiece #2, RepCo "Unitrap" per the specifications in Section 1.101	\$0.21		
004	** Evidence Tickets	\$0.15 per 200	\$0.14 per 400	\$0.13 per 1000
	BAC Datamaster Option K – now includes compatible printer	\$4,500 per year		
	BAC Datamaster Instrument – now includes compatible printer	\$6,300 per year *		
	* Dry Gas Option included subject to separate order at \$100 per instrument			

MSP's current requirement is 222 instruments of the 260 total.

* All municipal owned instruments have been invoiced at the old rate, and will not change until September 6th.

** All supplies are invoiced as shipped.

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

April 16, 2008

**CHANGE NOTICE NO. 1
 OF
 CONTRACT NO. 071B6200141
 between
 THE STATE OF MICHIGAN
 and**

NAME & ADDRESS OF VENDOR National Patent Analytical Systems, Inc. 2541 Ashland Road Mansfield, OH 44905		TELEPHONE (419) 589-8378 John Fusco
		BUYER/CA (517) 241-1916 Jim Wilson
Contract Compliance Inspector: Sgt. Perry Curtis Data Master Breath Tester/Maintenance – Michigan State Police		
CONTRACT PERIOD: From: February 1, 2006 To: January 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 INCREASED by \$1,218,125.00. All other terms, conditions, specifications, and pricing remain unchanged.

AUTHORITY/REASON:

Per request of Michigan State Police, Ad Board approval on 4/15/08, and DMB/Purchasing Operations' approval.

REVISED CURRENT AUTHORIZED SPEND LIMIT: \$1,991,717.00

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

March 30, 2006

NOTICE
OF
CONTRACT NO. 071B6200141
between
THE STATE OF MICHIGAN
and

NAME & ADDRESS OF VENDOR National Patent Analytical Systems, Inc. 2541 Ashland Road Mansfield, OH 44905	TELEPHONE (419) 589-8378 John Fusco
	BUYER/CA (517) 241-1916 Jim Wilson, Buyer
	Contract Compliance Inspector: Sgt. Perry Curtis Data Master Breath Tester/Maintenance – Michigan State Police
CONTRACT PERIOD: From: February 1, 2006 To: January 31, 2009	
TERMS N/A	SHIPMENT N/A
F.O.B. N/A	SHIPPED FROM N/A
MINIMUM DELIVERY REQUIREMENTS N/A	

The terms and conditions of this Contract are those of [ITB #071I6200022](#), this Contract Agreement and the vendor's quote dated [11/11/2005](#). 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: \$773,592.00

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

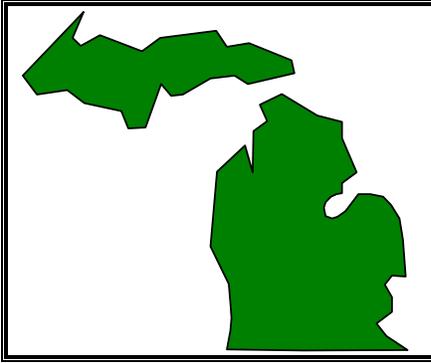
**CONTRACT NO. 071B6200141
 between
 THE STATE OF MICHIGAN
 and**

NAME & ADDRESS OF VENDOR National Patent Analytical Systems, Inc. 2541 Ashland Road Mansfield, OH 44905	TELEPHONE (419) 589-8378 John Fusco BUYER/CA (517) 241-1916 Jim Wilson, Buyer
Contract Compliance Inspector: Sgt. Perry Curtis Data Master Breath Tester/Maintenance – Michigan State Police	
CONTRACT PERIOD: From: February 1, 2006 To: January 31, 2009	
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 #071I6200022, this Contract Agreement and the vendor's quote dated 11/11/2005. 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: \$773,592.00</p>	

THIS IS NOT AN ORDER: This Contract Agreement is awarded on the basis of our inquiry bearing the **ITB No. 071I6200022**. Orders for delivery may be issued directly by the **Michigan State Police** through the issuance of a Purchase Order Form.

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

<p>FOR THE VENDOR:</p> <p style="text-align: center;">National Patent Analytical Systems, Inc. _____ 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>FOR THE STATE:</p> <p style="text-align: center;">_____ Signature Kristi L. B. Thompson, Director _____ Name/Title Services Division, Acquisition Services _____ Title</p> <p style="text-align: center;">_____ Date</p>
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STATE OF MICHIGAN
Department of Management and Budget
Acquisition Services

Contract No. 071B6200141
Data Master Breath Tester Contract Including Maintenance

Buyer Name: Jim Wilson
Telephone Number: 517-241-1916
E-Mail Address: wilsonj4@michigan.gov



Data Master Breath Tester Contract

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Article 1 – Statement of Work (SOW)

1.0 Introduction

1.001 DEFINING DOCUMENT

This is a Contract. 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 for *the repairs, if needed, perform 120 day maintenance of 260 BAC Data Master Breath Testers, and purchase of supplies including mouthpieces, and evidence tickets, for the current and future instruments.* Article 1 is designed to provide information on requirements associated with this ITB.

If any part of the Specific Requirements appears to be excessive, with respect to the overall outcome desired by the State, please notify the Buyer in writing for consideration of a possible change to the requirements (see 3.001).

1.003 PROJECT CONTROL

Project Control

- a. The Contractor will carry out this project under the direction and control of the *Michigan State Police Alcohol Enforcement Unit (MSP/AEFU)*.

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 in the "Invitation To Bid", Item Listing and/or copies of specifications attached.

Breath Alcohol Detecting Devices - repairs if needed and 120 day maintenance/certification of the estimated 260 detecting devices per the following specifications: Enter pricing on the Item Listing/Pricing Page at end of document.

- A. Shall conform to the USDOT "Standards for Devices to Measure Breath Alcohol". F.R., Vol. 49, No. 242, p.48854, December 14, 1984. The instrument shall be approved by the USDOT. A letter from USDOT confirming acceptability of the instrument or appearance of the instrument on the "Conforming Products List of Evidential Breath Measurement Devices" published in the Federal Register by the OSDOT are both considered as acceptable documentation of approval by USDOT.
- B. Shall pass accuracy, precision, and reliability testing as performed by the State Police. Ten (10) tests each at 0.005%, 0.010%, 0.040%, 0.100%, 0.200%, and 0.300% alcohol concentrations shall conform to the federal testing guidelines indicated above. The accuracy range shall be +/- 5%, or .004, whichever is greater. The instrument shall also conform to any other tests as performed by State Police in accordance with the federal testing guidelines indicated above.
- C. The Contractor shall guarantee that the instruments will adhere to all Frye-Davis requirements and criteria, providing the reliability and accuracy of the instrument technology in order to be scientifically acceptable within the State of Michigan.



- D. Shall be specific for alcohol.
- E. Shall be a stand-alone instruments requiring no physical modifications of current facilities in order to accommodate the instrument.
- F. Shall provide a printed hard copy test report (evidence record). A minimum of three copies of each subject test shall be printed. Each printout of a subject test shall display the following:
- Date;
 - Time;
 - Location of instrument;
 - Instrument serial number;
 - Operator signature blank;
 - Subject's name;
 - Subject's date of birth;
 - Subject's driver's license number;
 - Indication that an internal standard was performed;
 - Test result (shall be expressed as 2 digits for a subject test and three digits for accuracy tests).
- G. Shall operate on a standard 110 volts AC at 60Hz and shall be grounded.
- H. Shall detect non-alcohol interfering substances (including radio frequency interference), which may interfere with the accuracy of a test, indicate such interference, and abort the test. An incorrect operational procedure or improper conditions shall also cause the instrument to automatically abort a breath test.
- I. For entering data, the instruments shall include a keyboard. The keyboard can be either a sealed keyboard with raised keys, or a standard keyboard with raised keys and a plastic cover.
- J. As the subject exhales, the instrument shall continuously monitor the breath sample and automatically sense when it has obtained an alveolar (deep lung) sample, regardless of the subject's lung capacity and without operator instruction. The instrument shall also:
- Reject an insufficient breath sample;
 - Reject a series of shallow breath samples, such as may be blown to avoid providing a deep lung sample.
 - Reject a breath sample characterized by the presence of mouth alcohol.
- If the subject is unable to complete a satisfactory breath test, the instrument shall display a message indicating the subject did not provide an adequate breath sample. After five (5) unsatisfactory attempts by the subject, the instrument shall automatically abort the test and indicate a refusal.
- K. Shall provide an internal accuracy verification check before and after each subject test.
- Blank;
 - Internal standard;
 - Blank;
 - Subject test;
 - Blank;
 - Subject test;
 - Blank;
 - Internal standard;
 - Blank.
- The instruments shall also provide for a third subject test if the first two tests do not agree within +/- 10%.
- L. Shall have a battery back-up ram module for storing a minimum of 100 total tests, subject and simulator.



- M. Each instruments serial number shall be permanently stored in the circuitry.
- N. The operator shall be able to initiate a breath test sequence by activating only one button.
- O. Shall be menu driven, prompting the operator with regards to the information and steps needed to run a complete test. An alphanumeric display utilizing a series of messages and commands shall communicate to and instruct the operator.
- P. The breath tube shall be heated to prevent condensation.
- Q. Shall have a date/time clock, which is observable and has a battery back up in case of power failure.
- R. All software modifications, clock/date settings, calibration adjustments, or program changes shall be made using special keyboard commands. Some type of security protection (pass code, lock, etc.) shall be provided on the instrument in order to allow for only certain people to make these modifications and to restrict any unauthorized persons from being able to make these modifications.
- S. The instruments shall perform diagnostic checks on its components, display the nature of a malfunction if one exists, and automatically shut itself down until the malfunction is corrected.
- T. Shall accept a wet bath simulator for performing calibration checks against a standard alcohol solution.
- U. Shall express the subject test result in percent of weight by volume. The subject test result shall be displayed on the instrument in two (2) digits, while the accuracy verification shall be displayed on the instrument in three (3) digits.
- V. Each instrument shall be supplied with an operator's training manual and all related software. The operator's training manual shall indicate all displays that may appear on the panel and evidence record with an explanation of what each means. The manual shall also show a step-by-step procedure on how the instrument is programmed to perform.
- W. All software and hardware upgrades developed by the Contractor for technological advances of the instrument shall be made available to the State. If upgrades become available that will allow the instrument to operate differently or perform different tasks as required by the State, the State may elect to purchase these upgrades and have them installed into the instruments. However, if upgrades become available that will allow the Contractor to more easily maintain the instruments or will allow the instruments to operate more efficiently and effectively, thus reducing the Maintenance Program demands on the Contractor, these software may be installed into the instruments with prior approval from the State and at **NO** additional cost.
- X. Two hundred (200) individually packaged mouthpieces and two hundred (200) evidence tickets shall be provided with each instrument upon delivery and installation at no additional cost to the State.

All supplies required after the initial supplies delivered with each instrument have been used will be purchased by the State.

- Y. The instruments shall conform to all existing State Police operating protocol and administrative rules.

Mouthpieces #1, Guth "Ultrap"- Purchase of 70,000 each per the following specifications: Enter pricing on Item Listing/Pricing Page at end of document.

- A. Shall be crystal clear, made from unused virgin plastic.
- B. Shall be one-piece, elliptical, solid construction with ultrasonically sealed seams and internal surfaces.
- C. There shall be a minimum of three (3) internal baffles within the main body chamber to filter and inhibit the flow of saliva or small solids.



- D. Shall not restrict gas flow or leak into atmosphere when connected to the instrument.
- E. Inlet tube and outlet tube shall be part of the total mouthpieces.
- F. The mouthpieces shall have tapered ends. The tape shall be no less than 0.255 of an inch from the end.
- G. The general shape of the unit shall be round with elliptical cross section with an axial (in-line) inlet and outlet tubes to conform to the human mouth and shall have a minimum diameter of 1.5 inches.
- H. The overall length shall not exceed 2.8 inches. This dimension includes the inlet and outlet tubes.
- I. The length of the inlet and outlet tubes shall be no longer than 0.625 of an inch and shall maintain a wall thickness (typical) of 0.050 of an inch.
- J. The outside diameter of the inlet and outlet tubes shall be no more than 0.263 of an inch and no less than 0.0258 of an inch.
- K. The inside diameter of the inlet and outlet tubes shall be uniform throughout with no more than 0.160 of an inch or less than 0.150 of an inch.
- L. Each mouthpiece shall be sealed individually in a plastic bag.

Mouthpieces #2, RepCo "Unitrap" - Purchase of 70,000 each per the following specifications: Enter pricing on Item Listing/Pricing Page at end of document.

- A. Shall be manufactured from clear polystyrene material and ultrasonically sealed.
- B. Unit shall restrict the flow of saliva and solid particles from entering the breath alcohol tests instrument.
- C. Overall length: 2.365 inches +/- 0.010 length.
- D. Inlet and outlet tube:
 - 0.625 inches +/- 0.10 length.
 - 0.235 to 0.270 +/- 0.002 tapered diameter
 - 0.050 +/- 0.002 thickness
- E. Body size: 1.110 inches +/- 0.005 x 1.100 inches +/- 0.020.
- F. The outside surface of the inlet and outlet tube shall be free of any weld seams or non-uniform surfaces which would prevent an airtight seal between the mouthpiece and the input to the breath alcohol test instrument (using an input hose or connector with a uniform i.d. of 0.236 to 0.268 inches).
- G. Unit shall be capable of maintaining a minimum vacuum of 15 inches Hg using a conventional, metered, vacuum pump with a hose attachment of 0.236 to 0.268 inches diameter.
- H. Each mouthpiece shall be sealed individually in a plastic bag.

Evidence Tickets, Purchase of 92,000 each per the following specifications: Enter pricing on the Item Listing/Pricing page at the end of the document.

- A. Three (3) part NCR form.
 - Part One – White, prints black on one side.
 - Part Two – Canary, prints black on one side.
 - Part Three – Pink, prints black on two sides



- B. 4½" x 8½" " upright with 7/32" notch die cut on left side of form 5 1/16" from the top of the form.
- C. Form to be edge glued at top.
- D. Forms to be shrink wrapped in quantities of 200.

DIMENSIONS ARE CRITICAL

1.102 RESERVED

1.103 QUALITY ASSURANCE PROGRAM

Contractor to provide detail regarding any Quality Assurance Program(s) that are currently in place within their organization.

National Patent operates under the MIL STD 790F Quality Assurance program.

1.104 WARRANTY FOR PRODUCTS OR SERVICES

Contractor shall discuss all aspects of their warranty. This shall include the warranty associated with the actual product being proposed, as well as the warranty associated with any service work performed under the contract. Bidders shall also discuss how they will handle any repairs that need to be made due to damaged or defective product, how installation problems will be rectified, and the process State agencies should follow to report warranty issues. Work is warranted as addressed per bid specifications.

1.2 Service Capabilities

1.201 CUSTOMER SERVICE/ORDERING

Contractor shall discuss their ordering/customer service capabilities. This includes having the capacity to receive orders electronically, by phone, facsimile, and by written order. The Contractor shall provide a statewide toll-free phone number for phone orders. Contractor shall have internal controls, approved by Acquisition Services, to insure that authorized individuals with the State place orders. The Contractor shall verify orders that have quantities that appear to be abnormal or excessive.

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

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

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

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

1.202 TRAINING

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

**1.203 REPORTING**

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

1.204 RESERVED**1.205 SECURITY**

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

Upon review of the security measures included in a bidder's proposal and if that bidder is awarded the contract, the State will decide whether to issue State ID badges to the bidder's delivery personnel or accept the ID badge issued to delivery personnel by the bidder.

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

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

1.3 Delivery Capabilities**1.301 TIME FRAMES**

It is requested that all orders be delivered within *30 days* calendar days after receipt of order. However, vendors shall discuss in detail the various delivery programs available. The State is interested in both a standard delivery program and a quick-ship program. Please discuss the delivery time associated with each program, as well as if there are quantity and other limitations for the quick ship program.

1.302 MINIMUM ORDER

It is requested that the minimum order is maintenance or repair of (one (1) instrument, 400 mouthpieces, 200 evidence tickets). If the bidder's minimum order requirement is less than that minimum, which will become the minimum order if a Contract is awarded to the bidder, shall be indicated in the bidder's proposal or in the space provided on the attached Item Listing.

Also, please indicate in the space provided on the attached Item Listing any additional charge (handling fee) to be applicable on orders under the numbers stated above, or under the bidder's minimum order requirement indicated in the bidder's proposal or on the attached Item Listing.

1.303 PACKAGING

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

1.304 PALLETIZING

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



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

1.305 DELIVERY TERM

All orders during the contract period shall be delivered within thirty (30) calendar days after receipt of order to the following address:

Michigan Department of State Police, Field Operations Division, Alcohol Enforcement Unit, Bldg. F, 714 S. Harrison Road, East Lansing, MI 48823

Prices shall be quoted "F.O.B. Delivered" with transportation charges prepaid on all orders of *(one (1) instrument, 400 mouthpieces, 200 evidence tickets)* or more to the State, or on all orders totaling or in excess of the bidder's minimum order requirement stated on the Item Listing. Other F.O.B. terms will not be accepted and shall disqualify a bidder from further consideration. This supersedes Instruction #8 on the reverse side of the Invitation To Bid cover page.

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

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

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

() F.A.S. _____ (state name of vessel)

() C.I.F. _____ (state name of carrier)

1.306 RESERVED FOR ACCEPTANCE OF DELIVERABLES/PARE EXPLANATION

1.4 Project Price

1.401 PROPOSAL PRICING

Bidders shall provide pricing for the items included on the attached Item Listing.

1.402 QUICK PAYMENT TERMS

The State of Michigan is interested in payment terms that reflect cost savings to the State based on an accelerated payment process. Bidders shall discuss quick payment terms that they are offering to the State (i.e. _____% discount off invoice if paid within _____ days). This will be a factor considered in our award decision.

**1.403 PRICE TERM**

- Firm Fixed Price (best for goods)

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

- Fixed with prospective re-determination at an agreed upon time (best for long term service)

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.

- Firm Fixed Level of Effort (best for research and development)
- Adjustable
- Cost Sharing – (best for work that is unclear or undefined)

State agrees to pay a portion of vendor's cost after negotiation.

1.5 Quantity term

- Requirements – Vendor agrees to supply all that the state requires
- Output – State agrees to buy all that the vendor can produce
- Specified Amount _____

1.6 Other Terms and Conditions Needed for this Contract**II-1 INSTALLATION**

All instruments ordered shall be delivered, installed (including all parts, supplies, etc. as outlined in the specifications), and fully operational, in accordance with these terms, conditions, and specifications.

II-2 SITE REQUIREMENTS

Site preparation specifications shall be furnished by the Contractor promptly upon request of the State. The specifications shall be detailed in order to ensure that the instruments to be installed will operate in accordance with all requirements outlined in this Contract and the specifications.



The State will have the sites prepared as specified by the Contractor. Subsequent alterations or modifications in site preparation required by the Contractor which are attributable to the Contractor's requirements and which would involve additional expense to the State shall be made at the expense of the contractor.

II-3 STATE POLICE NOTIFICATION

If an instrument is purchased for law enforcement purposes by any organization in the State of Michigan other than State Police, the Contractor shall notify State Police immediately in order to have the instrument and location certified to be used in conjunction with the State Police program.

II-4 PERFORMANCE EVALUATION PERIOD

Step 1

A pre-installation check shall be performed by the Contractor to insure that the instruments delivered are in compliance with the terms, conditions, and specifications of the Contract. In the event that it is determined that any component or feature of the delivered instrument does not comply with the terms, conditions, or specifications, the Contractor is allowed three (3) calendar days for rectification of the problem. Should the Contractor be unable to rectify the deficiency, the State reserves the right to cancel the order or to have the instrument in question replaced with a new instrument.

Step 2

After the instruments are installed, the Contractor shall perform a check in order to ensure that the instruments are fully operational. When this check is completed (and in compliance with Step 1 above), a thirty (30) calendar day Performance Evaluation Period shall commence for each instrument delivered. If an instrument operates properly at least 98% of the time for the entire thirty (30) day period, based on how many times an operator actually attempts to use the instrument, it shall be deemed to have met the State's Performance Evaluation Period. The Performance Evaluation Period will be complete only when the instrument has attained this requirement.

If successful completion of the performance period is not attained within ninety (90) days of the installation date, the State reserves the right to terminate the Contract, continue with performance evaluation period, or have the instrument in question replaced with a new instrument.

Instruments will not be accepted by the State and no charges will be paid by the State until each instrument passes the Performance Evaluation Period.

The Contractor shall provide the State Police with copies of all forms that have been completed with regards to the various checks. Some forms to be completed by the Contractor are official forms developed by State Police.

II-5 INVOICING AND PAYMENT

Charges are to begin on each instrument from the first day after successful completion of the Performance Evaluation Period.

II-6 EXPERT COURT TESTIMONY

The Contractor shall provide expert court testimony in order to guarantee the accuracy of the instrument and scientifically prove the reliability and accuracy of the instrument and its technology. This shall be performed in order to meet Frye/Davis criteria and requirements.

The Contractor shall also agree to provide expert court testimony in order to guarantee that the maintenance and service performed on any instrument has been performed properly and in a timely manner.

There are **NO** additional charges for any expert court testimony that may be required throughout the Contract period.



II-7 CERTIFICATE OF OPERATIONS AND SERVICE PERSONNEL

All operators of the instruments are to be trained exclusively by representatives of State Police prior to operation of the instrument. After training, the State Police will issue certification to all those that will be authorized as an operator.

All Maintenance Program work, as well as certification of the instruments, shall be performed by factory trained and authorized personnel. State Police reserves the right to disapprove any service personnel if there is just cause to do so.

II-8 TECHNICAL SERVICE

A technical representative of the Contractor shall be available to the State by telephone in order to assist State personnel in solving minor problems or answering minor questions. The toll free telephone number for such technical service is indicated on the attached Item Listing/Pricing Page.

II-9 MAINTENANCE PROGRAM

This Contract requires that a Maintenance Program be in effect to cover each instrument purchased throughout the Contract period. Service shall be performed by the Contractor as part of this Contract. A yearly price for the Maintenance Program to apply to each instrument is to be indicated on the attached Item Listing. All costs associated with the Maintenance Program, including parts, labor, etc., are included in the price. No additional charges will be accepted.

The Maintenance Program includes the following two (2) components:

1. 120-Day Service – Requires that each instrument be looked at every 120 days (maximum) throughout the entire length of the Contract, as a form of preventative maintenance, in order to keep all instruments operating properly. When the 120-Day Service is performed on a particular instrument, all work shall be completed within one (1) calendar day after the 120-Day Service has begun on that instrument. Indicated below are the tasks that shall be included and performed, at a minimum, as part of the 120-Day Service requirement. However this list may be modified by the State throughout the Contract period.
 - a. Certification of accuracy in accordance with existing statutes and administrative rules relating to blood/breath alcohol testing. This shall be accomplished by using a 0.040, 0.080, and 0.200 wet bath. The Contractor shall provide all solutions required to perform these tests. An independent laboratory report shall be submitted to State Police to verify that each batch of solutions is acceptable.
 - b. Calibrate the instrument if needed.
 - c. Check for interfering substances such as acetone, radio, etc.
 - d. Check internal standard.
 - e. Perform a diagnostic check on the instrument.
 - f. Check and clean printer (lubricate if needed). Replace ink jet cartridge, ribbon, and any other accessories associated with the printer except evidence cards or tape, if necessary.
 - g. Clean instrument and accessories as needed, including the fan.
 - h. Check breath tube and replace, if needed.
 - i. Check the computer battery voltage.



- j. Perform routine maintenance in order to keep all State of Michigan owned simulators operational. State Police will verify that all simulators are kept in proper working condition prior to establishment of the Contract. Each instrument will be assigned on simulator that will require this maintenance.
 - k. Certification of compliance with State Police guidelines, procedures, policies, and official orders.
 - l. After the above tasks have been completed on a particular instrument as part of the 120-Day Service, the Contractor shall guarantee the accuracy and precision of the instrument at the location where the instrument will be used.
1. General Service Work – requires that the Contractor perform whatever service is necessary in order to keep the instruments fully operational. If an instrument breaks down and is not operating properly, the Contractor has two (2) calendar days, after notification by the user, to have the instrument operational or have an operational instrument at that location. This shall be accomplished by doing one of the following:
- a. The service personnel can visit the location and fix the instrument on-site whenever possible.
 - b. If the service personnel arrives to make repairs and discovers that the instrument cannot be fixed on-site, the service personnel may leave a temporary replacement instrument (loaner) to use while the other instrument is being repaired.
 - c. If the service personnel arrives to make repairs and discovers that the instrument cannot be fixed on-site and the service personnel does not have a replacement available, the service personnel may telephone the factory and have a loaner shipped to the user overnight.
 - d. If the State determines that the original instrument “persistently fails”, the Contractor will be required to replace the original instrument with a new instrument at no additional charge to the State. “Persistently fails” refers to an “unreliable instrument”. If it is suspected that an instrument is unreliable, a review of the service reports will be done, and a decision will be made as to whether the instrument is actually unreliable and has seriously impaired the productivity of the program. If a component of an instrument is considered unacceptable, just the component may be replaced. However, if the same component “persistently fails” and is considered unreliable, the entire instrument shall be replaced with a new instrument.
 - e. After any General Service Work has been completed on a particular instrument, The Contractor shall guarantee the accuracy and precision of the instrument at the location where the instrument will be used.

The Contractor shall agree to have an adequate number of replacement units available in order to comply with the requirements described above.

The Contractor is responsible for maintaining the official maintenance record for each instrument. Upon completion of any Maintenance Program work, that work shall be recorded by the Contractor at the location and on forms to be developed and provided by the State Police. Copies of all maintenance records shall be provided to the State when requested. The forms developed by the State Police will consist of the following information at a minimum:

- Serial/Model number of the instrument being serviced;
- Location of the instrument being serviced;
- Date of service performed; and
- Type of service performed, including explanation of the parts replaced.

The Contractor shall not utilize or employ any persons presently employed by State Police to perform any Maintenance Program work on the instruments.



The Contractor shall agree to continue to provide the Maintenance Program for each instrument after this Contract expires. Upon expiration of this Contract, a separate Contract will be developed to cover the Maintenance Program. The most recent price, the escalation clause, and all terms and conditions and other requirements applying to the Maintenance Program from this Contract will be carried into the new Contract.

II-9 ORDERING PROCESS

When the Contractor's representative performs 120-day service on an instrument, they will check that particular location's stock of mouthpieces, evidence tickets, and alcohol solutions. The Contractor's representative will determine how many mouthpieces, evidence tickets, and alcohol solutions are needed and will notify someone at that location. The location will fill out an order form for the quantity specified for each of the three (3) items by the Contractor's representative. The Contractor's representative will then call the order in to the Contractor's office in Mansfield, Ohio. A copy of the order form should be forwarded to the State Police Alcohol Enforcement Unit, a copy should be retained at the location, and the Contractor shall retain a copy. The Contractor's office in Mansfield, Ohio, will ship all the items needed directly to the ordering location.

If a location needs any of the three (3) items prior to their scheduled 120-day service, that location can either send an order to the contractor's office or place an order over the phone. If the order is placed by phone, a written order should also be sent to the Contractor's office. All items ordered will then be shipped directly to the ordering location.

The minimum order for each item is as follows:

Mouthpieces – 400 each
Evidence Tickets – 200 each
Alcohol – 50 each

On the first Monday of each month, the Contractor will submit an invoice to the State Police Alcohol Enforcement Unit for all mouthpieces delivered to all locations in the previous month. Included with the invoice shall be a copy of each individual order form filled out by each location in the previous month. State Police will then issue a confirming purchase order for the total number of mouthpieces ordered in the previous month for all locations. Payment will be made based on this purchase order and the Contractor's invoice.



Article 2 – General Terms and Conditions

2.0 Introduction

2.001 GENERAL PURPOSE

The Contract is for the maintenance, repair and purchase of mouth pieces and evidence tickets for MSP/FOD. 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. Bids are due and will be publicly identified at the time noted on the Invitation To Bid (ITB) Form.

Indicated on the Invitation To Bid cover page is the "ship to" address for Michigan Department of State Police, Field Operations Division (MSP/FOD). However, if the Contractor and the State agree, additional State agencies may participate should the need develop.

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 MSP/FOD. Where actions are a combination of those of Acquisition Services and the MSP/FOD, 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: *Jim Wilson*
2nd Floor, Mason Building
P.O. Box 30026
Lansing, Michigan 48909
(517) 241-1916
wilsonj4@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, 2006* through January 31, 2009.



Option. The State reserves the right to exercise two (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.

Written notice will be provided to the Contractor within sixty (60) 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 (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 MSP/FOD 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 RESERVED

2.104 RESERVED

2.105 PERFORMANCE AND RELIABILITY EVALUATION (PARE)

When the State requires that a performance and reliability evaluation (PARE) is to be performed, the standard of performance for the PARE will be closely monitored during the acceptance period.

In the event that the PARE is for components only, all references to systems (processors) should be changed to components.

The Performance and Reliability Evaluation will consist of two phases.

PHASE I

The first phase shall be comprised of a specification compliance review of the equipment listed on the ordering documents. Such equipment shall be checked for total compliance with all required specifications of the RFQ. In the event that the State determines that any component or feature of the delivered equipment or software does not comply with the mandatory specifications of the RFQ, the State shall so notify the Contractor, allowing 14 calendar days for rectification by the Contractor. Should the Contractor be unable to rectify the deficiency, the State reserves the right to cancel the ordering document. Should the equipment and software pass the specification conformance review, the equipment shall enter Phase II of the PARE.

PHASE II

a. Determination of System Readiness

- 1) Prior to the PARE, a committee of three persons will be formed to evaluate the system's performance on a daily basis. The committee will consist of one Contractor representative and two State personnel.
- 2) The PARE will begin on the installation dates when the Contractor certifies that the equipment is ready for use by the State.

b. During the PARE:

All rerun times resulting from equipment failure and preventive maintenance shall be excluded from the performance hours.

- 1) All reconfiguration and reload time shall be excluded from the performance hours.



- 2) If files are destroyed as a result of a problem with Contractor equipment and must be rebuilt, the time required to rebuild the files will be considered "down-time" for the system.
- 3) If the Contractor requests access to failed equipment and the State refuses, then such maintenance will be deferred to a mutually agreeable time and the intervening time will not count against the PARE.
- 4) A functional benchmark demonstration will be run for the PARE Committee to confirm that the installed system is capable of performing the same functions that were demonstrated. This run must be completed to the satisfaction of the PARE Committee.

STANDARD OF PERFORMANCE

- a. The performance period (a period of thirty consecutive calendar days) shall commence on the installation date, at which time the operational control becomes the responsibility of the State. It is not required that one thirty day period expire in order for another performance period to begin.
- b. If each component operates at an average level of effectiveness of 95 percent or more for a period of 30 consecutive days from the commencement date of the performance period, it shall be deemed to have met the State's standard of performance period. The State shall notify the Contractor in writing of the successful completion of the performance period. The average effectiveness level is a percentage figure determined by dividing the total operational use time by the total operational use time plus associated down-time. In addition, the equipment shall operate in substantial conformance with the Contractor's published specifications applicable to such equipment on the date of this Agreement. Equipment added by amendment to this contract shall operate in conformance with the Contractor's published specifications applicable to such equipment at the time of such amendment.
- c. During the successful performance period, all rerun time resulting from equipment failure and preventive maintenance time shall be excluded from the performance period hours. All reconfigurations and reload time shall be excluded from the performance hours. Equipment failure down-time shall be measured by those intervals during the performance period between the time that the Contractor is notified of equipment failure and the time that the equipment is returned to the State in operating condition.
- d. During the successful performance period, a minimum of 80 hours of operational use time on each component will be required as a basis for computation of the average effectiveness level. However, in computing the effectiveness level, the actual number of operational use hours shall be used when in excess of the minimum stated above.
- e. No more than one hour will accrue to the performance hours during any one wall-clock hour.
- f. Equipment shall not be accepted by the State and no charges will be paid by the State until the standard of performance is met.
- g. When a system involves on-line machines, which are remote to the basic installation, the required effectiveness level shall apply separately to each component in the system.
- h. Promptly upon successful completion of the performance period, the State shall notify the Contractor in writing of acceptance of the equipment and authorize the monthly payments to begin on the first day of the successful performance period.
- i. If successful completion of the performance period is not attained within 90 days of the installation date, the State shall have the option of terminating the Contract, or continuing the



- j. performance tests. The State's option to terminate the contract shall remain in effect until such time as a successful completion of the performance period is attained. The Contractor shall be liable for all outbound preparation and shipping costs for contracted items returned under this clause.
- k. The PARE will be complete when the equipment has met the required effectiveness level for the prescribed time period.

2.106 RESERVED

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.

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

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)

- a. *Contractor request for performance-based payment.* The Contractor may submit requests for payment of performance-based payments not more frequently than monthly, in a form and manner acceptable to the Contract Administrator. Unless otherwise authorized by the Contract Administrator, all performance-based payments in any period for which payment is being requested shall be included in a single request, appropriately itemized and totaled.
- b. *Approval and payment of requests.*
 - (1) The Contractor shall not be entitled to payment of a request for performance-based payment prior to successful accomplishment of the event or performance criterion for which payment is requested. The Contract Administrator shall determine whether the event or performance criterion for which payment is requested has been successfully accomplished in accordance with the terms of the contract. The Contract Administrator may, at any time, require the Contractor to substantiate the successful performance of any event or performance criterion, which has been or is represented as being payable.
 - (2) A payment under this performance-based payment clause is a contract financing payment under the Quick Payment clause (1.402) of this contract.
 - (3) The approval by the Contract Administrator of a request for performance-based payment does not constitute an acceptance by the Government and does not excuse the Contractor from performance of obligations under this contract.

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 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 the value of the Contract. 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 ninety (90) 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 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(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:

Sgt. Perry Curtis
Michigan Department of State Police
Field Operations Division
Alcohol Enforcement Unit
Bldg. F, 714 S. Harrison Road
East Lansing, MI 48823
Tel: (517) 336-5338
Fax: (517) 336-6465
Email: CurtisPD@michigan.gov

2.402 PERFORMANCE REVIEWS

Acquisition Services in conjunction with MSP/FOD 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**

- (a) **Inspection of Work Performed.** The State's authorized representatives shall at all reasonable times and with ten (10) days prior written request, have the right to enter Contractor's premises, or any other places, where the Services are being performed, and shall have access, upon reasonable request, to interim drafts of Deliverables or work-in-progress. Upon ten (10) Days prior written notice and during business hours, the State's representatives shall be allowed to inspect, monitor, or otherwise evaluate the work being performed and to the extent that such access will not interfere or jeopardize the safety or operation of the systems or facilities. Contractor must provide all reasonable facilities and assistance for the State's representatives, so long as no security, labor relations policies and propriety information policies are violated.
- (b) **Examination of Records.** No more than once per year, Contractor agrees that the State, including its duly authorized representatives, until the expiration of seven (7) years following the creation of the material (collectively, the "Audit Period"), shall, upon twenty (20) days prior written notice, have access to and the right to examine and copy any of Contractor's books, records, documents and papers pertinent to establishing Contractor's compliance with the terms and conditions of the Contract and with applicable laws and rules, including the State's procurement rules, regulations and procedures, and actual performance of the Contract for the purpose of conducting an audit, examination, excerpt and/or transcription but the State shall not have access to any information deemed confidential to Contractor to the extent such access would require such confidential information to become publicly available. This provision also applies to the books, records, accounts, documents and papers, in print or electronic form, of any parent, affiliated or subsidiary organization of Contractor, or any Subcontractor of Contractor performing services in connection with the Contract.
- (c) **Retention of Records.** Contractor shall maintain at least until the end of the Audit Period all pertinent financial and accounting records (including time sheets and payroll records, and information pertaining to the Contract and to the Services, equipment, and commodities provided under the Contract) pertaining to the Contract in accordance with generally accepted accounting principles and other procedures specified in this Section. Financial and accounting records shall be made available, upon request, to the State at any time during the Audit Period. If an audit, litigation, or other action involving Contractor's records is initiated before the end of the Audit Period, the records must be retained until all issues arising out of the audit, litigation, or other action are resolved or until the end of the Audit Period, whichever is later.
- (d) **Audit Resolution.** If necessary, the Contractor and the State shall meet to review each audit report promptly after issuance. The Contractor will respond to each audit report in writing within thirty (30) days from receipt of such report, unless a shorter response time is specified in such report. The Contractor and the State shall develop and agree upon an action plan to promptly address and resolve any deficiencies, concerns, and/or recommendations in such audit report.
1. **Errors.** If the audit demonstrates any errors in the statements provided to the State, then the amount in error shall be reflected as a credit or debit on the next invoice and in subsequent invoices until the amount is paid or refunded in full. However, a credit or debit may not be carried for more than four (4) quarterly statements. If a balance remains after four (4) quarterly statements, then the remaining amount will be due as a payment or refund within forty-five (45) days of the last quarterly statement that the balance appeared on or termination of the contract, whichever is earlier.
 2. In addition to other available remedies, the difference between the payment received and the correct payment amount is greater than ten (10%), then the Contractor shall pay all of the reasonable costs of the audit.



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 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.
3. All costs of repair and/or replacement of equipment deemed to have been damaged by substandard products as determined by the State.

2.503 INSPECTION

All goods are subject to inspection and testing. In the event goods are defective in material or workmanship, or otherwise fail to meet the requirements of the Contract, the State shall have the right to reject the goods or retain the goods and correct the defects. The 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 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 RESERVED**2.508 EQUIPMENT WARRANTY**

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

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

Within two (2) business days of notification from the State, the Contractor shall adjust, repair or replace all equipment that is defective or not performing in compliance with the Contract. The Contractor shall assume all costs for replacing parts or units and their installation including transportation and delivery fees, if any.

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

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

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

2.509 RESERVED**2.6 Breach of Contract****2.601 BREACH DEFINED**

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

In addition to any remedies available in law and by the terms of this contract, if the 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

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 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.
- (b) 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.
- (c) 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.



3.000 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.

4.000 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.

5.000 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 listed **below**:

1. Commercial General Liability with the following minimum coverage:

\$2,000,000	General Aggregate Limit other than Products/Completed Operations
\$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

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.



ITEM LISTING/PRICING PAGE

ITEM NO.	QNTY	UNIT	NIGP CODE	DESCRIPTION	UNIT PRICE	TOTAL 1 YR. PRICE
001	222	EA		Repairs, Maintenance & Certification of 260 Breath Alcohol Detecting Devices; 120 day maintenance of the detecting devices per the specifications shown in Item 1.101.	\$898.48	\$199,462.56 98
002	70,000	EA		Mouthpieces #1, Guth "Ultrap" - per the specifications shown in Item 1.101. Brand & No. _____	\$0.23	\$16,100.00
003	70,000	EA		Mouthpieces #2, RepCo "Unitrap" - per the specifications shown in Item 1.101. Brand & No. _____	\$0.21	\$14,700.00
004	92,000	EA		Evidence Tickets , per the specifications shown in Item 1.101. Brand & No. _____	\$0.15	\$13,800.00
				BAC Datamaster Option K = \$4,500 BAC Datamaster Instrument DMT= \$6,300 Total Bid	1 year \$257,864.00 —	3 year \$773,592.00

TOLL FREE TELEPHONE NUMBER FOR TECHNICAL SERVICE: 800-800-8143.