

STATE OF MICHIGAN  
 DEPARTMENT OF TECHNOLOGY MANAGEMENT AND BUDGET      February 23, 2011  
 PURCHASING OPERATIONS  
 P.O. BOX 30026, LANSING, MI 48909  
 OR  
 530 W. ALLEGAN, LANSING, MI 48933

**CHANGE NOTICE NO. 2**  
**TO**  
**CONTRACT NO. 071B7200213**  
**between**  
**THE STATE OF MICHIGAN**  
**and**

NAME & ADDRESS OF VENDOR  <b>Simplex Time Recorder Co.</b> <b>2970 Walkent Drive, NW</b> <b>Grand Rapids, MI 49544</b>  smichael@simplexgrinnell.com	TELEPHONE (616)784-7921 x226 <b>Kenneth Tockstein</b>
	VENDOR NUMBER/MAIL CODE
	BUYER/CA (517) 241-4225 <b>Kevin Dunn</b>
Contract Compliance Inspector: Peggy Deaton (269) 337-3047 <b>Fire Alarm Maintenance Services – Kalamazoo Psychiatric Hospital - DCH</b>	
CONTRACT PERIOD:                      From: <b>March 7, 2007</b> To: <b>March 6, 2012</b>	
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>	

**NATURE OF CHANGE(S):**

Effective February 28, 2011, this Contract is hereby **EXTENDED** to March 6, 2012 per Article 2.004. Contract is also hereby **INCREASED** by \$11,400.00. The vendor contact is hereby **CHANGED** to Kenneth Tockstein.

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

**AUTHORITY/REASON:**

Per PRF from Department of Community Health dated 2/17/2011.

**INCREASE: \$11,400.00**

**TOTAL REVISED ESTIMATED CONTRACT VALUE:: \$56,827.08**

**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 5, 2010

**CHANGE NOTICE NO. 1  
 TO  
 CONTRACT NO. 071B72000213  
 between  
 THE STATE OF MICHIGAN  
 and**

NAME & ADDRESS OF VENDOR  <b>Simplex Time Recorder Co.          2970 Walkent Drive, NW          Grand Rapids, MI 49544</b>  smichael@simplexgrinnell.com	TELEPHONE (616) 784-7921 <b>Sean Michael</b>
	VENDOR NUMBER/MAIL CODE
	BUYER/CA (517) 241-4225 <b>Kevin Dunn</b>
Contract Compliance Inspector: Peggy Deaton (269) 337-3047 <b>Fire Alarm Maintenance Services – Kalamazoo Psychiatric Hospital - DCH</b>	
CONTRACT PERIOD: From: <b>March 7, 2007</b> To: <b>March 6, 2011</b>	
TERMS  <p style="text-align: center;"><b>N/A</b></p>	SHIPMENT  <p style="text-align: center;"><b>N/A</b></p>
F.O.B.  <p style="text-align: center;"><b>N/A</b></p>	SHIPPED FROM  <p style="text-align: center;"><b>N/A</b></p>
MINIMUM DELIVERY REQUIREMENTS  <p style="text-align: center;"><b>N/A</b></p>	

**NATURE OF CHANGE(S):**

Effective March 4, 2010, this Contract is hereby EXTENDED to March 6, 2011, and INCREASED by \$12,000.00.

The Contract Compliance Inspector for this Contract is now:

**Peggy Deaton  
 Department of Community Health  
 Kalamazoo Psychiatric Hospital  
 (269) 337-3047**

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

**AUTHORITY/REASON:**

Per agency request (PRF dated 01/04/2010), OSE approval (#OSE-0956-10 dated 02/08/2010), and DMB/Purchasing Operations' approval.

**REVISED CURRENT AUTHORIZED SPEND LIMIT: \$45,427.08**

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

May 30, 2007

**NOTICE**  
**TO**  
**CONTRACT NO. 071B72000213**  
**between**  
**THE STATE OF MICHIGAN**  
**and**

NAME & ADDRESS OF VENDOR  <b>Simplex Time Recorder Co.</b> <b>2970 Walkent Drive, NW</b> <b>Grand Rapids, MI 49544</b>	TELEPHONE (616) 784-7921 <b>Sean Michael</b>
	VENDOR NUMBER/MAIL CODE
	BUYER/CA (517) 241-4225 <b>Kevin Dunn</b>
Contract Compliance Inspector: Tom Reilly <b>Fire Alarm Maintenance Services – Kalamazoo Psychiatric Hospital - DCH</b>	
CONTRACT PERIOD: From: <b>March 7, 2007</b> To: <b>March 6, 2010</b>	
TERMS <p style="text-align: center;"><b>N/A</b></p>	SHIPMENT <p style="text-align: center;"><b>N/A</b></p>
F.O.B. <p style="text-align: center;"><b>N/A</b></p>	SHIPPED FROM <p style="text-align: center;"><b>N/A</b></p>
MINIMUM DELIVERY REQUIREMENTS <p style="text-align: center;"><b>N/A</b></p>	

The terms and conditions of this Contract are those of REQ. No. 391R7200010, this Contract Agreement and the vendor's quote dated 2/7/2007. 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: **\$33,427.08**

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

**CONTRACT NO. 071B72000213  
 between  
 THE STATE OF MICHIGAN  
 and**

NAME & ADDRESS OF VENDOR  <b>Simplex Time Recorder Co.          2970 Walkent Drive, NW          Grand Rapids, MI 49544</b>	TELEPHONE (616) 784-7921 <b>Sean Michael</b> VENDOR NUMBER/MAIL CODE BUYER/CA (517) 241-4225 <b>Kevin Dunn</b>
Contract Compliance Inspector: Tom Reilly <b>Fire Alarm Maintenance Services – Kalamazoo Psychiatric Hospital - DCH</b>	
CONTRACT PERIOD: From: <b>March 7, 2007</b> To: <b>March 6, 2010</b>	
TERMS <p style="text-align: center;"><b>N/A</b></p>	SHIPMENT <p style="text-align: center;"><b>N/A</b></p>
F.O.B. <p style="text-align: center;"><b>N/A</b></p>	SHIPPED FROM <p style="text-align: center;"><b>N/A</b></p>
MINIMUM DELIVERY REQUIREMENTS <p style="text-align: center;"><b>N/A</b></p>	
MISCELLANEOUS INFORMATION:  <p><b>The terms and conditions of this Contract are those of REQ. No. 391R7200010, this Contract Agreement and the vendor's quote dated 2/7/2007. 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.</b></p> <p><b>Estimated Contract Value: \$33,427.08</b></p>	

**THIS IS NOT AN ORDER:** This Contract Agreement is awarded on the basis of our inquiry bearing the REQ.No. 391R7200010. Orders for delivery will be issued directly by the Department of Community Health through the issuance of a Purchase Order Form.

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

<p><b>FOR THE VENDOR:</b></p> <p style="text-align: center;"><b>Simplex Time Recorder Co.</b>          _____          Firm Name</p> <p style="text-align: center;">_____          Authorized Agent Signature</p> <p style="text-align: center;">_____          Authorized Agent (Print or Type)</p> <p style="text-align: center;">_____          Date</p>	<p><b>FOR THE STATE:</b></p> <p style="text-align: center;">_____          Signature  <b>Melissa Castro, CPPB, Buyer Manager</b>          _____          Name/Title  <b>Services Division, Purchasing Operations</b>          _____          Title</p> <p style="text-align: center;">_____          Date</p>
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## **Article 1 – Statement of Work (SOW)**

### 1.010 Project Identification

#### **1.011 PROJECT REQUEST**

This Contract is for Fire Alarm Services for the Department of Community Health (DCH), Kalamazoo Psychiatric Hospital (KPH). The project is for a full service maintenance contract for existing Simplex Fire Alarm System at the Kalamazoo Psychiatric Hospital.

#### **1.012 BACKGROUND**

In order to meet fire safety inspections and comply with fire safety regulations, this Contract would provide maintenance services to the fire alarm system at the hospital. This Contract is necessary to assure that the fire alarm system at the hospital is fully functional and in compliance with Fire Safety Codes and Regulations and continue to meet Joint Commission on the Accreditation of Healthcare Organizations (JCAHO) requirements.

### 1.020 Scope of Work and Deliverables

#### **1.021 IN SCOPE**

Full service maintenance Contract for existing Simplex Fire Alarm System at Kalamazoo Psychiatric Hospital.

Service to include:

Two (2) 50% systems annual tests and inspection yearly. Inspection to be coordinated with Tom Reilly, Safety Director (269-337-3153) and to be performed by trained technicians during the months of November and April each year. Annual tests include system performance evaluation, adjustment and calibration of control equipment components. KPH will provide staff to assist with the tests to oversee the control panel to inform technicians of alarm conditions and reset the panel. Upon completion, test results 5420 will be sent to Agency Safety Director.

Sensitivity testing and cleaning of all system smoke detectors to be done every two (2) years. The first service date to be October 2008. Test results to be sent to Agency Safety Director.

Two (2) annual tests and inspections on Kitchen Suppression System to be completed yearly. Upon completion, test results will be sent to Agency Safety Director.

Annual tests and inspection of approximately 110 fire extinguishers. A report of tests and inspections to be sent to Agency Safety Director.

24 hour/7 days per week emergency service, including holidays. This includes labor, travel, mileage and replacement of listed parts due to normal equipment failure.

Equipment included consists of:

- 1 each 4100 Multiplex Control Panel
- 1 each 40/20 Control Panel
- 4 each Transponders
- 2 each Command Centers
- 1 each Remote Printer, Epson LX810
- 17 each Audible/Visibles
- 2 each Remote CRT with Keyboard
- 1 each Remote CRT
- 134 each Zams/Iams
- 318 each Smoke Detectors
- 154 each Door Holders
- 162 each Speakers
- 85 each Pull Stations
- 1 each 24 Pin Dot Matrix Printer

**1.022 OUT OF SCOPE -- RESERVED****1.023 ENVIRONMENT -- RESERVED****1.024 WORK AND DELIVERABLE**

Contractor shall provide Deliverables/Services and staff, and otherwise do all things necessary for or incidental to the performance of work, as set forth in Section 1.021.

**1.030 Roles and Responsibilities****1.031 CONTRACTOR STAFF, ROLES, AND RESPONSIBILITIES**

- A. All work shall be carried out in accordance with the current editions of the following standards:
  - NFPA 72 "National Fire Alarm Code"
  - NFPA 70 "National Electrical Code"
  - UL listings and FM approvals
  - Industrial Risk Insurers
  - NFPA 101 Life Safety Code
  - NFPA 75
- B. The Contractor shall include all material not specifically mentioned, but which may be deemed necessary to put the system in full operational status.
- C. The function of key maintenance switches, manual alarm stations, and audible warning devices shall be clearly identified by the use of signs provided by the Contractor.
- D. The control panel shall include a display which provides specific information on the location and nature of the alarm, supervisory, and trouble conditions.
- E. The control panel shall have a keypad for local programming and system control.
- F. The system configuration shall be installed in nonvolatile memory such that it will be maintained even in a total power failure.
- G. There shall be sufficient nonvolatile buffer space to store the most recent 1,800 events. This buffer must be able to be downloaded, at any time, through the serial port to produce hard copy. History events shall be stored with time, date and a description of the abnormal event.
- H. The system shall provide for sensor contamination levels, fire levels, and other reference levels to be downloaded for immediate analysis.
- I. A display panel shall clearly identify all fire alarm components by locations.
- J. Each sensor and alarm device shall be individually tested to prove the condition of the device.
- K. Operation sequences of all installed suppression and detection system shall be tested in a "Dry test". In this test all sequences of the systems are tested however precaution release circuits are disconnected.
- L. Each thermal detector shall be tested using a non-destructive heat source. Open flame is not permitted.
- M. The Contractor shall provide a complete checklist with a detailed description clearly stating which devices will be tested and how they will be tested.
- N. The certificate of verification shall be prepared and signed by a qualified representative of the equipment manufacturer, who witnessed the entire test and verification procedure.
- O. After all tests the Contractor's representative shall certify that all systems are in working order and on standby mode.
- P. Upon completion of testing for each system, the Contractor shall arm the system and leave it in 100% working order. The State's representative shall sign the Contractor's test report to that effect.
- Q. The inspections will include a comprehensive test of all system functions, replacement of any defective or malfunctioning components, and recertification of the system.
- R. The Contractor will provide the Agency a number to call for service and will guarantee a response within two hours of the time the call was placed. An on-site response is required within four hours or other mutually agreeable time. Maintenance will include full parts and labor to replace any failed or otherwise malfunctioning systems component. Maintenance will also include the cost of restoring the system to normal, following a failure of any component.
- S. The Contractor will indicate their hourly cost of labor were the State to request service outside the terms of this Contract.
- T. Site visits must be scheduled with the agency.

**1.032 STATE STAFF, ROLES, AND RESPONSIBILITIES**

- A. Agency staff will be available to meet with, and provide information to the Contractor's staff.
- B. The Agency Project Manager will be facilitator for making necessary contact for the Contractor.
- C. Allow the Contractor entrance to the buildings listed as mutually agreed upon with the Contractor and the Contract Administrator.
- D. Not responsible for, nor make reimbursement for travel time or mileage.
- E. Pay the Contractor within 45 days of receipt of properly prepared invoices. Invoices improperly prepared shall be returned to the vendor.

**1.033 OTHER ROLES AND RESPONSIBILITIES**

- A. Unattended vehicles must be accounted for at all times.
- B. All equipment must be accounted for at all times.
- C. While working at KPH, the Contractor may encounter information relative to our consumers, including their identity. The Contractor shall maintain confidentiality of consumers at all times, under the HIPPA agreement.
- D. All Personal Protection Equipment (PPE) must be used when appropriate.
- E. All Federal (OHSa) and State (MIOSHA) standards and NFPA (National Fire Protection Associations) Life Safety Codes must be followed during the course of any work or service being performed at this Agency.

1.040 Project Plan**1.041 PROJECT PLAN MANAGEMENT**

The designated Agency Project Manager will be:

Tom Reilly  
Safety Director  
Kalamazoo Psychiatric Hospital  
1312 Oakland Drive  
Kalamazoo, MI 49008  
Phone: (269) 337-3153  
Fax: (269) 337-3350

**1.042 REPORTS**

- A. Reports are required for the two (2) 50% systems annual tests and the yearly inspections.
- B. Reports for the sensitivity testing and cleaning of all system smoke detectors are required every two years.
- C. Reports for the two (2) annual tests and yearly inspections on the Kitchen Suppression System are required.
- D. Reports are required for the annual testing/inspections of the fire extinguishers.
- E. The Contractor shall provide a complete checklist with a detailed description clearly stating which devices will be tested and how they will be tested.
- F. The certificate of verification shall be prepared and signed by a qualified representative of the equipment manufacturer, who witnessed the entire test and verification procedure.
- G. After all tests, the Contractor's representative shall certify that all systems are in working order and on standby mode.
- H. Upon completion of testing for each system, the Contractor shall arm the system and leave it in 100% working order. The State's representative shall sign the Contractor's test report to that effect.

1.050 Project Management**1.051 ISSUE/RISK MANAGEMENT**

This Contract could possibly be impacted by funding that could be reduced not only due to budget constraints but impacted by consumer census levels. The funding could be reduced due to budget issues which could result in only part of the deliverables that funding can support being received. This Contract is for the provision of fire alarm services located in a mental health facility.

**1.052 CHANGE MANAGEMENT**

The Agency Project Manager will identify any changes to the project.

If a proposed Contract change is approved by the Contract Compliance Inspector, the Contract Compliance Inspector will submit a request for change to the Department of Management and Budget, Purchasing Operations Buyer, who will make recommendations to the Director of Purchasing Operations regarding ultimate approval/disapproval of change request. If the DMB Purchasing Operations Director agrees with the proposed modification, and all required approvals are obtained (including State Administrative Board), the Purchasing Operations Buyer will issue an addendum to the Contract, via a Contract Change Notice. **Contractors who provide products or services prior to the issuance of a Contract Change Notice by the DMB Purchasing Operations, risk non-payment for the out-of-scope/pricing products and/or services.**

*1.060 Proposal Pricing***1.061 PROPOSAL PRICING**

The Contractor should provide a monthly cost for both monitoring costs and inspection costs. Additionally, the Contractor should provide a cost per hour for maintenance provided by the Contractor that is not part of the Contract.

**1.062 PRICE TERM**

Price is fixed with prospective re-determination at an agreed upon time.

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

The prices in this Contract 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. Purchasing Operations 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). Purchasing Operations 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 10 DAYS PRIOR TO THEIR EFFECTIVE DATE, and are subject to written acceptance before becoming effective. In the event new prices are not acceptable, the Contract may be cancelled. The continued payment of any charges due after September 30th of any fiscal year will be subject to the availability of an appropriation for this purpose.

**1.063 QUICK PAYMENT TERMS - RESERVED**



1.070 Additional Terms and Conditions Specific to this SOW

**1.071 ADDITIONAL TERMS AND CONDITIONS SPECIFIC TO THIS SOW**

- A. The Contractor agrees to work cooperatively with the KPH Agency Project Manager to attain and maintain quality fire alarm services.
- B. Under no circumstances will the Contractor represent him or herself as an employee of KPH.
- C. The Contractor agrees that he/she will not, at any time either during or after the terms of this agreement, reveal, divulge, or make known to any person, firm or corporation any confidential information whatsoever in connection with KPH or its consumers. The Contractor may disclose confidential information in accordance with legal requirements.
- D. The Contractor assures that he/she presently has no personal or financial interest and shall not acquire any such interest, direct or indirect, which would conflict with any manner of degree with the performance of the services under the agreement. The Contractor further assures that in the performance of this agreement, no persons having such interest will be employed. The Contractor further assures that no officer, member or employee of the State or no other public official who exercises any functions or responsibilities in the review or approval of the undertaking or carrying out of this agreement, has any personal or financial interest, direct or indirect, in this agreement or in the proceeds thereof.



## Article 2 – General Terms and Conditions

### 2.0 Introduction

#### 2.001 GENERAL PURPOSE

The Contract is for Fire Alarm Services for the Department of Community Health (DCH) for the State of Michigan. 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.

#### 2.002 ISSUING OFFICE AND CONTRACT ADMINISTRATOR

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

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

**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 Purchasing Operations and the listed Contract Administrator.**

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

Department of Management and Budget  
Purchasing Operations  
Attn: *Kevin Dunn, Buyer*  
2nd Floor, Mason Building  
P.O. Box 30026  
Lansing, Michigan 48909  
(517) 241-4225  
*dunnk3@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 *March 7, 2007* through *March 6, 2010*.

**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 Purchasing to exercise an option year.



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

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

## **2.005 GOVERNING LAW**

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

**2.008 HEADINGS**

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

**2.009 MERGER**

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

**2.010 SEVERABILITY**

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

**2.011 SURVIVORSHIP**

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

**2.012 NO WAIVER OF DEFAULT**

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

**2.013 PURCHASE ORDERS**

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

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

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

**2.102 NOTIFICATION OF OWNERSHIP**

The Contractor shall make the following notifications in writing:

1. When the Contractor becomes aware that a change in its ownership or officers has occurred, or is certain to occur, that could result in changes in the valuation of its capitalized assets in the accounting records, the Contractor shall notify Purchasing within 30 days.
2. The Contractor shall also notify the Purchasing 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 Purchasing or designated representative ready access to the records upon request;
3. Ensure that all individual and grouped assets, their capitalized values, accumulated depreciation or amortization, and remaining useful lives are identified accurately before and after each of the Contractor's ownership or officer changes; and
4. Retain and continue to maintain depreciation and amortization schedules based on the asset records maintained before each Contractor ownership or officer change.

**2.103 SOFTWARE COMPLIANCE-RESERVED**

**2.104 RESERVED**

**2.105 PERFORMANCE AND RELIABILITY EVALUATION (PARE)-RESERVED**

**2.106 PREVAILING WAGE-RESERVED**

**2.107 PAYROLL AND BASIC RECORDS-RESERVED**

**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-RESERVED**

**2.2 Contract Performance**

**2.201 TIME IS OF THE ESSENCE-RESERVED**

**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 Purchasing, Department of Management & Budget. This activity will occur only upon the specific written direction from Purchasing.

The specific payment schedule for this Contract will be mutually agreed upon execution of the Contract. 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.

Unless otherwise agreed in writing, correct invoices will be due and payable by the State, in accordance with the State's standard payment procedure as specified in 1984 Public Act No. 279, MCL 17.51 et seq., "Payments to Private Enterprises", within 45 days after receipt.

**2.203 POSSIBLE PROGRESS PAYMENTS-RESERVED**

**2.204 STATE ADMINISTRATIVE FEE - RESERVED**



## 2.205 ELECTRONIC PAYMENT AVAILABILITY

Electronic transfer of funds is MANDATORY for State Contractors. Vendor is required to register with the State of Michigan Office of Financial Management so the State can make payments related to this Contract electronically at [www.cpexpress.state.mi.us](http://www.cpexpress.state.mi.us).

## 2.206 MiDEAL PROGRAM - 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 Purchasing.

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 Purchasing has given written consent to the delegation.

**Contractor must obtain the approval of the Director of Purchasing before using a place of performance that is different from the address that the Contractor 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 State 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 State 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 10 days after the State's receipt of Contractor's information requested by the State pursuant to clause (ii) of this paragraph if the State determines that Contractor has failed to demonstrate to the reasonable satisfaction of the State Contractor's financial ability to carry out its defense and indemnity obligations under this Section.



Any litigation activity on behalf of the State of Michigan, or any of its subdivisions pursuant to this Section, must be coordinated with the Department of Attorney General. In the event the insurer's attorney represents the State pursuant to this Section, the insurer's attorney may be required to be designated as a Special Assistant Attorney General by the Attorney General of the State of Michigan.

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

### **2.306 LIMITATION OF LIABILITY**

Except as set forth herein, neither the Contractor nor the State shall be liable to the other party for indirect or consequential damages, even if such party has been advised of the possibility of such damages. Such limitation as to indirect or consequential damages shall not apply to claims for infringement of United States patent, copyright, trademarks or trade secrets; to claims for personal injury or damage to property caused by the gross negligence or willful misconduct of the Contractor; to claims covered by other specific provisions of this Contract calling for liquidated damages; to Contractor's indemnification obligations (2.305); or to court costs or attorney's fees awarded by a court in addition to damages after litigation based on this Contract.

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

### **2.307 CONTRACT DISTRIBUTION**

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

### **2.308 FORM, FUNCTION, AND UTILITY-RESERVED**

### **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 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](http://www.michigan.gov/cis)

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

Before both parties sign the Contract or before the purchase order is issued by the State, the Contractor must furnish to the Director of Purchasing, 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 30 days prior written notice, except for ten (10) days for non-payment of premium, having been given to the Director of Purchasing, Department of Management and Budget. The notice must include the Contract or Purchase Order number affected and be mailed to: Director, Purchasing, Department of Management and Budget, P.O. Box 30026, Lansing, Michigan 48909. Failure to provide evidence of coverage, may, at the State's sole option, result in this Contract's termination.

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

- Commercial General Liability with the following minimum coverage:

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

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

- 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.

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



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

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

4. Employers liability insurance with the following minimum limits:

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

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

**B. Subcontractors**

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

**C. Certificates of Insurance and Other Requirements**

Contractor shall furnish to the Office of Purchasing 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 30 days written notice, the State may pay such premium or procure similar insurance coverage from another company or companies; and at the State's election, the State may deduct the entire cost (or part thereof) from any payment due Contractor, or Contractor shall pay the entire cost (or any part thereof) upon demand by the State.



### 2.311 WORKPLACE SAFETY

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

### 2.312 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.

### 2.313 RESERVED

### 2.314 WEBSITE INCORPORATION - RESERVED

## 2.4 Contract Review and Evaluation

### 2.401 CONTRACT COMPLIANCE INSPECTOR

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

Tom Reilly  
Safety Director  
Kalamazoo Psychiatric Hospital  
1312 Oakland Drive  
Kalamazoo, MI 49008  
Phone: (269) 337-3153  
Fax: (269) 337-3350



## 2.402 PERFORMANCE REVIEWS

Purchasing in conjunction with the DCH 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 Purchasing, 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 Purchasing, the Contract may be canceled for default. Delivery by the Contractor of unsafe and/or adulterated or off-condition products to any State agency is considered a material breach of Contract subject to the cancellation provisions contained herein.

## 2.403 AUDIT OF CONTRACT COMPLIANCE/ RECORDS AND INSPECTIONS

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

## 2.5 Quality and Warranties

### 2.501 PROHIBITED PRODUCTS

The State will not accept salvage, distressed, outdated or discontinued merchandise. Shipping of such merchandise to any State agency, as a result of an order placed against the Contract, shall be considered default by the Contractor of the terms and conditions of the Contract and may result in cancellation of the Contract by the State. The brand and product number offered for all items shall remain consistent for the term of the Contract, unless Purchasing 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-RESERVED****2.506 STAFF-RESERVED****2.507 RESERVED****2.508 EQUIPMENT WARRANTY-RESERVED****2.509 RESERVED****2.6 Breach of Contract****2.601 BREACH DEFINED**

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

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, workaroud 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, workaroud 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 LIQUIDATED DAMAGES-RESERVED

**2.704 STOP WORK-RESERVED****2.705 SUSPENSION OF WORK-RESERVED****2.8 Changes, Modifications, and Amendments****2.801 APPROVALS**

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

**2.802 TIME EXTENTIONS**

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

**2.803 MODIFICATION**

Purchasing 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 Purchasing.

**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 Purchasing. 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 three (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 State-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.



**SimplexGrinnell** *BE SAFE.*

**Pricing Summary/Scope of Work Kalamazoo Psychiatric Hospital**

**Location : KPH, 1312 Oakland Drive**

**Fire Alarm Detection Systems [Full Service (24/7)]**

	<b><u>Quantity</u></b>	<b><u>Frequency</u></b>
Smoke Detector ( Test/Inspect )	168	Annual
Transponder or gathering panel ( Each )	4	Annual
Simplex 4020 ( Fire Alarm Panel )	1	Annual
Simplex 4100 ( Fire Alarm Panel )	1	Annual
Pull Station	132	Annual
Door Holder	154	Each
Audible Visual Units ( Horns, Strobes, Speakers, etc. )	179	Annual
IAM/ZAM ( Remote Relay Module )	134	Annual

**Total Annual Investment : (Plus Any Applicable Tax)**

**\$11,142.36**