

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

December 19, 2007

NOTICE
OF
CONTRACT NO. 071B8200030
between
THE STATE OF MICHIGAN
and

NAME & ADDRESS OF VENDOR Whatman Incorporated 200 Park Ave. Florham Park, NJ 07932-6183 Email: mike.deguglielmo@whatman.com		TELEPHONE: Mike Deguglielmo (615) 223-7800
		VENDOR NUMBER/MAIL CODE
		BUYER/CA (517) 241-2005 Lisa Morrison
Contract Compliance Inspector: Dorothy Catella (517) 322-6135 Whatman Buccal Collection Kits – Department of State Police		
CONTRACT PERIOD: From: October 19, 2007 To: October 19, 2010		
TERMS Net 30 Days	SHIPMENT 84 Days ARO	
F.O.B. Shipping Point	SHIPPED FROM Sanford, Maine	
MINIMUM DELIVERY REQUIREMENTS Freight prepaid on 50 kits or more		
MISCELLANEOUS INFORMATION:		

The terms and conditions of this Contract are those of ITB #07117200164, this Contract Agreement and the vendor's quote dated May 7, 2007. In the event of any conflicts between the specifications, and terms and conditions, indicated by the State and those indicated by the vendor, those of the State take precedence.

Estimated Contract Value: **\$540,000.00**

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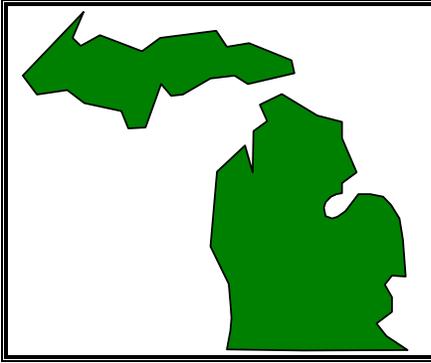
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THIS IS NOT AN ORDER: This Contract Agreement is awarded on the basis of our inquiry bearing the ITB No. 07117200164. Orders for delivery will be issued directly by the Department of State Police through the issuance of a Purchase Order Form.

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

FOR THE VENDOR: Whatman Incorporated Firm Name	FOR THE STATE: Signature Jeffrey A. White, Buyer Manager
Authorized Agent Signature	Name/Title Purchasing Operations, Commodities Division
Authorized Agent (Print or Type)	Division
Date	Date



STATE OF MICHIGAN
Department of Management and Budget
Purchasing Operations

Contract No. 071B8200030
Convicted Offender Buccal Collection Kit

Buyer Name: Lisa Morrison
Telephone Number: (517) 241-2005
E-Mail Address: morrisonl1@michigan.gov

Convicted Offender Buccal Collection Kit

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Article 1 – Statement of Work (SOW)

1.0 Introduction 1.001 DEFINING DOCUMENT

This is a contract for Convicted Offender Buccal Collection Kits. 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

The Convicted Offender Buccal Collection Kits are required for Deoxyribonucleic Acid (DNA) collection from all Michigan Convicted Offenders. The DNA profiles generated from Michigan Convicted Offender samples are entered into the Combined DNA Index System (CODIS) National Database for comparison to crime evidence, thereby providing investigators with the identity of a perpetrator.

1.003 PROJECT CONTROL

Project Control

- a. **The Vendor will carry out this project under the direction and control of the Michigan State Police (MSP).**
- b. **Although there will be continuous liaison with the Vendor team, the client agency's project director will meet monthly as a minimum, with the Vendor's project manager for the purpose of reviewing progress and providing necessary guidance to the Vendor in solving problems that arise.**
- c. **The Vendor will submit brief written monthly summaries of progress which outline the work accomplished during the reporting period; work to be accomplished during the subsequent reporting period; problems, real or anticipated, which should be brought to the attention of the client agency's project director; and notification of any significant deviation from previously agreed-upon work plans. A copy of this report will be forwarded to the named buyer in Purchasing Operations.**
- d. **Within five (5) working days of the award of the Contract, the Vendor will submit to the (MSP) project director for final approval a work plan, which must include the following:**

The Vendor's project organizational structure.

- (1) **The Vendor's staffing table with names and title of personnel assigned to the project. This must be in agreement with staffing of accepted proposal. Necessary substitutions due to change of employment status and other unforeseen circumstances may only be made with prior approval of the State.**
- (2) **The project breakdown showing sub-projects, activities and tasks, and resources required and allocated to each.**
- (3) **The time-phased plan in the form of a graphic display, showing each event, task, and decision point in your work plan.**

Reports

The Vendor shall be able to provide various reports when requested by the Michigan State Police. Examples of such reports include itemized report of kits shipped to each agency, open invoice reports, and quantity in stock reports.



1.004 COMMENCEMENT OF WORK

Vendor shall show acceptance of this agreement by signing a copy of this contract and returning it to the contract administrator. Vendor 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 specifications attached.

1.102 RESEARCH AND DEVELOPMENT

Vendor shall discuss their ability to invest in new product development and research to stay current with ongoing demands.

1.103 QUALITY ASSURANCE PROGRAM

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

1.104 WARRANTY FOR PRODUCTS OR SERVICES

Vendor 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. Vendor 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.

1.2 Service Capabilities

1.201 CUSTOMER SERVICE/ORDERING

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

The Vendor shall have an accessible customer service department with an individual specifically assigned to State of Michigan accounts. The Vendor shall have experienced sales representatives make timely personal visits to State accounts. The Vendor's customer service must respond to State agency inquiries promptly. The Vendor 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

Vendor shall discuss their training capabilities and the training to be included in the Contract. The Vendor shall provide training to individual agencies, when necessary, on aspects of ordering, shipping, billing, and receiving. At the request of the Contract Administrator, the Vendor shall



provide in-service training to agency personnel on products, installation, and product safety issues. The Vendor 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

Vendor shall discuss their capabilities related to generating reports. Vendor 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 SPECIAL PROGRAMS

The State is interested in any other special programs that vendor's may have. Please discuss these programs, such as return policies, trade-in programs allowing the return of new product not needed, quantity discounts, etc.

1.205 SECURITY

The Contract may require frequent deliveries to State of Michigan facilities. Vendors 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, vendors 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, vendors shall provide the results of all security background checks.

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

The State may decide to also perform a security background check. If so, vendors 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 Vendor 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 2 business 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 50 kits. If the vendor's minimum order requirement is less than 50 kits, that minimum, which will become the minimum order if a Contract is awarded to the vendor, shall be indicated in the vendor'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 50 kits, or under the vendor's minimum order requirement indicated in the vendor's proposal or on the attached Item Listing.

1.303 PACKAGING

The vendor is requested to provide packaging that most closely meets these packaging sizes. However, vendors can submit alternates. The state reserves the right of final approval on packaging offered by the vendor.

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:

- Manufacturer's 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

(X) F.O.B. state facility

Prices shall be quoted "F.O.B. Delivered" with transportation charges prepaid on all orders of 50 kits or more to the State, or on all orders totaling or in excess of the vendor's minimum order requirement stated on the Item Listing. Other F.O.B. terms will not be accepted and shall disqualify a vendor from further consideration. This supersedes instructions contained within the DMB-285.

Freight Charges - Should an agency order below the minimum order requirement of a Contract, the Vendor 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 Vendor fails to follow these shipping instructions, the State shall pay the carrier used and deduct the difference from the Vendor's invoice for the amount that was charged and the amount that would have been charged if the requested carrier had been used.

1.306 RESERVED FOR ACCEPTANCE OF DELIVERABLES/PARE EXPLANATION

1.4 Project Price

1.401 PROPOSAL PRICING

Vendors shall provide pricing for the items included in this contract (see attached Item Listing).

1.402 QUICK PAYMENT TERMS - RESERVED



1.403 PRICE TERM

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.

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

1.5 Quantity term

Requirements – Vendor agrees to supply all that the state requires

Output – State agrees to buy all that the vendor can produce

Specified Amount _____

1.6 Other Terms and Conditions Needed for this Contract

RESERVED



Article 2 – General Terms and Conditions

2.0 Introduction

2.001 GENERAL PURPOSE

The Contract is for Convicted Offender Buccal Collection Kits for the State of Michigan. Exact quantities to be purchased are unknown, however the Vendor 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 Vendor by various State Agencies on the Purchase Order Contract Release Form.

Indicated on the Invitation To Bid cover page is the "ship to" address for the participating agency. However, if the Vendor 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 Purchasing Operations, State of Michigan, Department of Management and Budget, hereinafter known as Purchasing Operations, for the Michigan State Police, hereinafter known as *MSP*. Where actions are a combination of those of Purchasing Operations 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 Operations 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.

Vendor 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: [Laura Gyorkos](mailto:gyorkisl@michigan.gov)
2nd Floor, Mason Building
P.O. Box 30026
Lansing, Michigan 48909
[\(517\) 373-1455](tel:5173731455)
gyorkisl@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 October 19, 2007 through October 19, 2010.



The State reserves the right to exercise two (2) one-year options, at the sole option of the State. Vendor performance, quality of products, price, cost savings, and the Vendor's ability to deliver on time are some of the criteria that will be used as a basis for any decision by Purchasing Operations to exercise an option year.

Written notice will be provided to the Vendor within 60 days, provided that the State gives the Vendor a preliminary written notice of its intent to extend at least 30 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 (FOIA) 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 USC §§ 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 Vendor is that of client and independent Vendor. No agent, employee, or servant of the Vendor 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 Vendor 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 Vendor'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. Vendor is asked to reference the Purchase Order Number on all invoices for payment.

2.1 Vendor/Vendor Obligations

2.101 ACCOUNTING RECORDS

The Vendor 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 Vendor shall make the following notifications in writing:

- 1. When the Vendor 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 Vendor shall notify Purchasing Operations within 30 days.**
- 2. The Vendor shall also notify the Purchasing Operations 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 Vendor shall:



1. **Maintain current, accurate, and complete inventory records of assets and their costs;**
2. **Provide Purchasing Operations 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 Vendor's ownership or officer changes; and**
4. **Retain and continue to maintain depreciation and amortization schedules based on the asset records maintained before each Vendor ownership or officer change.**

2.103 SOFTWARE COMPLIANCE

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

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

2.104 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 - RESERVED

2.109 CALL CENTER DISCLOSURE

Vendor and/or all subcontracts 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

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 - RESERVED



2.203 POSSIBLE PROGRESS PAYMENTS - RESERVED

2.204 POSSIBLE PERFORMANCE-BASED PAYMENTS - RESERVED

2.205 ELECTRONIC PAYMENT AVAILABILITY

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

2.206 PERFORMANCE OF WORK BY VENDOR - RESERVED

2.3 Contract Rights and Obligations

2.301 INCURRING COSTS

The State of Michigan is not liable for any cost incurred by the Vendor prior to signing of the Contract. The State fiscal year is October 1st through September 30th. The Vendor(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 VENDOR RESPONSIBILITIES

The Vendor will be required to assume responsibility for all contractual activities, whether or not that Vendor performs them. Further, the State will consider the Vendor 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 Vendor to replace subcontractors found to be unacceptable. The Vendor 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 Vendor 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 Vendor may not assign the right to receive money due under the Contract without the prior written consent of the Director of Purchasing Operations.

The Vendor 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 Operations has given written consent to the delegation.

Vendor must obtain the approval of the Director of Purchasing Operations before using a place of performance that is different from the address that vendor 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 Vendor 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 Vendor 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 Vendor 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 Vendor of any representation or warranty made by the Vendor 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 Vendor 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 Vendor, 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 Vendor 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 Vendor 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 Vendor 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 Vendor's opinion be likely to become the subject of a claim of infringement, the Vendor shall at the Vendor'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



Vendor, (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 Vendor, (iii) accept its return by the State with appropriate credits to the State against the Vendor'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 Vendor shall indemnify, defend and hold harmless the State from any claim, loss, or expense arising from Vendor'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 Vendor 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 Vendor 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 Vendor of such claim in writing and take or assist Vendor in taking, as the case may be, any reasonable action to avoid the imposition of a default judgment against Vendor. No failure to so notify Vendor shall relieve Vendor of its indemnification obligations except to the extent that Vendor can demonstrate damages attributable to such failure. Within ten (10) days following receipt of written notice from the State relating to any claim, Vendor shall notify the State in writing whether Vendor agrees to assume control of the defense and settlement of that claim (a "Notice of Election"). After notifying Vendor of a claim and prior to the State receiving Vendor's Notice of Election, the State shall be entitled to defend against the claim, at Vendor's expense, and Vendor will be responsible for any reasonable costs incurred by the State in defending against the claim during such period.
- (b) If Vendor 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) Vendor shall, at the request of the State, demonstrate to the reasonable satisfaction of the State, Vendor's financial ability to carry out its defense and indemnity obligations under this Contract; (iii) Vendor 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



Vendor given within ten (10) days after the State's receipt of Vendor's information requested by the State pursuant to clause (ii) of this paragraph if the State determines that Vendor has failed to demonstrate to the reasonable satisfaction of the State Vendor'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 Vendor 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 Vendor. If it is determined that the claim was one against which Vendor was required to indemnify the State, upon request of the State, Vendor shall promptly reimburse the State for all such reasonable costs and expenses.**

2.306 LIMITATION OF LIABILITY

Except as set forth herein, neither the Vendor 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 Vendor; to claims covered by other specific provisions of this Contract calling for liquidated damages; to Vendor'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.

2.307 CONTRACT DISTRIBUTION

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

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 vendor 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 PURCHASING FROM OTHER STATE AGENCIES - 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 Vendor must provide for up to 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 Vendor 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 Vendor's website, even if the Vendor'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 Purchasing Operations 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 Operations. The Contract Compliance Inspector for this project is:

Dorothy Catella
Michigan State Police
Forensic Science
7320 N. Canal Rd.
Lansing, MI 48913
(517) 322-6135

2.402 PERFORMANCE REVIEWS

Purchasing Operations in conjunction with the Michigan State Police may review with the Vendor their performance under the Contract. Performance reviews shall be conducted quarterly, semi-annually or annually depending on Vendor'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 Operations, the Vendor 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 Operations, the Contract may be canceled for default. Delivery by the Vendor 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 Vendor agrees that the State may, upon 24-hour notice, perform an audit at Vendor's location(s) to determine if the Vendor is complying with the requirements of the Contract. The Vendor agrees to cooperate with the State during the audit and produce all records and documentation that verifies compliance with the Contract requirements.

(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 Vendor'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. Vendor 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, Vendor 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 Vendor's books, records, documents and papers pertinent to establishing Vendor'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 Vendor 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 Vendor, or any Subcontractor of Vendor performing services in connection with the Contract.
- (c) **Retention of Records.** Vendor 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 Vendor'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 Vendor and the State shall meet to review each audit report promptly after issuance. The Vendor 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 Vendor 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 Vendor 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 Vendor 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 Operations 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 Vendor 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 Vendor shall pay the State for expenses incurred in correcting defects. Rejected goods will be held for 45 days after delivery. The Vendor 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 Vendor 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 VENDOR WARRANTIES

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

1. The Vendor will perform all services in accordance with high professional standards in the industry;
2. The Vendor will use adequate numbers of qualified individuals with suitable training, education, experience and skill to perform the services;
3. The Vendor 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 Vendor 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 Vendor will perform the services in a manner that does not infringe the proprietary rights of any third party;
6. The Vendor will perform the services in a manner that complies with all applicable laws and regulations;
7. The Vendor has duly authorized the execution, delivery and performance of the Contract;
8. The Vendor 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 Vendor is the lawful owner or licensee of any Deliverable licensed or sold to the state by Vendor or developed by Vendor under this contract, and Vendor 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, Vendor procures any equipment, software or other Deliverable for the State (including equipment, software and other Deliverables manufactured, re-marketed or otherwise sold by Vendor under Vendor's name), then in addition to Vendor's other responsibilities with respect to such items as set forth in this Contract, Vendor 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 Vendor.
13. The Vendor is qualified and registered to transact business in all locations where required.
14. Neither the Vendor 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 Vendor'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. Vendor 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 Vendor 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 Vendor 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 Vendor. All written information furnished to the State by or behalf of Vendor 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 Vendor's assignment of Key Personnel to this project and to recommend reassignment of personnel deemed unsatisfactory by the State.



The Vendor 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 Vendor's obligations under this Contract. The Vendor 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 Vendor including but not limited to illness, disability, resignation or termination of the Key Personnel's employment.

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 Vendor 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 Vendor, the State shall provide the Vendor 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 Vendor); 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 Vendor as of the date specified by the State in a written notice of cancellation to the Vendor. The Vendor 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 Vendor which are caused by acts or omissions of its subcontractors will not relieve the Vendor 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 Vendor 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 Vendor.** In the event that the Vendor 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 Vendor, 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 Vendor 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 Vendor 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 Vendor 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 Vendor 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 Vendor. The State shall give the Vendor 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 Vendor, an officer of the Vendor, or an owner of a 25% or greater share of the Vendor, 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 Vendor'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 Vendor 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, Vendor 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 Vendor's Default pursuant to Section 2.602; otherwise the State shall compensate Vendor 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 Operations 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 Vendor 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 .**

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

Vendor shall be required to submit cost or pricing data with the pricing of any modification of this contract to the Contract Administrator in Purchasing Operations. 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 Vendor'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.

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

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

2.805 CHANGES

(a) The Contract Administrator may, at any time, without notice to the sureties, if any, by written order designated or indicated to be a change order, make changes in the work within the general scope of the contract, including changes:

- (1) In the specifications (including drawings and designs);
 - (2) In the method or manner of performance of the work;
 - (3) In the Government-furnished facilities, equipment, materials, services, or site; or
 - (4) Directing acceleration in the performance of the work.
- (a) Any other written or oral order (which, as used in this paragraph (b), includes direction, instruction, interpretation, or determination) from the Contract Administrator that causes a



change shall be treated as a change order under this clause; Provided, that the Vendor gives the Contract Administrator written notice stating:

- (1) The date, circumstances, and source of the order; and
 - (2) That the Vendor regards the order as a change order.
- (b) Except as provided in this clause, no order, statement, or conduct of the Contract Administrator shall be treated as a change under this clause or entitle the Vendor to an equitable adjustment.



Kit Contents – Michigan State Police Convicted Offender Buccal Collection Kit

Kit contents will include the following:

1. Two round sterile buccal foam tipped applicators approximately 1” in diameter.
2. Bar-coded paper based collection/storage device (Whatman® Part# WB12-9123)

Barcode Lots: Collection cards will be numbered sequentially with each production. Each production will be identified with a unique lot designator (see item 3). Each lot will start at number one (1). Approval of a new barcode lot sequence will be obtained from the Michigan State Police before printing.

Example: First Lot – MIAE00001.....MIAE99999
Second Lot – MIAF00001.....MIAF99999

3. 9” x 6” plastic mailing envelope that meets United States Postal Service requirements for the delivery of biological specimens. The envelope must be pre-printed with the Michigan State Police mailing address and return address on the front. The envelope must be pre-printed with a reminder statement as provided by the Michigan State Police on the back. The envelope must contain a peel and stick adhesive for closure.
4. 5.5” x 1.5” Ink strip with an easy peel edge.
5. Transparent kit envelope of sufficient dimension to contain the above kit components, with a notched area for ease of opening.

Each box of 50 kits must contain a reorder information sheet as specified by the Michigan State Police.



ITEM LISTING/PRICING PAGE

ITEM NO.	UNIT	NIGP CODE	DESCRIPTION	UNIT COST
001	EA	495-28	<p>BUCCAL COLLECTION KITS per the specifications outlined below and on pages 1 - 3 at beginning of terms and conditions.</p> <p>This kit relies on a medical collection device impregnated with chemicals which protect the DNA sample and kills any microorganisms associated with the sample. The Michigan Department of State Police require that the buccal collection device to be designed according to the specifications of the Michigan Department of State Police and utilizing Whatman BioScience FTA paper.</p> <p>Kit contents will include, two sterile buccal foam swabs, bar-coded paper based collection/storage device, kit envelope (transparent), mailing envelope, buccal swab envelope.</p> <p>The collection/storage device should be labeled with:</p> <ul style="list-style-type: none">a. Michigan State Policeb. Convicted Felon Database Buccal Collection Card	\$4.50

