

STATE OF MICHIGAN
 DEPARTMENT OF TECHNOLOGY, MANAGEMENT & BUDGET
 PROCUREMENT

525 W. ALLEGAN STREET
 LANSING, MI 48933

P.O. BOX 30026
 LANSING, MI 48909

CHANGE NOTICE NO. 6
 to
 CONTRACT NO. 071B1300079
 between
 THE STATE OF MICHIGAN
 and

NAME & ADDRESS OF CONTRACTOR	PRIMARY CONTACT	EMAIL
Falcon Road Maintenance Equipment, LLC 120 Waldo Ave. Midland MI, 48642	Gretchen Grouix	sales@falconme.com
	PHONE	CONTRACTOR'S TAX ID NO. (LAST FOUR DIGITS ONLY)
	989-495-332	*****4196

STATE CONTACTS	AGENCY	NAME	PHONE	EMAIL
PROGRAM MANAGER / CCI	MDOT	Dan smith	517-334-7767	smithd4@michigan.gov
CONTRACT ADMINISTRATOR	DTMB	Yvon Dufour	(517) 284-6996	dufouy@michigan.gov

CONTRACT SUMMARY			
DESCRIPTION: Road Maint. Equipment Statewide			
INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW
October 1, 2010	September 30, 2013	2 - 1 Year	December 31, 2016
PAYMENT TERMS		DELIVERY TIMEFRAME	
45 Days		N/A	
ALTERNATE PAYMENT OPTIONS			EXTENDED PURCHASING
<input type="checkbox"/> P-card <input type="checkbox"/> Direct Voucher (DV) <input type="checkbox"/> Other			<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
MINIMUM DELIVERY REQUIREMENTS			
F.O.B			

DESCRIPTION OF CHANGE NOTICE				
EXERCISE OPTION?	LENGTH OF OPTION	EXERCISE EXTENSION?	LENGTH OF EXTENSION	REVISED EXP. DATE
<input type="checkbox"/>		<input type="checkbox"/>		
CURRENT VALUE		VALUE OF CHANGE NOTICE	ESTIMATED AGGREGATE CONTRACT VALUE	
\$ 500,000.00		\$ 0.00	\$ 500,000.00	
DESCRIPTION: Effective 4/22/2016 pricing on this contract hereby updated, per revised Attachment A. All other terms, conditions, specifications and pricing remain the same. Per contractor request, and DTMB Procurement approval.				

ATTACHMENT A - PRICING

Item	Make/Model Bid	Estimated Quantity	Unit Price
Asphalt Heater, two ton per MDOT spec 36-04012T.07	FALCON S2D1XI	1 to 5	\$17,758.00
Asphalt Heater, four ton per MDOT spec. 36-0401.4T.05	FALCON P4D1XI	1 to 5	\$14,163.00
Asphalt Heater, two ton, diesel fired, per MDOT spec 36-0401.2TOJ.5	FALCON P2D1XI	1 to 5	\$17,552.00

STATE OF MICHIGAN
 DEPARTMENT OF TECHNOLOGY, MANAGEMENT & BUDGET
 PROCUREMENT

525 W. ALLEGAN STREET
 LANSING, MI 48933

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 LANSING, MI 48909

CHANGE NOTICE NO. 5
 to
 CONTRACT NO. 071B1300079
 between
 THE STATE OF MICHIGAN
 and

NAME & ADDRESS OF CONTRACTOR	PRIMARY CONTACT	EMAIL
Falcon Road Maintenance Equipment, LLC 120 Waldo Ave. Midland MI, 48642	Gretchen Grouix	sales@falconme.com
	PHONE	CONTRACTOR'S TAX ID NO. (LAST FOUR DIGITS ONLY)
	989-495-332	*****4196

STATE CONTACTS	AGENCY	NAME	PHONE	EMAIL
PROGRAM MANAGER / CCI	MDOT	Dan smith	517-334-7767	smithd4@michigan.gov
CONTRACT ADMINISTRATOR	DTMB	Yvon Dufour	(517) 284-6996	dufouy@michigan.gov

CONTRACT SUMMARY			
DESCRIPTION: Road Maint. Equipment Statewide			
INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW
October 1, 2010	September 30, 2013	2 - 1 Year	March 30, 2016
PAYMENT TERMS		DELIVERY TIMEFRAME	
45 Days		N/A	
ALTERNATE PAYMENT OPTIONS			EXTENDED PURCHASING
<input type="checkbox"/> P-card <input type="checkbox"/> Direct Voucher (DV) <input type="checkbox"/> Other			<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
MINIMUM DELIVERY REQUIREMENTS			
F.O.B			

DESCRIPTION OF CHANGE NOTICE				
EXERCISE OPTION?	LENGTH OF OPTION	EXERCISE EXTENSION?	LENGTH OF EXTENSION	REVISED EXP. DATE
<input type="checkbox"/>		<input checked="" type="checkbox"/>	9 Months	12/31/2016
CURRENT VALUE		VALUE OF CHANGE NOTICE	ESTIMATED AGGREGATE CONTRACT VALUE	
\$ 500,000.00		\$ 0.00	\$ 500,000.00	

DESCRIPTION:
 Effective March 15, 2016, this contract is hereby extended 9 months. The revised contract expiration date is 12/31/2016. All other terms, conditions, specifications, and pricing remain the same. Per DTMB request, DTMB Procurement approval, and State Administrative Board approval on March 15, 2016.

STATE OF MICHIGAN
 DEPARTMENT OF TECHNOLOGY, MANAGEMENT AND BUDGET
 PROCUREMENT
 P.O. BOX 30026, LANSING, MI 4890
 OR
 525 W. ALLEGAN, LANSING, MI 48933

CHANGE NOTICE NO. 4
 to
CONTRACT NO. 071B1300079
 between
THE STATE OF MICHIGAN
 and

NAME & ADDRESS OF CONTRACTOR	PRIMARY CONTACT	EMAIL
FALCON ROAD MAINTENANCE EQUIPMENT, INC. 120 Waldo Ave. Midland Michigan 48642	Gretchen Grouix	sales@falconrme.com
	PHONE	CONTRACTOR'S TAX ID NO. (LAST FOUR DIGITS ONLY)
	616-403-0886	5770

STATE CONTACTS	AGENCY	NAME	PHONE	EMAIL
PROGRAM MANAGER / CCI	various	Dan Smith	517-334-7767	smithd4@michigan.gov
CONTRACT ADMINISTRATOR	DTMB	Yvon Dufour	(517) 284-6996	dufoury@michigan.gov

CONTRACT SUMMARY			
DESCRIPTION: ROAD MAINT. EQUIPMENT STATEWIDE			
INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE CHANGE (S) NOTED BELOW
October 01, 2010	September 30, 2013	2, 1 year	September 30, 2015
PAYMENT TERMS		DELIVERY TIMEFRAME	
45 days		N/A	
ALTERNATE PAYMENT OPTIONS			EXTENDED PURCHASING
<input type="checkbox"/> P Card: <input type="checkbox"/> Direct Voucher (DV) <input type="checkbox"/> Other			<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
MINIMUM DELIVERY REQUIREMENTS			
F.O.B.			

DESCRIPTION OF CHANGE NOTICE				
EXERCISE OPTION?	LENGTH OF OPTION	EXERCISE EXTENSION?	LENGTH OF EXTENSION	REVISED EXPIRATION DATE
<input type="checkbox"/>		<input type="checkbox"/>	6 Months	March 30, 2016
CURRENT VALUE		VALUE OF CHANGE NOTICE	ESTIMATED AGGREGATE CONTRACT VALUE	
\$500,000.00		\$0.00	\$500,000.00	

DESCRIPTION:
 Effective 9/16/2015, this contract is hereby extended through 3/30/2016. Please note the Contract Administrator has been changed to Yvon Dufour. All other terms, conditions, specifications and pricing remain the same. Per DTMB request and agency agreement, and DTMB Procurement approval.

STATE OF MICHIGAN
 DEPARTMENT OF TECHNOLOGY, MANAGEMENT AND BUDGET
 PROCUREMENT
 P.O. BOX 30026, LANSING, MI 48909
 OR
 525 W. ALLEGAN, LANSING, MI 48933

CHANGE OF CONTRACTOR NAME AND/OR TAX ID NO.

CONTRACT NO. 071B1300079

hereafter referred as

CONTRACT NO. N/A

between

THE STATE OF MICHIGAN

and

PREVIOUS NAME & ADDRESS OF CONTRACTOR	PRIMARY CONTACT	EMAIL
Falcon Road Maintenance Equipment, Inc. 120 Waldo Ave. Midland, MI 48642	Gretchen Grouix	sales@falconrme.com
	PHONE	CONTRACTOR'S TAX ID NO. (LAST FOUR DIGITS ONLY)
	(616) 403-0886	5770

NEW NAME & ADDRESS OF CONTRACTOR	PRIMARY CONTACT	EMAIL
Falcon Road Maintenance Equipment, LLC. 120 Waldo Ave. Midland, MI 48642	Gretchen Grouix	sales@falconrme.com
	PHONE	CONTRACTOR'S TAX ID NO. (LAST FOUR DIGITS ONLY)
	(616) 403-0886	4196

CONTRACT SUMMARY			
DESCRIPTION: ROAD MAINT. EQUIPMENT STATEWIDE			
INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	CURRENT EXPIRATION DATE
October 1, 2010	September 30, 2013	2, one year	September 30, 2015
PAYMENT TERMS		DELIVERY TIMEFRAME	
45 days		N/A	
ALTERNATE PAYMENT OPTIONS			EXTENDED PURCHASING
<input type="checkbox"/> P-card <input type="checkbox"/> Direct Voucher (DV) <input type="checkbox"/> Other			<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
MINIMUM DELIVERY REQUIREMENTS			
F.O.B.			

DESCRIPTION OF CHANGE NOTICE
<p>DESCRIPTION: Effective September 28, 2015 Contractor is under new ownership. The parties agree that Falcon Road Maintenance Equipment, LLC. will assume all duties and obligations, and rights under contract No. 071B1300079 and that Falcon Road maintenance Equipment, Inc. will no longer be the responsible party. This action will constitute a valid novation for the substitution of the parties. The contract terms and conditions remain in effect and enforceable against Falcon Road Maintenance Equipment, LLC.</p>

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

CHANGE NOTICE NO. 3
 to
CONTRACT NO. 071B1300079

between
THE STATE OF MICHIGAN
 and

NAME & ADDRESS OF CONTRACTOR:	PRIMARY CONTACT	EMAIL
Falcon Road Maintenance Equipment 120 Waldo Ave Midland, MI 48642	Gretchen Grouix	gretchen@falconrme.com
	TELEPHONE	CONTRACTOR #, MAIL CODE
	sales@falconrme.com	

STATE CONTACTS	AGENCY	NAME	PHONE	EMAIL
CONTRACT COMPLIANCE INSPECTOR	MDOT	Dan Smith	517-334-7767	smithd4@michigan.gov
BUYER	DTMB	Steve Rigg	517-284-7043	riggs@michigan.gov

CONTRACT SUMMARY:

DESCRIPTION: Road Maintenance Equipment – Statewide

INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW
October 1, 2010	September 30, 2013	2, 1yr	September 30, 2014
PAYMENT TERMS	F.O.B	SHIPPED	SHIPPED FROM
Net 30	Delivered	N/A	N/A

ALTERNATE PAYMENT OPTIONS: AVAILABLE TO MI DEAL PARTICIPANTS
 P-card Direct Voucher (DV) Other Yes No

MINIMUM DELIVERY REQUIREMENTS:

N/A

DESCRIPTION OF CHANGE NOTICE:

EXTEND CONTRACT EXPIRATION DATE	EXERCISE CONTRACT OPTION YEAR(S)	EXTENSION BEYOND CONTRACT OPTION YEARS	LENGTH OF OPTION/EXTENSION	EXPIRATION DATE AFTER CHANGE
<input type="checkbox"/> No <input type="checkbox"/> Yes	<input checked="" type="checkbox"/>	<input type="checkbox"/>	1 yr.	September 30, 2015

VALUE/COST OF CHANGE NOTICE:

\$0.00

ESTIMATED REVISED AGGREGATE CONTRACT VALUE:

\$ 500,000.00

Effective immediately, the State hereby exercised the second option year. The REVISED contract expiration date is September 30, 2015. Please note that the buyer has been changed to Steve Rigg. All other pricing, terms, conditions and models remain unchanged. Per vendor and DTMB Procurement approval.

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

CHANGE NOTICE NO. 071B1300079

to

CONTRACT NO. 2

between

THE STATE OF MICHIGAN

and

NAME & ADDRESS OF CONTRACTOR:	PRIMARY CONTACT	EMAIL
Falcon Road Maintenance Equipment 120 Waldo Ave Midland, MI 48642	Gretchen Grouix	sales@falconrme.com
	TELEPHONE	CONTRACTOR #, MAIL CODE
	sales@falconrme.com	

STATE CONTACTS	AGENCY	NAME	PHONE	EMAIL
CONTRACT COMPLIANCE INSPECTOR	MDOT	Dan Smith	517-334-7767	smithd4@michigan.gov
BUYER	DTMB	Klatra Pickett	517-373-7374	pickettk@michigan.gov

CONTRACT SUMMARY:

DESCRIPTION: Road Maintenance Equipment – Statewide

INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW
October 1, 2010	September 30, 2013	2, 1yr	September 30, 2013
PAYMENT TERMS	F.O.B	SHIPPED	SHIPPED FROM
Net 30	Delivered	N/A	N/A
ALTERNATE PAYMENT OPTIONS:			AVAILABLE TO MiDEAL PARTICIPANTS
<input type="checkbox"/> P-card <input type="checkbox"/> Direct Voucher (DV) <input type="checkbox"/> Other			<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No

MINIMUM DELIVERY REQUIREMENTS:

N/A

DESCRIPTION OF CHANGE NOTICE:

EXTEND CONTRACT EXPIRATION DATE	EXERCISE CONTRACT OPTION YEAR(S)	EXTENSION BEYOND CONTRACT OPTION YEARS	LENGTH OF OPTION/EXTENSION	EXPIRATION DATE AFTER CHANGE
<input type="checkbox"/> No <input type="checkbox"/> Yes	<input checked="" type="checkbox"/>	<input type="checkbox"/>	1 yr.	September 30, 2014
VALUE/COST OF CHANGE NOTICE:			ESTIMATED REVISED AGGREGATE CONTRACT VALUE:	
\$0.00			\$ 500,000.00	

Effective, June 1, 2013, the State hereby exercised one option year. The REVISED contract expiration date is September 30, 2014,

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

Per vendor and DTMB Procurement approval.

STATE OF MICHIGAN
DEPARTMENT OF TECHNOLOGY, MANAGEMENT AND BUDGET February 16, 2012
PROCUREMENT
P.O. BOX 30026, LANSING, MI 48909

CHANGE NOTICE NO.1
OF
CONTRACT NO. 071B1300079
between
THE STATE OF MICHIGAN
and

NAME & ADDRESS OF CONTRACTOR Falcon Road Maintenance Equipment 120 Waldo Ave. Midland, MI 48642 Email: sales@falconrme.com	TELEPHONE (989)495-9332 Gretchen Grouix
	CONTRACTOR NUMBER/MAIL CODE
	BUYER/CA (517) 373-7374 Klatra Pickett
Contract Compliance Inspector: Irene Pena Road Maintenance Equipment - Statewide	
CONTRACT PERIOD: 3 yrs. + 2 one-year options From: October 1, 2010 To: September 30, 2013	
TERMS Net 30	SHIPMENT N/A
F.O.B. Delivered	SHIPPED FROM N/A
MINIMUM DELIVERY REQUIREMENTS None	
MISCELLANEOUS INFORMATION:	

THIS CONTRACT IS EXTENDED TO LOCAL UNITS OF GOVERNMENT.

NATURE OF CHANGE(S):

Effective February 16, 2012 the Buyer has been changed to:

Klatra Pickett
Phone: (517) 373-7374
pickettk@michigan.gov

AUTHORITY/REASON:

Per DTMB Procurement's approval.

TOTAL ESTIMATED CONTRACT VALUE REMAINS: \$500,000.00

STATE OF MICHIGAN
 DEPARTMENT OF TECHNOLOGY, MANAGEMENT AND BUDGET October 11, 2010
 PURCHASING OPERATIONS
 P.O. BOX 30026, LANSING, MI 48909

**NOTICE
 OF
 CONTRACT NO. 071B1300079
 between
 THE STATE OF MICHIGAN
 and**

NAME & ADDRESS OF CONTRACTOR Falcon Road Maintenance Equipment 120 Waldo Ave. Midland, MI 48642 Email: sales@falconrme.com	TELEPHONE (989)495-9332 Gretchen Grouix
	CONTRACTOR NUMBER/MAIL CODE
	BUYER/CA (517)241-1647 Irene Pena, Buyer Specialist
Contract Compliance Inspector: Irene Pena Road Maintenance Equipment - Statewide	
CONTRACT PERIOD: 3 yrs. + 2 one-year options From: October 1, 2010 To: September 30, 2013	
TERMS <p style="text-align: center;">Net 30</p>	SHIPMENT <p style="text-align: center;">N/A</p>
F.O.B. <p style="text-align: center;">Delivered</p>	SHIPPED FROM <p style="text-align: center;">N/A</p>
MINIMUM DELIVERY REQUIREMENTS <p style="text-align: center;">None</p>	
MISCELLANEOUS INFORMATION:	

PLEASE NOTE: The Contract Period End Date above is corrected to September 30, 2013 as Stated in Section 2.000 Contract Structure and Term, Sub-Section 2.001 Contract Term.

THIS CONTRACT IS EXTENDED TO LOCAL UNITS OF GOVERNMENT.

The terms and conditions of this Contract are those of ITB #07110200129 This Contract Agreement and the vendor's quote dated 06/15/10. 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: \$500,000.00

**STATE OF MICHIGAN
 DEPARTMENT OF TECHNOLOGY, MANAGEMENT AND BUDGET
 PURCHASING OPERATIONS
 P.O. BOX 30026, LANSING, MI 48909**

**CONTRACT NO. 071B1300079
 between
 THE STATE OF MICHIGAN
 and**

NAME & ADDRESS OF CONTRACTOR Falcon Road Maintenance Equipment 120 Waldo Ave. Midland, MI 48642 <p style="text-align: right;">Email: sales@falconrme.com</p>	TELEPHONE (989)495-9332 Gretchen Grouix <hr/> CONTRACTOR NUMBER/MAIL CODE BUYER/CA (517)241-1647 Irene Pena, Buyer Specialist
Contract Compliance Inspector: Irene Pena <p style="text-align: center;">Road Maintenance Equipment - Statewide</p>	
CONTRACT PERIOD: 3 yrs. + 2 one-year options From: October 1, 2010 To: September 30, 2013	
TERMS <p style="text-align: center;">Net 30</p>	SHIPMENT <p style="text-align: center;">N/A</p>
F.O.B. <p style="text-align: center;">Delivered</p>	SHIPPED FROM <p style="text-align: center;">N/A</p>
MINIMUM DELIVERY REQUIREMENTS <p style="text-align: center;">None</p>	
MISCELLANEOUS INFORMATION: <p style="color: blue;">THIS CONTRACT IS EXTENDED TO LOCAL UNITS OF GOVERNMENT.</p> <p>The terms and conditions of this Contract are those of ITB #07110200129 This Contract Agreement and the vendor's quote dated 06/15/10. 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.</p> <p>Estimated Contract Value: \$500,000.00</p>	

THIS IS NOT AN ORDER: This Contract Agreement is awarded on the basis of our inquiry bearing the ITB No. 07110200129. Orders for delivery will be issued directly by various State Departments through the issuance of a Purchase Order Form. All terms and conditions of the invitation to bid are made a part hereof.

FOR THE CONTRACTOR: <p style="text-align: center;">Falcon Road Maintenance Equipment</p> <hr/> <p style="text-align: center;">Firm Name</p> <hr/> <p style="text-align: center;">Authorized Agent Signature</p> <hr/> <p style="text-align: center;">Authorized Agent (Print or Type)</p> <hr/> <p style="text-align: center;">Date</p>	FOR THE STATE: <hr/> <p style="text-align: center;">Signature Irene Pena, Buyer Specialist</p> <hr/> <p style="text-align: center;">Name/Title Commodities Division, Purchasing Operations</p> <hr/> <p style="text-align: center;">Division</p> <hr/> <p style="text-align: center;">Date</p>
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Attachment A, Pricing



DEFINITIONS

“Days” means calendar days unless otherwise specified.

“24x7x365” means 24 hours a day, seven days a week, and 365 days a year (including the 366th day in a leap year).

“Additional Service” means any Services/Deliverables within the scope of the Contract, but not specifically provided under any Statement of Work, that once added will result in the need to provide the Contractor with additional consideration.

“Audit Period” means the seven year period following Contractor’s provision of any work under the Contract.

“Bidder(s)” are those companies that submit a proposal in response to this RFP.

“Business Day,” whether capitalized or not, shall mean any day other than a Saturday, Sunday, Office of State **Employer mandated furlough day**, or State-recognized legal holiday (as identified in the Collective Bargaining Agreement for State employees) from 8:00am EST through 5:00pm EST unless otherwise stated.

“Blanket Purchase Order” is an alternate term for Contract and is used in the States computer system.

“Business Critical” means any function identified in any Statement of Work as Business Critical.

“Chronic Failure” is defined in any applicable Service Level Agreements.

“Deleted – Not Applicable” means that section is not applicable or included in this RFP. This is used as a placeholder to maintain consistent numbering.

“Deliverable” means physical goods and/or commodities as required or identified by a Statement of Work

“DTMB” means the Michigan Department of Technology, Management and Budget

“Environmentally preferable products” means a product or service that has a lesser or reduced effect on human health and the environment when compared with competing products or services that serve the same purpose. Such products or services may include, but are not limited to, those which contain recycled content, minimize waste, conserve energy or water, and reduce the amount of toxics either disposed of or consumed.

“Excusable Failure” has the meaning given in **Section 2.244**.

“Hazardous material” means any material defined as hazardous under the latest version of federal Emergency Planning and Community Right-to-Know Act of 1986 (including revisions adopted during the term of the Contract).

“Incident” means any interruption in Services.

“ITB” is a generic term used to describe an Invitation to Bid. The ITB serves as the document for transmitting the RFP to potential Bidders

“Key Personnel” means any Personnel designated in **Section 1.031** as Key Personnel.

“New Work” means any Services/Deliverables outside the scope of the Contract and not specifically provided under any Statement of Work, that once added will result in the need to provide the Contractor with additional consideration.



“Ozone-depleting substance” means any substance the Environmental Protection Agency designates in 40 CFR part 82 as: (1) Class I, including, but not limited to, chlorofluorocarbons, halons, carbon tetrachloride, and methyl chloroform; or (2) Class II, including, but not limited to, hydrochlorofluorocarbons.

“Post-Consumer Waste” means any product generated by a business or consumer which has served its intended end use, and which has been separated or diverted from solid waste for the purpose of recycling into a usable commodity or product, and which does not include post-industrial waste.

“Post-Industrial Waste” means industrial by-products which would otherwise go to disposal and wastes generated after completion of a manufacturing process, but does not include internally generated scrap commonly returned to industrial or manufacturing processes.

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

“Reuse” means using a product or component of municipal solid waste in its original form more than once.

“RFP” means a Request for Proposal designed to solicit proposals for services.

“Services” means any function performed for the benefit of the State.

“Source reduction” means any practice that reduces the amount of any hazardous substance, pollutant, or contaminant entering any waste stream or otherwise released into the environment prior to recycling, energy recovery, treatment, or disposal.

“State Location” means any physical location where the State performs work. State Location may include state-owned, leased, or rented space.

“Subcontractor” means a company Contractor delegates performance of a portion of the Services to, but does not include independent contractors engaged by Contractor solely in a staff augmentation role.

“Unauthorized Removal” means the Contractor’s removal of Key Personnel without the prior written consent of the State.

“Waste prevention” means source reduction and reuse, but not recycling.

“Waste reduction”, or “pollution prevention” means the practice of minimizing the generation of waste at the source and, when wastes cannot be prevented, utilizing environmentally sound on-site or off-site reuse and recycling. The term includes equipment or technology modifications, process or procedure modifications, product reformulation or redesign, and raw material substitutions. Waste treatment, control, management, and disposal are not considered pollution prevention, per the definitions under Part 143, Waste Minimization, of the Natural Resources and Environmental Protection Act (NREPA), 1994 PA 451, as amended.

“Work in Progress” means a Deliverable that has been partially prepared, but has not been presented to the State for Approval.

“Work Product” refers to any data compilations, reports, and other media, materials, or other objects or works of authorship created or produced by the Contractor as a result of an in furtherance of performing the services required by this Contract.



Article 1 – Statement of Work (SOW)

1.010 Project Identification

1.011 Project Request

This is a Contract to procure Road Maintenance Equipment.

1.012 Background

This is a master contract for State Agencies, MiDEAL members, and participating National Association of State Procurement Officers (NASPO) member states and their political sub-divisions to procure Road Maintenance Equipment. State Agencies include, but are not limited to: Michigan Department of Transportation (MDOT), Michigan Department of Natural Resources and Environment (DNRE) and Michigan Department of Veteran and Military Affairs (DMVA).

Attachment A, Price Proposal, includes items with firm-fixed pricing on specific items and pricing and/or discounts the Contractor provided as part of 1.0707, Special Programs.

1.020 Scope of Work and Deliverables

1.021 In Scope

Contractor must provide the Road Maintenance Equipment for purchase as specified in Attachment A, Price Proposal. Contractor must provide Deliverables/Services and staff, and otherwise do all things necessary for or incidental to the performance of work, as set forth in this Contract.

1.022 Work and Deliverable – Deleted, Not Applicable

1.030 Roles and Responsibilities

1.031 Contractor Staff, Roles, and Responsibilities

Contractor must have the capacity to receive orders electronically, by phone, facsimile, and by written order. Contractors shall have internal controls, approved by Purchasing Operations, to insure that authorized individuals with the State place orders. The contractor must verify orders that have quantities that appear to be abnormal or excessive.

It is the preference of the State of Michigan that the Contractor have an accessible customer service department with an individual specifically assigned to State of Michigan accounts. It is the preference of the State of Michigan that the Contractor have experienced sales representatives make timely personal visits to State accounts. The Contractor’s customer service must respond to State agency inquiries promptly. It is the preference of the State of Michigan that the Contractor provides 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 a purchase order. Orders will be issued by the various state agencies, MiDEAL members, and participating National Association of State Procurement Officers (NASPO) member states and their political sub-divisions.

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

If mailed, a purchase order is considered “issued” when the State deposits the order in the mail. Orders may be issued orally, by facsimile, or by electronic commerce methods.

Falcon RME has the capacity to receive orders electronically, by phone, by facsimile and by written order. Falcon has internal controls to ensure that only authorized individuals with the state place orders. Falcon RME has an order review process which includes identification of order quantities that appear to be abnormal or excessive. Gretchen Groulx is responsible for reviewing all purchase orders with the buyer designated by the customer.



Orders may be emailed to sales@falconrme.com
Orders may be phoned to 616 403 2939 (contact is Gretchen Groulx)
Orders may be faxed to 989 495 9342.
Orders may be mailed to Falcon RME, 120 Waldo Ave., Midland, MI 48642

Gretchen Groulx is assigned customer service responsibility to the state of Michigan and Dave Zedaker is the Falcon Sales Representative assigned to the State of Michigan.

1.040 Project Plan

1.041 Project Plan Management – Deleted, Not Applicable

1.042 Reports

Reports shall be submitted as requested by the State of Michigan.

For purchases by MiDEAL program members (authorized local units of government), Contractor must submit reports of purchasing activities to Purchasing Operations, DTMB on a quarterly basis. Reports must include, at a minimum, an itemized listing of purchasing activities by each agency, with the agency name, and the total value of purchases for each agency, and a grand total of all purchases.

1.050 Acceptance

1.051 Criteria

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

Equipment shall be furnished and delivered in new and operational condition. Damaged equipment will not be accepted by the State, and the Contractor will have to repair or replace the damaged equipment at the Contractor's expense.

1.052 Final Acceptance

The Contractor shall furnish and deliver the specified equipment to the Michigan location. The State, or their designee, will inspect equipment and approve acceptance of goods upon delivery.

1.060 Proposal Pricing

1.061 Proposal Pricing

Contract pricing is found on Attachment A, Pricing.

Equipment items for purchase must be the newest model year available.

Contractor's out-of-pocket expenses are not separately reimbursable by the State unless, on a case-by-case basis for unusual expenses, the State has agreed in advance and in writing to reimburse Contractor for the expense at the State's current travel reimbursement rates. See www.michigan.gov/dmb for current rates.

State Administrative Fee

The Contractor must collect an Administrative Fee on the sales transacted under this Contract. The Contractor must remit the Administrative Fee in U.S. dollars within 30 days after the end of the quarterly sales reporting period. The Administrative Fee equals **two (2) percent** of the total quarterly sales reported. Contractor must include the Administrative Fee in their prices.

The Contractor must remit any monies due as a result of the close-out report at the time the close-out report is submitted to Purchasing Operations.



The Contractor must pay the Administrative Fee by check. To ensure the payment is credited properly, the Contractor must identify the check as an "Administrative Fee" and include the following information with the payment: *Applicable State BPO Number, report amount(s), and reporting period covered.*

Contractor must forward the check to the following address:

*Department of Technology, Management and Budget
Financial Services – Cashier Unit
Lewis Cass Building
320 South Walnut St.
P.O. Box 30681
Lansing, MI 48909*

Please make check payable to: State of Michigan

1.062 Price Term

(X) 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. Discounts quoted are the minimum 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 Contractor remains responsible for performing according to the Contract terms at the Contract price for all orders received before price revisions are approved or before the Contract is cancelled.**

1.063 Tax Excluded from Price

(a) Sales Tax: For purchases made directly by the State, the State is exempt from State and Local Sales Tax. Prices must not include the taxes. Exemption Certificates for State Sales Tax will be furnished upon request.

(b) Federal Excise Tax: The State may be exempt from Federal Excise Tax, or the taxes may be reimbursable, if articles purchased under any resulting Contract are used for the State's exclusive use. Certificates showing exclusive use for the purposes of substantiating a tax-free, or tax-reimbursable sale will be sent upon request. If a sale is tax exempt or tax reimbursable under the Internal Revenue Code, prices must not include the Federal Excise Tax.

1.064 Holdback – Deleted, Not Applicable

1.070 Commodity Requirements and Terms

Product Quality

1.0701 Specifications

See Attachment A, Pricing for items available under this contract.



1.0702 Alternate Bids – Deleted, Not Applicable

1.0703 Research and Development – Deleted, Not Applicable

1.0704 Quality Assurance Program – Deleted, Not Applicable

1.0705 Warranty for Products or Services

For any equipment purchased, the manufacturers' standard warranty shall apply. In addition there shall be an option for the state to purchase extended warranty coverage, if desired.

Falcon has a dedicated and experienced service department which has provided both service and consultation to the Michigan DOT over the past several years. To the best of our knowledge, the Michigan DOT is satisfied with both the quality of the Falcon product and the responsiveness of the Falcon service team.

1.0706 Training

The Contractor must provide operator and service training to individual agencies, when necessary, on larger, more complex equipment that requires training. This training must be equivalent to the training that is offered to retail customers. At the request of the state agency, the Contractor must provide in-service training to agency personnel on products, installation, and product safety issues. The Contractor must provide training as needed during the period covered by the contract at no additional charge.

Falcon has a formal "in-service training program" for the operator, the mechanic/maintenance team and for the safety coordinator. This "in-service training" typically is performed over a 4-hour period at the time of delivery or as scheduled by the customer. In addition, Falcon provides ongoing consultation to all of its customers free of charge.

1.0707 Special Programs

Discounts are offered on purchases for all categories within Contractor's Agricultural, Grounds, and Roadside catalog. This must encompass attachments for base models.

Contractor must provide multi-unit discounts for all of their catalog items which are not included under the Attachment A, Price Proposal, State Item Listing Tab, SOM Road Maintenance Equipment List.

Falcon is pleased to offer the State of Michigan, 25% off its list price for all products for the duration of this contract. In the attached file, the column titled Falcon List Price reflects Falcon's current list prices while the column Michigan DOT prices represents prices that are 25% off Falcon's list price.

1.0708 Security

This Contract may require frequent deliveries to State of Michigan facilities. Upon request by the State, the Contractor shall provide the results of all security background checks.

The State may decide to also perform a security background check. If so, the Contractor 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 or driver license number would also be helpful).

The Contractor and its Subcontractors shall comply with the security access requirements of individual State facilities; see section 2.091, Background Checks and Security.

Delivery Capabilities

1.0709 Time Frames

Falcon offers two product lines. Its Falcon product line is built to a customer specification with delivery timeframes ranging from 45 - 90 days while the Talon product line is built to a standard specification with most deliveries made within 5 days.



1.0710 Minimum Order

There is no minimum order for orders.

1.0711 Packaging – Deleted, Not Applicable

1.0712 Palletizing

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

- Manufacturer’s standard 4-way shipping pallets are acceptable.

1.0713 Delivery Term

Prices are "F.O.B. Delivered" with transportation charges prepaid on all orders of one (1) or more to the State.

Other F.O.B. terms will not be accepted.

1.0714 Contract Performance – Deleted, Not Applicable

1.0715 Place of Performance

Place of Performance Full address	Owner/Operator of facility to be used	Percent (%) of Contract value to be Performed at listed Location
120 Waldo Avenue Midland, MI 48642	FALCON RME Owned	100%

1.0716 Environmental Requirements – Deleted, Not Applicable

1.0717 Subcontractors

work to be subcontracted under Contract (use additional attachment if necessary; estimates are acceptable):

Description of Work to be sub-contracted	Percent (%) of total contract value to be sub-contracted	Sub-contractor’s name and principal place of business (City and State)
NONE		

1.0718 Reports and Meetings – Deleted, Not Applicable

1.0719 Samples/Models – Deleted, Not Applicable

1.080 Additional Requirements

1.081 Rental/Lease Equipment – Deleted/Not Applicable



Article 2, Terms and Conditions

2.000 Contract Structure and Term

2.001 Contract Term

This Contract is for a period of three (3) years beginning 10/01/10 through 9/30/13. All outstanding Purchase Orders must also expire upon the termination (cancellation for any of the reasons listed in **Section 2.150**) of the Contract, unless otherwise extended under the Contract. Absent an early termination for any reason, Purchase Orders issued but not expired, by the end of the Contract's stated term, will remain in effect for the balance of the fiscal year for which they were issued.

2.002 Options to Renew

This Contract may be renewed in writing by mutual agreement of the parties not less than 30 days before its expiration. The Contract may be renewed for up to two (2) additional one (1) year periods.

2.003 Legal Effect

Contractor shall show acceptance of this Contract by signing two copies of the Contract and returning them to the Contract Administrator. The Contractor shall not proceed with the performance of the work to be done under the Contract, including the purchase of necessary materials, until both parties have signed the Contract to show acceptance of its terms, and the Contractor receives a contract release/purchase order that authorizes and defines specific performance requirements.

Except as otherwise agreed in writing by the parties, the State assumes no liability for costs incurred by Contractor or payment under this Contract, until Contractor is notified in writing that this Contract (or Change Order) has been approved by the State Administrative Board (if required), approved and signed by all the parties, and a Purchase Order against the Contract has been issued.

2.004 Attachments & Exhibits

All Attachments and Exhibits affixed to any and all Statement(s) of Work, or appended to or referencing this Contract, are incorporated in their entirety and form part of this Contract.

2.005 Ordering

The State will issue a written Purchase Order, Blanket Purchase Order, Direct Voucher or Procurement Card Order, which must be approved by the Contract Administrator or the Contract Administrator's designee, to order any Services/Deliverables under this Contract. All orders are subject to the terms and conditions of this Contract. No additional terms and conditions contained on either a Purchase Order or Blanket Purchase Order apply unless they are also specifically contained in that Purchase Order's or Blanket Purchase Order's accompanying Statement of Work. 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.

2.006 Order of Precedence

- (a) The Contract, including any Statements of Work and Exhibits, to the extent not contrary to the Contract, each of which is incorporated for all purposes, constitutes the entire agreement between the parties with respect to the subject matter and supersedes all prior agreements, whether written or oral, with respect to the subject matter and as additional terms and conditions on the purchase order must apply as limited by **Section 2.005**.
- (b) In the event of any inconsistency between the terms of the Contract and a Statement of Work, the terms of the Statement of Work will take precedence (as to that Statement of Work only); provided, however, that a Statement of Work may not modify or amend the terms of the Contract, which may be modified or amended only by a formal Contract amendment.



2.007 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 the Contract.

2.008 Form, Function & Utility

If the Contract is for use of more than one State agency and if the Deliverable/Service does not meet the form, function, and utility required by that State agency, that agency may, subject to State purchasing policies, procure the Deliverable/Service from another source.

2.009 Reformation and Severability

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

2.010 Consents and Approvals

Except as expressly provided otherwise in the Contract, if either party requires the consent or approval of the other party for the taking of any action under the Contract, the consent or approval must be in writing and must not be unreasonably withheld or delayed.

2.011 No Waiver of Default

If a party fails to insist upon strict adherence to any term of the Contract then the party has not waived the right to later insist upon strict adherence to that term, or any other term, of the Contract.

2.012 Survival

Any provisions of the Contract that impose continuing obligations on the parties, including without limitation the parties' respective warranty, indemnity and confidentiality obligations, survive the expiration or termination of the Contract for any reason. Specific references to survival in the Contract are solely for identification purposes and not meant to limit or prevent the survival of any other section.

2.020 Contract Administration

2.021 Issuing Office

This Contract is issued by the Department of Technology, Management and Budget, Purchasing Operations to be used by the State (which refers collectively to all other relevant State of Michigan departments and agencies), also is available to be used by MiDEAL members and participating National Association of State Procurement Officers (NASPO) member states. Purchasing Operations is the sole point of contact in the State with regard to all procurement and contractual matters relating to the Contract. Purchasing Operations **is the only State office authorized to change, modify, amend, alter or clarify the prices, specifications, terms and conditions of this Contract.** The Contractor Administrator within Purchasing Operations for this Contract is:

Irene Pena, Buyer Specialist
Purchasing Operations
Department of Technology, Management and Budget
Mason Bldg, 2nd Floor
PO Box 30026
Lansing, MI 48909
Penail@michigan.gov
(517) 241-1647

2.022 Contract Compliance Inspector (CCI)

After DTMB-PurchOps receives the properly executed Contract, it is anticipated that the Director of Purchasing Operations, will direct the person named below, or any other person so designated, to monitor and coordinate the activities for the Contract on a day-to-day basis during its term. The Contract Compliance Inspector for this Contract is:



Irene Pena, Buyer Specialist
Department of Technology, Management and Budget
520 W. Allegan St.
Lansing, MI 48933
Penai1@michigan.gov
(517) 241-1647
Fax (517) 335-0046

2.023 Project Manager – Deleted, Not Applicable

2.024 Change Requests

The State reserves the right to request from time to time any changes to the requirements and specifications of the Contract and the work to be performed by the Contractor under the Contract. During the course of ordinary business, it may become necessary for the State to discontinue certain business practices or create Additional Services/Deliverables. At a minimum, to the extent applicable, the State would like the Contractor to provide a detailed outline of all work to be done, including tasks necessary to accomplish the services/deliverables, timeframes, listing of key personnel assigned, estimated hours for each individual per task, and a complete and detailed cost justification.

If the Contractor does not so notify the State, the Contractor has no right to claim thereafter that it is entitled to additional compensation for performing that service or providing that deliverable.

Change Requests:

- (a) By giving Contractor written notice within a reasonable time, the State must be entitled to accept a Contractor proposal for Change, to reject it, or to reach another agreement with Contractor. Should the parties agree on carrying out a Change, a written Contract Change Notice must be prepared and issued under this Contract, describing the Change and its effects on the Services and any affected components of this Contract (a “Contract Change Notice”).
- (b) No proposed Change must be performed until the proposed Change has been specified in a duly executed Contract Change Notice issued by the Department of Technology, Management and Budget, Purchasing Operations.
- (c) If the State requests or directs the Contractor to perform any activities that Contractor believes constitute a Change, the Contractor must notify the State that it believes the requested activities are a Change before beginning to work on the requested activities. If the Contractor fails to notify the State before beginning to work on the requested activities, then the Contractor waives any right to assert any claim for additional compensation or time for performing the requested activities. If the Contractor commences performing work outside the scope of this Contract and then ceases performing that work, the Contractor must, at the request of the State, retract any out-of-scope work that would adversely affect the Contract.

2.025 Notices

Any notice given to a party under the Contract must be deemed effective, if addressed to the 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 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.

State:
State of Michigan
Purchasing Operations
Attention: Mary Ostrowski
PO Box 30026
530 West Allegan
Lansing, Michigan 48909

Contractor:



Gretchen Grouix
Falcon Road Maintenance Equipment
120 Waldo Ave.
Midland, MI 48642

Either party may change its address where notices are to be sent by giving notice according to this Section.

2.026 Binding Commitments

Representatives of Contractor must have the authority to make binding commitments on Contractor's behalf within the bounds set forth in the table. Contractor may change the representatives from time to time upon written notice.

2.027 Relationship of the Parties

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

2.028 Covenant of Good Faith

Each party must act reasonably and in good faith. Unless stated otherwise in the Contract, the parties will not unreasonably delay, condition or withhold the giving of any consent, decision or approval that is either requested or reasonably required of them in order for the other party to perform its responsibilities under the Contract.

2.029 Assignments

(a) Neither party may assign the Contract, or assign 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 other party; provided, however, that the State may assign the Contract to any other State agency, department, division or department without the prior consent of Contractor and Contractor may assign the Contract to an affiliate so long as the affiliate is adequately capitalized and can provide adequate assurances that the affiliate can perform the Contract. The State may withhold consent from proposed assignments, subcontracts, or novations when the transfer of responsibility would operate to decrease the State's likelihood of receiving performance on the Contract or the State's ability to recover damages.

(b) Contractor may not, without the prior written approval of the State, assign its right to receive payments due under the Contract. If the State permits an assignment, the Contractor is not relieved of its responsibility to perform any of its contractual duties, and the requirement under the Contract that all payments must be made to one entity continues.

(c) If the Contractor intends to assign the contract or any of the Contractor's rights or duties under the Contract, the Contractor must notify the State in writing at least 90 days before the assignment. The Contractor also must provide the State with adequate information about the assignee within a reasonable amount of time before the assignment for the State to determine whether to approve the assignment.

2.030 General Provisions

2.031 Media Releases

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

2.032 Contract Distribution

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



2.033 Permits

Contractor must obtain and pay any associated costs for all required governmental permits, licenses and approvals for the delivery, installation and performance of the Services. The State must pay for all costs and expenses incurred in obtaining and maintaining any necessary easements or right of way.

2.034 Website Incorporation

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

2.035 Future Bidding Preclusion

Contractor acknowledges that, to the extent this Contract involves the creation, research, investigation or generation of a future RFP, it may be precluded from bidding on the subsequent RFP. The State reserves the right to disqualify any Bidder if the State determines that the Bidder has used its position (whether as an incumbent Contractor, or as a Contractor hired to assist with the RFP development, or as a Vendor offering free assistance) to gain a competitive advantage on the RFP.

2.036 Freedom of Information

All information in any proposal submitted to the State by Contractor and this Contract is subject to the provisions of the Michigan Freedom of Information Act, 1976 Public Act No. 442, as amended, MCL 15.231, et seq (the "FOIA").

2.037 Disaster Recovery

Contractor and the State recognize that the State provides essential services in times of natural or man-made disasters. Therefore, except as so mandated by Federal disaster response requirements, Contractor personnel dedicated to providing Services/Deliverables under this Contract will provide the State with priority service for repair and work around in the event of a natural or man-made disaster.

2.040 Financial Provisions

2.041 Fixed Prices for Services/Deliverables

Each Statement of Work or Purchase Order issued under this Contract shall specify (or indicate by reference to the appropriate Contract Exhibit) the firm, fixed prices for all Services/Deliverables, and the associated payment milestones and payment amounts. The State may make progress payments to the Contractor when requested as work progresses, but not more frequently than monthly, in amounts approved by the Contract Administrator, after negotiation. Contractor must show verification of measurable progress at the time of requesting progress payments.

2.042 Adjustments for Reductions in Scope of Services/Deliverables

If the scope of the Services/Deliverables under any Statement of Work issued under this Contract is subsequently reduced by the State, the parties shall negotiate an equitable reduction in Contractor's charges under such Statement of Work commensurate with the reduction in scope.

2.043 Services/Deliverables Covered

For all Services/Deliverables to be provided by Contractor (and its Subcontractors, if any) under this Contract, the State shall not be obligated to pay any amounts in addition to the charges specified in this Contract.

2.044 Invoicing and Payment – In General

- (a) Each Statement of Work issued under this Contract shall list (or indicate by reference to the appropriate Contract Exhibit) the prices for all Services/Deliverables, equipment and commodities to be provided, and the associated payment milestones and payment amounts.
- (b) Each Contractor invoice will show details as to charges by Service/Deliverable component and location at a level of detail reasonably necessary to satisfy the State's accounting and charge-back requirements. Invoices for



Services performed on a time and materials basis will show, for each individual, the number of hours of Services performed during the billing period, the billable skill/labor category for such person and the applicable hourly billing rate. Prompt payment by the State is contingent on the Contractor's invoices showing the amount owed by the State minus any holdback amount to be retained by the State in accordance with **Section 1.064**.

(c) 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., within 45 days after receipt, provided the State determines that the invoice was properly rendered.

(d) 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 Operations, Department of Management & Budget. This activity will occur only upon the specific written direction from Purchasing Operations.

The specific payment schedule for any Contract(s) entered into, as the State and the Contractor(s) will mutually agree upon. 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.

The Government may make progress payments to the Contractor when requested as work progresses, but not more frequently than monthly, in amounts approved by the Contract Administrator, after negotiation. Contractor must show verification of measurable progress at the time of requesting progress payments.

2.045 Pro-ration

To the extent there are any Services that are to be paid for on a monthly basis, the cost of such Services shall be pro-rated for any partial month.

2.046 Antitrust Assignment

The Contractor assigns to the State any claim for overcharges resulting from antitrust violations to the extent that those violations concern materials or services supplied by third parties to the Contractor, toward fulfillment of this Contract.

2.047 Final Payment

The making of final payment by the State to Contractor does not constitute a waiver by either party of any rights or other claims as to the other party's continuing obligations under the Contract, nor will it constitute a waiver of any claims by one party against the other arising from unsettled claims or failure by a party to comply with this Contract, including claims for Services and Deliverables not reasonably known until after acceptance to be defective or substandard. Contractor's acceptance of final payment by the State under this Contract shall constitute a waiver of all claims by Contractor against the State for payment under this Contract, other than those claims previously filed in writing on a timely basis and still unsettled.

2.048 Electronic Payment Requirement

Electronic transfer of funds is required for payments on State Contracts. Contractors are required to register with the State electronically at <http://www.cpexpress.state.mi.us>. As stated in Public Act 431 of 1984, all contracts that the State enters into for the purchase of goods and services shall provide that payment will be made by electronic fund transfer (EFT).

2.050 Taxes

2.051 Employment Taxes

Contractors are expected to collect and pay all applicable federal, state, and local employment taxes, including the taxes.

2.052 Sales and Use Taxes

Contractors are required to be registered and to remit sales and use taxes on taxable sales of tangible personal property or services delivered into the State. Contractors that lack sufficient presence in Michigan to be required to register and pay tax must do so as a volunteer. This requirement extends to: (1) all members of any controlled



group as defined in § 1563(a) of the Internal Revenue Code and applicable regulations of which the company is a member, and (2) all organizations under common control as defined in § 414(c) of the Internal Revenue Code and applicable regulations of which the company is a member that make sales at retail for delivery into the State are registered with the State for the collection and remittance of sales and use taxes. In applying treasury regulations defining “two or more trades or businesses under common control” the term “organization” means sole proprietorship, a partnership (as defined in § 701(a)(2) of the Internal Revenue Code), a trust, an estate, a corporation, or a limited liability company.

2.060 Contract Management

2.061 Contractor Personnel Qualifications

All persons assigned by Contractor to the performance of Services under this Contract must be employees of Contractor or its majority-owned (directly or indirectly, at any tier) subsidiaries (or a State-approved Subcontractor) and must be fully qualified to perform the work assigned to them. Contractor must include a similar provision in any subcontract entered into with a Subcontractor. For the purposes of this Contract, independent contractors engaged by Contractor solely in a staff augmentation role must be treated by the State as if they were employees of Contractor for this Contract only; however, the State understands that the relationship between Contractor and Subcontractor is an independent contractor relationship.

2.062 Contractor Key Personnel

- (a) The Contractor must provide the Contract Compliance Inspector with the names of the Key Personnel.
- (b) Key Personnel must be dedicated as defined in the Statement of Work to the Project for its duration in the applicable Statement of Work with respect to other individuals designated as Key Personnel for that Statement of Work.
- (c) The State will have the right to recommend and approve in writing the initial assignment, as well as any proposed reassignment or replacement, of any Key Personnel. Before assigning an individual to any Key Personnel position, Contractor will notify the State of the proposed assignment, will introduce the individual to the appropriate State representatives, and will provide the State with a resume and any other information about the individual reasonably requested by the State. The State reserves the right to interview the individual before granting written approval. In the event the State finds a proposed individual unacceptable, the State will provide a written explanation including reasonable detail outlining the reasons for the rejection.
- (d) Contractor must not remove any Key Personnel from their assigned roles on the Contract without the prior written consent of the State. The Contractor’s removal of Key Personnel without the prior written consent of the State is an unauthorized removal (“Unauthorized Removal”). Unauthorized Removals does not include replacing Key Personnel for reasons beyond the reasonable control of Contractor, including illness, disability, leave of absence, personal emergency circumstances, resignation or for cause termination of the Key Personnel’s employment. Unauthorized Removals does not include replacing Key Personnel because of promotions or other job movements allowed by Contractor personnel policies or Collective Bargaining Agreement(s) as long as the State receives prior written notice before shadowing occurs and Contractor provides 30 days of shadowing unless parties agree to a different time period. The Contractor with the State must review any Key Personnel replacements, and appropriate transition planning will be established. Any Unauthorized Removal may be considered by the State to be a material breach of the Contract, in respect of which the State may elect to exercise its termination and cancellation rights.
- (e) The Contractor must notify the Contract Compliance Inspector and the Contract Administrator at least 10 business days before redeploying non-Key Personnel, who are dedicated to primarily to the Project, to other projects. If the State does not object to the redeployment by its scheduled date, the Contractor may then redeploy the non-Key Personnel.

2.063 Re-assignment of Personnel at the State’s Request

The State reserves the right to require the removal from the Project of Contractor personnel found, in the judgment of the State, to be unacceptable. The State’s request must be written with reasonable detail outlining the reasons for the removal request. Additionally, the State’s request must be based on legitimate, good-faith reasons. Replacement personnel for the removed person must be fully qualified for the position. If the State exercises this right, and the Contractor cannot immediately replace the removed personnel, the State agrees to an equitable adjustment in schedule or other terms that may be affected by the State’s required removal. If any incident with



removed personnel results in delay not reasonably anticipatable under the circumstances and which is attributable to the State, the applicable SLAs for the affected Service will not be counted for a time as agreed to by the parties.

2.064 Contractor Personnel Location

All staff assigned by Contractor to work on the Contract will perform their duties either primarily at Contractor’s offices and facilities or at State facilities. Without limiting the generality of the foregoing, Key Personnel will, at a minimum, spend at least the amount of time on-site at State facilities as indicated in the applicable Statement of Work. Subject to availability, selected Contractor personnel may be assigned office space to be shared with State personnel.

2.065 Contractor Identification

Contractor employees must be clearly identifiable while on State property by wearing a State-issued badge, as required. Contractor employees are required to clearly identify themselves and the company they work for whenever making contact with State personnel by telephone or other means.

2.066 Cooperation with Third Parties

Contractor agrees to cause its personnel and the personnel of any Subcontractors to cooperate with the State and its agents and other contractors including the State’s Quality Assurance personnel. As reasonably requested by the State in writing, the Contractor will provide to the State’s agents and other contractors reasonable access to Contractor’s Project personnel, systems and facilities to the extent the access relates to activities specifically associated with this Contract and will not interfere or jeopardize the safety or operation of the systems or facilities. The State acknowledges that Contractor’s time schedule for the Contract is very specific and agrees not to unnecessarily or unreasonably interfere with, delay or otherwise impede Contractor’s performance under this Contract with the requests for access.

2.067 Contract Management 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.

2.068 Contractor Return of State Equipment/Resources

The Contractor must return to the State any State-furnished equipment, facilities and other resources when no longer required for the Contract in the same condition as when provided by the State, reasonable wear and tear excepted.

2.070 Subcontracting by Contractor

2.071 Contractor full Responsibility

Contractor shall have full responsibility for the successful performance and completion of all of the Services and Deliverables. The State will consider Contractor to be the sole point of contact with regard to all contractual matters under this Contract, including payment of any and all charges for Services and Deliverables.

2.072 State Consent to delegation

Contractor shall not delegate any duties under this Contract to a Subcontractor unless the Department of Technology, Management and Budget, Purchasing Operations has given written consent to such delegation. The State shall have the right of prior written approval of all Subcontractors and to require Contractor to replace any Subcontractors found, in the reasonable judgment of the State, to be unacceptable. The State’s request shall be written with reasonable detail outlining the reasons for the removal request. Additionally, the State’s request shall be based on legitimate, good-faith reasons. Replacement Subcontractor(s) for the removed Subcontractor shall be fully qualified for the position. If the State exercises this right, and the Contractor cannot immediately replace the removed Subcontractor, the State will agree to an equitable adjustment in schedule or other terms that may be affected by the State’s required removal. If any such incident with a removed Subcontractor results in delay not



reasonable anticipatable under the circumstances and which is attributable to the State, the applicable SLA for the affected Work will not be counted in time agreed upon by the parties.

2.073 Subcontractor bound to Contract

In any subcontracts entered into by Contractor for the performance of the Services, Contractor shall require the Subcontractor, to the extent of the Services to be performed by the Subcontractor, to be bound to Contractor by the terms of this Contract and to assume toward Contractor all of the obligations and responsibilities that Contractor, by this Contract, assumes toward the State. The State reserves the right to receive copies of and review all subcontracts, although Contractor may delete or mask any proprietary information, including pricing, contained in such contracts before providing them to the State. The management of any Subcontractor will be the responsibility of Contractor, and Contractor shall remain responsible for the performance of its Subcontractors to the same extent as if Contractor had not subcontracted such performance. Contractor shall make all payments to Subcontractors or suppliers of Contractor. Except as otherwise agreed in writing by the State and Contractor, the State will not be obligated to direct payments for the Services other than to Contractor. The State's written approval of any Subcontractor engaged by Contractor to perform any obligation under this Contract shall not relieve Contractor of any obligations or performance required under this Contract. Attached as **Exhibit A** is a list of the Subcontractors, if any, approved by the State as of the execution of this Contract, together with a copy of the applicable subcontract.

2.074 Flow Down

Except where specifically approved in writing by the State on a case-by-case basis, Contractor shall flow down the obligations in **Sections 2.031, 2.060, 2.100, 2.110, 2.120, 2.130, 2.200** in all of its agreements with any Subcontractors.

2.075 Competitive Selection

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.

2.080 State Responsibilities

2.081 Equipment

The State will provide only the equipment and resources identified in the Statements of Work and other Contract Exhibits.

2.082 Facilities

The State must designate space as long as it is available and as provided in the Statement of Work, to house the Contractor's personnel whom the parties agree will perform the Services/Deliverables at State facilities (collectively, the "State Facilities"). The Contractor must have reasonable access to, and unless agreed otherwise by the parties in writing must observe and comply with all rules and regulations relating to each of the State Facilities (including hours of operation) used by the Contractor in the course of providing the Services. Contractor agrees that it will not, without the prior written consent of the State, use any State Facilities or access any State information systems provided for the Contractor's use, or to which the Contractor otherwise gains access in the course of performing the Services, for any purpose other than providing the Services to the State.

2.090 Security

2.091 Background Checks

On a case-by-case basis, the State may investigate the Contractor's personnel before they may have access to State facilities and systems. The scope of the background check is at the discretion of the State and the results will be used to determine Contractor personnel eligibility for working within State facilities and systems. The investigations will include Michigan State Police Background checks (ICHAT) and may include the National Crime Information Center (NCIC) Finger Prints. Proposed Contractor personnel may be required to complete and submit an RI-8 Fingerprint Card for the NCIC Finger Print Check. Any request for background checks will be initiated by the State and will be reasonably related to the type of work requested.



All Contractor personnel will also be expected to comply with the State's security and acceptable use policies for State IT equipment and resources. See <http://www.michigan.gov/dit>. Furthermore, Contractor personnel will be expected to agree to the State's security and acceptable use policies before the Contractor personnel will be accepted as a resource to perform work for the State. It is expected the Contractor will present these documents to the prospective employee before the Contractor presents the individual to the State as a proposed resource. Contractor staff will be expected to comply with all Physical Security procedures in place within the facilities where they are working.

2.092 Security Breach Notification

If the Contractor breaches this Section, the Contractor must (i) promptly cure any deficiencies and (ii) comply with any applicable federal and state laws and regulations pertaining to unauthorized disclosures. Contractor and the State will cooperate to mitigate, to the extent practicable, the effects of any breach, intrusion, or unauthorized use or disclosure. Contractor must report to the State in writing any use or disclosure of Confidential Information, whether suspected or actual, other than as provided for by the Contract within 10 days of becoming aware of the use or disclosure or the shorter time period as is reasonable under the circumstances.

2.093 PCI Data Security Requirements – Deleted, Not Applicable

2.100 Confidentiality

2.101 Confidentiality

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

2.102 Protection and Destruction of Confidential Information

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

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



2.103 Exclusions

Notwithstanding the foregoing, the provisions of **Section 2.100** will not apply to any particular information which the State or Contractor can demonstrate (i) was, at the time of disclosure to it, in the public domain; (ii) after disclosure to it, is published or otherwise becomes part of the public domain through no fault of the receiving party; (iii) was in the possession of the receiving party at the time of disclosure to it without an obligation of confidentiality; (iv) was received after disclosure to it from a third party who had a lawful right to disclose the information to it without any obligation to restrict its further disclosure; or (v) was independently developed by the receiving party without reference to Confidential Information of the furnishing party. Further, the provisions of **Section 2.100** will not apply to any particular Confidential Information to the extent the receiving party is required by law to disclose the Confidential Information, provided that the receiving party (i) promptly provides the furnishing party with notice of the legal request, and (ii) assists the furnishing party in resisting or limiting the scope of the disclosure as reasonably requested by the furnishing party.

2.104 No Implied Rights

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

2.105 Respective Obligations

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

2.110 Records and Inspections

2.111 Inspection of Work Performed

The State's authorized representatives must at all reasonable times and with 10 days prior written request, have the right to enter Contractor's premises, or any other places, where the Services are being performed, and must have access, upon reasonable request, to interim drafts of Deliverables or work-in-progress. Upon 10 Days prior written notice and at all reasonable times, the State's representatives must be allowed to inspect, monitor, or otherwise evaluate the work being performed and to the extent that the access will not reasonably interfere or jeopardize the safety or operation of the systems or facilities. Contractor must provide all reasonable facilities and assistance for the State's representatives.

2.112 Examination of Records

For seven years after the Contractor provides any work under this Contract (the "Audit Period"), the State may examine and copy any of Contractor's books, records, documents and papers pertinent to establishing Contractor's compliance with the Contract and with applicable laws and rules. The State must notify the Contractor 20 days before examining the Contractor's books and records. The State does not have the right to review any information deemed confidential by the Contractor to the extent access would require the confidential information to become publicly available. This provision also applies to the books, records, accounts, documents and papers, in print or electronic form, of any parent, affiliated or subsidiary organization of Contractor, or any Subcontractor of Contractor performing services in connection with the Contract.

2.113 Retention of Records

Contractor must 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 according to generally accepted accounting principles and other procedures specified in this Section. Financial and accounting records must be made available, upon request, to the State at any time during the Audit Period. If an audit, litigation, or other action involving Contractor's records is initiated before the end of the Audit Period, the records must be retained until all issues arising out of the audit, litigation, or other action are resolved or until the end of the Audit Period, whichever is later.

2.114 Audit Resolution

If necessary, the Contractor and the State will meet to review each audit report promptly after issuance. The Contractor will respond to each audit report in writing within 30 days from receipt of the report, unless a shorter



response time is specified in the report. The Contractor and the State must develop, agree upon and monitor an action plan to promptly address and resolve any deficiencies, concerns, and/or recommendations in the audit report.

2.115 Errors

- (a) If the audit demonstrates any errors in the documents provided to the State, then the amount in error must 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 invoices. If a balance remains after four invoices, then the remaining amount will be due as a payment or refund within 45 days of the last quarterly invoice that the balance appeared on or termination of the contract, whichever is earlier.
- (b) In addition to other available remedies, the difference between the payment received and the correct payment amount is greater than 10%, then the Contractor must pay all of the reasonable costs of the audit.

2.120 Warranties

2.121 Warranties and Representations

The Contractor represents and warrants:

- (a) It is capable in all respects of fulfilling and must fulfill all of its obligations under this Contract. The performance of all obligations under this Contract must be provided in a timely, professional, and workman-like manner and must meet the performance and operational standards required under this Contract.
- (b) The Contract Appendices, Attachments and Exhibits identify the equipment and software and services necessary for the Deliverable(s) to perform and Services to operate in compliance with the Contract's requirements and other standards of performance.
- (c) It is the lawful owner or licensee of any Deliverable licensed or sold to the State by Contractor or developed by Contractor under this Contract, and Contractor has all of the rights necessary to convey to the State the ownership rights or licensed use, as applicable, of any and all Deliverables. None of the Deliverables provided by Contractor to the State under this Contract, nor their use by the State, will infringe the patent, copyright, trade secret, or other proprietary rights of any third party.
- (d) If, under this Contract, Contractor procures any equipment, software or other Deliverable for the State (including equipment, software and other Deliverables manufactured, re-marketed or otherwise sold by Contractor under Contractor's name), then in addition to Contractor's other responsibilities with respect to the items in this Contract, Contractor must assign or otherwise transfer to the State or its designees, or afford the State the benefits of, any manufacturer's warranty for the Deliverable.
- (e) The contract signatory has the power and authority, including any necessary corporate authorizations, necessary to enter into this Contract, on behalf of Contractor.
- (f) It is qualified and registered to transact business in all locations where required.
- (g) Neither the Contractor nor any Affiliates, nor any employee of either, has, must have, or must acquire, any contractual, financial, business, or other interest, direct or indirect, that would conflict in any manner or degree with Contractor's performance of its duties and responsibilities to the State under this Contract or otherwise create an appearance of impropriety with respect to the award or performance of this Agreement. Contractor must notify the State about the nature of the conflict or appearance of impropriety within two days of learning about it.
- (h) Neither Contractor nor any Affiliates, nor any employee of either has accepted or must accept anything of value based on an understanding that the actions of the Contractor or Affiliates or employee on behalf of the State would be influenced. Contractor must not attempt to influence any State employee by the direct or indirect offer of anything of value.



- (i) Neither Contractor nor any Affiliates, nor any employee of either has paid or agreed to pay any person, other than bona fide employees and consultants working solely for Contractor or the Affiliate, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or making of this Contract.
- (j) The prices proposed by Contractor were arrived at independently, without consultation, communication, or agreement with any other Bidder for the purpose of restricting competition; the prices quoted were not knowingly disclosed by Contractor to any other Bidder; and no attempt was made by Contractor to induce any other person to submit or not submit a proposal for the purpose of restricting competition.
- (k) All financial statements, reports, and other information furnished by Contractor to the State as part of its response to the RFP or otherwise in connection with the award of this Contract fairly and accurately represent the business, properties, financial condition, and results of operations of Contractor as of the respective dates, or for the respective periods, covered by the financial statements, reports, other information. Since the respective dates or periods covered by the financial statements, reports, or other information, there have been no material adverse change in the business, properties, financial condition, or results of operations of Contractor.
- (l) All written information furnished to the State by or for the Contractor in connection with this Contract, including its bid, is true, accurate, and complete, and contains no untrue statement of material fact or omits any material fact necessary to make the information not misleading.
- (m) It is not in material default or breach of any other contract or agreement that it may have with the State or any of its departments, commissions, boards, or agencies. Contractor further represents and warrants that it has not been a party to any contract with the State or any of its departments that was terminated by the State or the department within the previous five years for the reason that Contractor failed to perform or otherwise breached an obligation of the contract.
- (n) If any of the certifications, representations, or disclosures made in the Contractor's original bid response change after contract award, the Contractor is required to report those changes immediately to the Department of Technology, Management and Budget, Purchasing Operations.

2.122 Warranty of Merchantability

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

2.123 Warranty of Fitness for a Particular Purpose

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

2.124 Warranty of Title

Contractor shall, in providing goods to the State, convey good title in those goods, whose transfer is right and lawful. All goods provided by Contractor 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 Contractor, under this Contract, shall be delivered free of any rightful claim of any third person by of infringement or the like.

2.125 Equipment Warranty

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

The Contractor represents and warrants that the equipment/system(s) are in good operating condition and operate and perform to the requirements and other standards of performance contained in this Contract, when installed, at



the time of Final Acceptance by the State, and for a minimum period of one (1) year commencing upon the first day following Final Acceptance.

Within 30 business days of notification from the State, the Contractor must adjust, repair or replace all equipment that is defective or not performing in compliance with the Contract. The Contractor must assume all costs for replacing parts or units and their installation including transportation and delivery fees, if any.

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

The Contractor agrees that all warranty service it provides under this Contract must be performed by Original Equipment Manufacturer (OEM) trained, certified and authorized technicians.

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

All warranty work must be performed on the State of Michigan worksite(s) for rental contracts only.

2.126 Equipment to be New

All equipment provided under this Contract by Contractor shall be new where Contractor has knowledge regarding whether the equipment is new or assembled from new or serviceable used parts that are like new in performance or has the option of selecting one or the other. Equipment that is assembled from new or serviceable used parts that are like new in performance is acceptable where Contractor does not have knowledge or the ability to select one or other, unless specifically agreed otherwise in writing by the State.

2.127 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 Operations has approved a change order pursuant to **Section 2.024**.

2.128 Consequences For Breach

In addition to any remedies available in law, if the Contractor breaches any of the warranties contained in this section, the breach may be considered as a default in the performance of a material obligation of this Contract.

2.130 Insurance

2.131 Liability Insurance

The Contractor must provide proof of the minimum levels of insurance coverage as indicated below. The insurance must 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 the 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 under this Contract.

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

The insurance must 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 must have an A.M. Best rating of A or better, or as otherwise approved in writing by the State, or if the ratings are no longer available, with a comparable rating from a recognized insurance rating agency. All policies of insurance required in this Contract must be issued by companies that have been approved to do business in the State.

See www.michigan.gov/dleg.

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

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

1. Commercial General Liability with the following minimum coverage:

- \$2,000,000 General Aggregate Limit other than Products/Completed Operations
- \$2,000,000 Products/Completed Operations Aggregate Limit
- \$1,000,000 Personal & Advertising Injury Limit
- \$1,000,000 Each Occurrence Limit

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

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

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

3. Workers' compensation coverage must be provided according to applicable laws governing the employees and employers work activities in the state of the Contractor's domicile. If the applicable coverage is provided by a self-insurer, 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 must not be applicable where prohibited or limited by the laws of the jurisdiction in which the work is to be performed.



- 4. Employers liability insurance with the following minimum limits:
 \$100,000 each accident
 \$100,000 each employee by disease
 \$500,000 aggregate disease

- 5. Employee Fidelity, including Computer Crimes, insurance naming the State as a loss payee, providing coverage for direct loss to the State and any legal liability of the State arising out of or related to fraudulent or dishonest acts committed by the employees of Contractor or its Subcontractors, acting alone or in collusion with others, in a minimum amount of one million dollars (\$1,000,000.00) with a maximum deductible of fifty thousand dollars (\$50,000.00).

- 6. Umbrella or Excess Liability Insurance in a minimum amount of ten million dollars (\$10,000,000.00), which must apply, at a minimum, to the insurance required in Subsection 1 (Commercial General Liability) above.

- 7. Professional Liability (Errors and Omissions) Insurance with the following minimum coverage: three million dollars (\$3,000,000.00) each occurrence and three million dollars (\$3,000,000.00) annual aggregate.

- 8. Fire and Personal Property Insurance covering against any loss or damage to the office space used by Contractor for any reason under this Contract, and the equipment, software and other contents of the office space, including without limitation, those contents used by Contractor to provide the Services to the State, up to its replacement value, where the office space and its contents are under the care, custody and control of Contractor. The policy must 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 must be endorsed on the policy as a loss payee as its interests appear.

2.132 Subcontractor Insurance Coverage

Except where the State has approved in writing a Contractor subcontract with other insurance provisions, Contractor must 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) must 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.

2.133 Certificates of Insurance and Other Requirements

Contractor must furnish to DTMB-PurchOps, certificate(s) of insurance verifying insurance coverage or providing satisfactory evidence of self-insurance as required in this Section (the “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) must contain a provision indicating that coverages afforded under the policies **WILL NOT BE CANCELLED, MATERIALLY CHANGED, OR NOT RENEWED** without 30 days prior written notice, except for 10 days for non-payment of premium, having been given to the Director of Purchasing Operations, Department of Technology, Management and Budget. The notice must include the Contract or Purchase Order number affected. Before the Contract is signed, and not less than 20 days before the insurance expiration date every year thereafter, the Contractor must provide evidence that the State and its agents, officers and employees are listed as additional insureds 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.



The Contractor must maintain all required insurance coverage throughout the term of the Contract and any extensions and, in the case of claims-made Commercial General Liability policies, must secure tail coverage for at least three years following the expiration or termination for any reason of this Contract. The minimum limits of coverage specified above are not intended, and must not be construed, to limit any liability or indemnity of Contractor under this Contract to any indemnified party or other persons. Contractor is responsible for all deductibles with regard to the insurance. If the 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, then the State may, after the State has given the Contractor at least 30 days written notice, pay the premium or procure similar insurance coverage from another company or companies. The State may deduct any part of the cost from any payment due the Contractor, or the Contractor must pay that cost upon demand by the State.

2.140 Indemnification

2.141 General Indemnification

To the extent permitted by law, the Contractor must indemnify, defend and hold harmless the State from liability, including all claims and losses, and all related costs and expenses (including reasonable attorneys' fees and costs of investigation, litigation, settlement, judgments, interest and penalties), accruing or resulting to any person, firm or corporation that may be injured or damaged by the Contractor in the performance of this Contract and that are attributable to the negligence or tortious acts of the Contractor or any of its Subcontractors, or by anyone else for whose acts any of them may be liable.

2.142 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.

2.143 Employee Indemnification

In any claims against the State of Michigan, its departments, divisions, agencies, sections, commissions, officers, employees and agents, by any employee of the Contractor or any of its Subcontractors, the indemnification obligation under the Contract must 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 benefit acts or other employee benefit acts. This indemnification clause is intended to be comprehensive. Any overlap in provisions, 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 provisions.

2.144 Patent/Copyright Infringement Indemnification

To the extent permitted by law, the Contractor must indemnify, defend and hold harmless the State from and against all losses, liabilities, damages (including taxes), and all related costs and expenses (including reasonable attorneys' fees 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 the 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 the equipment, software, commodity or service, or the use or reproduction of any documentation provided with the equipment, software, commodity or service infringes any United States patent, copyright, trademark or trade secret of any person or entity, which is enforceable under the laws of the United States.

In addition, should the equipment, software, commodity, or service, or its operation, become or in the State's or Contractor's opinion be likely to become the subject of a claim of infringement, the Contractor must at the Contractor's sole expense (i) procure for the State the right to continue using the equipment, software, commodity or service or, if the option is not reasonably available to the Contractor, (ii) replace or modify to the State's satisfaction the same with equipment, software, commodity or service of equivalent function and performance so that it becomes non-infringing, or, if the 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.



Notwithstanding the foregoing, the Contractor has no obligation to indemnify or defend the State for, or to pay any costs, damages or attorneys' fees related to, any claim based upon (i) equipment developed based on written specifications of the State; (ii) use of the equipment in a configuration other than implemented or approved in writing by the Contractor, including, but not limited to, any modification of the equipment by the State; or (iii) the combination, operation, or use of the equipment with equipment or software not supplied by the Contractor under this Contract.

2.145 Continuation of Indemnification Obligations

The Contractor's duty to indemnify under this Section continues in full force and effect, notwithstanding the expiration or early cancellation of the Contract, with respect to any claims based on facts or conditions that occurred before expiration or cancellation.

2.146 Indemnification Procedures

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

(a) After the State receives notice of the action or proceeding involving a claim for which it will seek indemnification, the State must promptly notify Contractor of the 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 notify the Contractor relieves the Contractor of its indemnification obligations except to the extent that the Contractor can prove damages attributable to the failure. Within 10 days following receipt of written notice from the State relating to any claim, the Contractor must 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 before the State receiving Contractor's Notice of Election, the State is entitled to defend against the claim, at the Contractor's expense, and the Contractor will be responsible for any reasonable costs incurred by the State in defending against the claim during that period.

(b) If Contractor delivers a Notice of Election relating to any claim: (i) the State is entitled to participate in the defense of the claim and to employ counsel at its own expense to assist in the handling of the claim and to monitor and advise the State about the status and progress of the defense; (ii) the Contractor must, at the request of the State, demonstrate to the reasonable satisfaction of the State, the Contractor's financial ability to carry out its defense and indemnity obligations under this Contract; (iii) the Contractor must periodically advise the State about the status and progress of the defense and must obtain the prior written approval of the State before entering into any settlement of the claim or ceasing to defend against the claim and (iv) to the extent that any principles of Michigan governmental or public law may be involved or challenged, the State has the right, at its own expense, to control the defense of that portion of the claim involving the principles of Michigan governmental or public law. But the State may retain control of the defense and settlement of a claim by notifying the Contractor in writing within 10 days after the State's receipt of Contractor's information requested by the State under clause (ii) of this paragraph if the State determines that the Contractor has failed to demonstrate to the reasonable satisfaction of the State the Contractor's financial ability to carry out its defense and indemnity obligations under this Section. Any litigation activity on behalf of the State, or any of its subdivisions under this Section, must be coordinated with the Department of Attorney General. In the event the insurer's attorney represents the State under 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 may defend the claim in the 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 must promptly reimburse the State for all the reasonable costs and expenses.

2.150 Termination/Cancellation

2.151 Notice and Right to Cure

If the Contractor breaches the contract, and the State in its sole discretion determines that the breach is curable, then the State will provide the Contractor with written notice of the breach and a time period (not less than 30



days) to cure the Breach. The notice of breach and opportunity to cure is inapplicable for successive or repeated breaches 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.

2.152 Termination for Cause

(a) The State may terminate this contract, for cause, by notifying the Contractor in writing, if the Contractor (i) breaches any of its material duties or obligations under this Contract (including a Chronic Failure to meet any particular SLA), or (ii) fails to cure a breach within the time period specified in the written notice of breach provided by the State

(b) If this Contract is terminated for cause, the Contractor must pay all costs incurred by the State in terminating this Contract, including but not limited to, State administrative costs, reasonable attorneys' fees and court costs, and any reasonable additional costs the State may incur to procure the Services/Deliverables required by this Contract from other sources. Re-procurement costs are not consequential, indirect or incidental damages, and cannot be excluded by any other terms otherwise included in this Contract, provided the costs are not in excess of 50% more than the prices for the Service/Deliverables provided under this Contract.

(c) If the State chooses to partially terminate this Contract for cause, charges payable under this Contract will be equitably adjusted to reflect those Services/Deliverables that are terminated and the State must pay for all Services/Deliverables for which Final Acceptance has been granted provided up to the termination date. Services and related provisions of this Contract that are terminated for cause must cease on the effective date of the termination.

(d) If the State terminates this Contract for cause under this Section, and it is determined, for any reason, that Contractor was not in breach of contract under the provisions of this section, that termination for cause must be deemed to have been a termination for convenience, effective as of the same date, and the rights and obligations of the parties must be limited to that otherwise provided in this Contract for a termination for convenience.

2.153 Termination for Convenience

The State may terminate this Contract for its convenience, in whole or part, if the State determines that a termination is in the State's best interest. Reasons for the termination must be left to the sole discretion of the State and may include, but not necessarily be 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 Services no longer practical or feasible, (c) unacceptable prices for Additional Services or New Work requested by the State, or (d) falsification or misrepresentation, by inclusion or non-inclusion, of information material to a response to any RFP issued by the State. The State may terminate this Contract for its convenience, in whole or in part, by giving Contractor written notice at least 30 days before the date of termination. If the State chooses to terminate this Contract in part, the charges payable under this Contract must be equitably adjusted to reflect those Services/Deliverables that are terminated. Services and related provisions of this Contract that are terminated for cause must cease on the effective date of the termination.

2.154 Termination for Non-Appropriation

(a) 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 Contract. If funds to enable the State to effect continued payment under this Contract are not appropriated or otherwise made available, the State must terminate this Contract and all affected Statements of Work, in whole or in part, at the end of the last period for which funds have been appropriated or otherwise made available by giving written notice of termination to Contractor. The State must give Contractor at least 30 days advance written notice of termination for non-appropriation or unavailability (or the time as is available if the State receives notice of the final decision less than 30 days before the funding cutoff).

(b) If funding for the Contract is reduced by law, or funds to pay Contractor for the agreed-to level of the Services or production of Deliverables to be provided by Contractor are not appropriated or otherwise unavailable, the State may, upon 30 days written notice to Contractor, reduce the level of the Services or the change the production of Deliverables in the manner and for the periods of time as the State may elect. The



charges payable under this Contract will be equitably adjusted to reflect any equipment, services or commodities not provided by reason of the reduction.

(c) If the State terminates this Contract, eliminates certain Deliverables, or reduces the level of Services to be provided by Contractor under this Section, the State must pay Contractor for all Work-in-Process performed through the effective date of the termination or reduction in level, as the case may be and as determined by the State, to the extent funds are available. This Section will not preclude Contractor from reducing or stopping Services/Deliverables or raising against the State in a court of competent jurisdiction, any claim for a shortfall in payment for Services performed or Deliverables finally accepted before the effective date of termination.

2.155 Termination for Criminal Conviction

The State may terminate this Contract immediately and without further liability or penalty in the event Contractor, an officer of Contractor, or an owner of a 25% or greater share of Contractor is convicted of a criminal offense related to a State, public or private Contract or subcontract.

2.156 Termination for Approvals Rescinded

The State may terminate this Contract if any final administrative or judicial decision or adjudication disapproves a previously approved request for purchase of personal services under Constitution 1963, Article 11, § 5, and Civil Service Rule 7-1. In that case, the State will pay the Contractor for only the work completed to that point under the Contract. 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 the written notice.

2.157 Rights and Obligations upon Termination

(a) If the State terminates this Contract for any reason, the Contractor must (a) stop all work as specified in the notice of termination, (b) take any action that may be necessary, or that the State may direct, for preservation and protection of Deliverables or other property derived or resulting from this Contract that may be in Contractor's possession, (c) return all materials and property provided directly or indirectly to Contractor by any entity, agent or employee of the State, (d) transfer title in, and deliver to, the State, unless otherwise directed, all Deliverables intended to be transferred to the State at the termination of the Contract and which are resulting from the Contract (which must be provided to the State on an "As-Is" basis except to the extent the amounts paid by the State in respect of the items included compensation to Contractor for the provision of warranty services in respect of the materials), and (e) take any action to mitigate and limit any potential damages, or requests for Contractor adjustment or termination settlement costs, to the maximum practical extent, including terminating or limiting as otherwise applicable those subcontracts and outstanding orders for material and supplies resulting from the terminated Contract.

(b) If the State terminates this Contract before its expiration for its own convenience, the State must pay Contractor for all charges due for Services provided before the date of termination and, if applicable, as a separate item of payment under this Contract, for Work In Process, on a percentage of completion basis at the level of completion determined by the State. All completed or partially completed Deliverables prepared by Contractor under this Contract, at the option of the State, becomes the State's property, and Contractor is entitled to receive equitable fair compensation for the Deliverables. Regardless of the basis for the termination, the State is not obligated to pay, or otherwise compensate, Contractor for any lost expected future profits, costs or expenses incurred with respect to Services not actually performed for the State.

(c) Upon a good faith termination, the State may assume, at its option, any subcontracts and agreements for services and deliverables provided under this Contract, and may further pursue completion of the Services/Deliverables under this Contract by replacement contract or otherwise as the State may in its sole judgment deem expedient.

2.158 Reservation of Rights

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

2.160 Termination by Contractor



2.161 Termination by Contractor

If the State breaches the Contract, and the Contractor in its sole discretion determines that the breach is curable, then the Contractor will provide the State with written notice of the breach and a time period (not less than 30 days) to cure the breach. The Notice of Breach and opportunity to cure is inapplicable for successive and repeated breaches.

The Contractor may terminate this Contract if the State (i) materially breaches its obligation to pay the Contractor undisputed amounts due and owing under this Contract, (ii) breaches its other obligations under this Contract to an extent that makes it impossible or commercially impractical for the Contractor to perform the Services, or (iii) does not cure the breach within the time period specified in a written notice of breach. But the Contractor must discharge its obligations under **Section 2.160** before it terminates the Contract.

2.170 Transition Responsibilities

2.171 Contractor Transition Responsibilities

If the State terminates this contract, for convenience or cause, or if the Contract is otherwise dissolved, voided, rescinded, nullified, expires or rendered unenforceable, the Contractor agrees to comply with direction provided by the State to assist in the orderly transition of equipment, services, software, leases, etc. to the State or a third party designated by the State. If this Contract expires or terminates, the Contractor agrees to make all reasonable efforts to effect an orderly transition of services within a reasonable period of time that in no event will exceed 30 days. These efforts must include, but are not limited to, those listed in **Sections 2.141, 2.142, 2.143, 2.144, and 2.145**.

2.172 Contractor Personnel Transition

The Contractor must work with the State, or a specified third party, to develop a transition plan setting forth the specific tasks and schedule to be accomplished by the parties, to effect an orderly transition. The Contractor must allow as many personnel as practicable to remain on the job to help the State, or a specified third party, maintain the continuity and consistency of the services required by this Contract. In addition, during or following the transition period, in the event the State requires the Services of the Contractor's Subcontractors or vendors, as necessary to meet its needs, Contractor agrees to reasonably, and with good-faith, work with the State to use the Services of Contractor's Subcontractors or vendors. Contractor will notify all of Contractor's Subcontractors of procedures to be followed during transition.

2.173 Contractor Information Transition

The Contractor agrees to provide reasonable detailed specifications for all Services/Deliverables needed by the State, or specified third party, to properly provide the Services/Deliverables required under this Contract. The Contractor will provide the State with asset management data generated from the inception of this Contract through the date on which this Contractor is terminated in a comma-delineated format unless otherwise requested by the State. The Contractor will deliver to the State any remaining owed reports and documentation still in Contractor's possession subject to appropriate payment by the State.

2.174 Contractor Software Transition

The Contractor must reasonably assist the State in the acquisition of any Contractor software required to perform the Services/use the Deliverables under this Contract. This must include any documentation being used by the Contractor to perform the Services under this Contract. If the State transfers any software licenses to the Contractor, those licenses must, upon expiration of the Contract, transfer back to the State at their current revision level. Upon notification by the State, Contractor may be required to freeze all non-critical changes to Deliverables/Services.

2.175 Transition Payments

If the transition results from a termination for any reason, reimbursement must be governed by the termination provisions of this Contract. If the transition results from expiration, the Contractor will be reimbursed for all reasonable transition costs (i.e. costs incurred within the agreed period after contract expiration that result from transition operations) at the rates agreed upon by the State. The Contractor will prepare an accurate accounting from which the State and Contractor may reconcile all outstanding accounts.



2.176 State Transition Responsibilities

In the event that this Contract is terminated, dissolved, voided, rescinded, nullified, or otherwise rendered unenforceable, the State agrees to perform the following obligations, and any others upon which the State and the Contractor agree:

- (a) Reconciling all accounts between the State and the Contractor;
- (b) Completing any pending post-project reviews.

2.180 Stop Work

2.181 Stop Work Orders

The State may, at any time, by written stop work order to Contractor, require that Contractor stop all, or any part, of the work called for by the Contract for a period of up to 90 calendar days after the stop work order is delivered to Contractor, and for any further period to which the parties may agree. The stop work order must be identified as a stop work order and must indicate that it is issued under **Section 2.180**. Upon receipt of the stop work order, Contractor must immediately comply with its terms and take all reasonable steps to minimize incurring costs allocable to the work covered by the stop work order during the period of work stoppage. Within the period of the stop work order, the State must either: (a) cancel the stop work order; or (b) terminate the work covered by the stop work order as provided in **Section 2.150**.

2.182 Cancellation or Expiration of Stop Work Order

The Contractor must resume work if the State cancels a Stop Work Order or if it expires. The parties will agree upon an equitable adjustment in the delivery schedule, the Contract price, or both, and the Contract must be modified, in writing, accordingly, if: (a) the stop work order results in an increase in the time required for, or in Contractor's costs properly allocable to, the performance of any part of the Contract; and (b) Contractor asserts its right to an equitable adjustment within 30 calendar days after the end of the period of work stoppage; provided that, if the State decides the facts justify the action, the State may receive and act upon a Contractor proposal submitted at any time before final payment under the Contract. Any adjustment will conform to the requirements of **Section 2.024**.

2.183 Allowance of Contractor Costs

If the stop work order is not canceled and the work covered by the stop work order is terminated for reasons other than material breach, the termination must be deemed to be a termination for convenience under **Section 2.153**, and the State will pay reasonable costs resulting from the stop work order in arriving at the termination settlement. For the avoidance of doubt, the State is not be liable to Contractor for loss of profits because of a stop work order issued under this **Section 2.180**.

2.190 Dispute Resolution

2.191 In General

Any claim, counterclaim, or dispute between the State and Contractor arising out of or relating to the Contract or any Statement of Work must be resolved as follows. For all Contractor claims seeking an increase in the amounts payable to Contractor under the Contract, or the time for Contractor's performance, Contractor must submit a letter, together with all data supporting the claims, executed by Contractor's Contract Administrator or the Contract Administrator's designee certifying that (a) the claim is made in good faith, (b) the amount claimed accurately reflects the adjustments in the amounts payable to Contractor or the time for Contractor's performance for which Contractor believes the State is liable and covers all costs of every type to which Contractor is entitled from the occurrence of the claimed event, and (c) the claim and the supporting data are current and complete to Contractor's best knowledge and belief.

2.192 Informal Dispute Resolution

(a) All disputes between the parties must be resolved under the Contract Management procedures in this Contract. If the parties are unable to resolve any disputes after compliance with the processes, the parties must meet with the Director of Purchasing Operations, DTMB, or designee, for the purpose of attempting to resolve the dispute without the need for formal legal proceedings, as follows:



- (i) The representatives of Contractor and the State must meet as often as the parties reasonably deem necessary to gather and furnish to each other all information with respect to the matter in issue which the parties believe to be appropriate and germane in connection with its resolution. The representatives must discuss the problem and negotiate in good faith in an effort to resolve the dispute without the necessity of any formal proceeding.
 - (ii) During the course of negotiations, all reasonable requests made by one party to another for non-privileged information reasonably related to the Contract will be honored in order that each of the parties may be fully advised of the other's position.
 - (iii) The specific format for the discussions will be left to the discretion of the designated State and Contractor representatives, but may include the preparation of agreed upon statements of fact or written statements of position.
 - (iv) Following the completion of this process within 60 calendar days, the Director of Purchasing Operations, DTMB, or designee, must issue a written opinion regarding the issue(s) in dispute within 30 calendar days. The opinion regarding the dispute must be considered the State's final action and the exhaustion of administrative remedies.
- (b) This Section will not be construed to prevent either party from instituting, and a party is authorized to institute, formal proceedings earlier to avoid the expiration of any applicable limitations period, to preserve a superior position with respect to other creditors, or under **Section 2.193**.
- (c) The State will not mediate disputes between the Contractor and any other entity, except state agencies, concerning responsibility for performance of work under the Contract.

2.193 Injunctive Relief

The only circumstance in which disputes between the State and Contractor will not be subject to the provisions of **Section 2.192** is where a party makes a good faith determination that a breach of the terms of the Contract by the other party is the that the damages to the party resulting from the breach will be so immediate, so large or severe and so incapable of adequate redress after the fact that a temporary restraining order or other immediate injunctive relief is the only adequate remedy.

2.194 Continued Performance

Each party agrees to continue performing its obligations under the Contract while a dispute is being resolved except to the extent the issue in dispute precludes performance (dispute over payment must not be deemed to preclude performance) and without limiting either party's right to terminate the Contract as provided in **Section 2.150**, as the case may be.

2.200 Federal and State Contract Requirements

2.201 Nondiscrimination

In the performance of the Contract, Contractor agrees not to discriminate against any employee or applicant for employment, with respect to his or her 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 disability. Contractor further agrees that every subcontract entered into for the performance of this Contract or any purchase order resulting from this Contract will contain a provision requiring non-discrimination in employment, as specified here, binding upon each Subcontractor. This covenant is required under the Elliot Larsen Civil Rights Act, 1976 PA 453, MCL 37.2101, et seq., and the Persons with Disabilities Civil Rights Act, 1976 PA 220, MCL 37.1101, et seq., and any breach of this provision may be regarded as a material breach of the Contract.

2.202 Unfair Labor Practices

Under 1980 PA 278, MCL 423.321, et seq., the State must not award a Contract or subcontract to an employer whose name appears in the current register of employers failing to correct an unfair labor practice compiled under section 2 of the Act. This information is compiled by the United States National Labor Relations Board. A Contractor of the State, in relation to the Contract, must not enter into a contract with a Subcontractor, manufacturer, or supplier whose name appears in this register. Under section 4 of 1980 PA 278, MCL 423.324, the State may void any Contract if, after award of the Contract, the name of Contractor as an employer or the name of the Subcontractor, manufacturer or supplier of Contractor appears in the register.



2.203 Workplace Safety and Discriminatory Harassment

In performing Services for the State, the Contractor must comply with the Department of Civil Services Rule 2-20 regarding Workplace Safety and Rule 1-8.3 regarding Discriminatory Harassment. In addition, the Contractor must comply with Civil Service regulations and any applicable agency rules provided to the Contractor. For Civil Service Rules, see <http://www.mi.gov/mdcs/0,1607,7-147-6877---,00.html>.

2.204 Prevailing Wage – Deleted, Not Applicable

2.210 Governing Law

2.211 Governing Law

The Contract must in all respects be governed by, and construed according to, the substantive laws of the State of Michigan without regard to any Michigan choice of law rules that would apply the substantive law of any other jurisdiction to the extent not inconsistent with, or pre-empted by federal law.

2.212 Compliance with Laws

Contractor shall comply with all applicable state, federal and local laws and ordinances in providing the Services/Deliverables.

2.213 Jurisdiction

Any dispute arising from the Contract must be resolved in the State of Michigan. With respect to any claim between the parties, Contractor consents to venue in Ingham County, Michigan, and irrevocably waives any objections it may have to the jurisdiction on the grounds of lack of personal jurisdiction of the court or the laying of venue of the court or on the basis of forum non conveniens or otherwise. Contractor agrees to appoint agents in the State of Michigan to receive service of process.

2.220 Limitation of Liability

2.221 Limitation of Liability

Neither the Contractor nor the State is liable to each other, regardless of the form of action, for consequential, incidental, indirect, or special damages. This limitation of liability does not apply to claims for infringement of United States patent, copyright, trademark 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; or to court costs or attorney's fees awarded by a court in addition to damages after litigation based on this Contract.

2.230 Disclosure Responsibilities

2.231 Disclosure of Litigation

(a) Disclosure. Contractor must disclose any material criminal litigation, investigations or proceedings involving the Contractor (and each Subcontractor) or any of its officers or directors or any litigation, investigations or proceedings under the Sarbanes-Oxley Act. In addition, each Contractor (and each Subcontractor) must notify the State of any material civil litigation, arbitration or proceeding which arises during the term of the Contract and extensions, to which Contractor (or, to the extent Contractor is aware, any Subcontractor) is a party, and which involves: (i) disputes that might reasonably be expected to adversely affect the viability or financial stability of Contractor or any Subcontractor; or (ii) a claim or written allegation of fraud against Contractor or, to the extent Contractor is aware, any Subcontractor by a governmental or public entity arising out of their business dealings with governmental or public entities. The Contractor must disclose in writing to the Contract Administrator any litigation, investigation, arbitration or other proceeding (collectively, "Proceeding") within 30 days of its occurrence. Details of settlements which are prevented from disclosure by the terms of the settlement may be annotated. Information provided to the State from Contractor's publicly filed documents referencing its material litigation will be deemed to satisfy the requirements of this Section.



(b) Assurances. If any Proceeding disclosed to the State under this Section, or of which the State otherwise becomes aware, during the term of this Contract would cause a reasonable party to be concerned about:

- (i) the ability of Contractor (or a Subcontractor) to continue to perform this Contract according to its terms and conditions, or
- (ii) whether Contractor (or a Subcontractor) in performing Services for the State is engaged in conduct which is similar in nature to conduct alleged in the Proceeding, which conduct would constitute a breach of this Contract or a violation of Michigan law, regulations or public policy, then the Contractor must provide the State all reasonable assurances requested by the State to demonstrate that:
 - (a) Contractor and its Subcontractors will be able to continue to perform this Contract and any Statements of Work according to its terms and conditions, and
 - (b) Contractor and its Subcontractors have not and will not engage in conduct in performing the Services which is similar in nature to the conduct alleged in the Proceeding.

(c) Contractor must make the following notifications in writing:

- (1) Within 30 days of Contractor becoming aware that a change in its ownership or officers has occurred, or is certain to occur, or a change that could result in changes in the valuation of its capitalized assets in the accounting records, Contractor must notify DTMB PurchOps.
- (2) Contractor must also notify DTMB PurchOps 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.
- (3) Contractor must also notify DTMB PurchOps within 30 days whenever changes to company affiliations occur.

2.232 Call Center Disclosure

Contractor and/or all Subcontractors involved in the performance of this Contract providing call or contact center services to the State must disclose the location of its call or contact center services to inbound callers. Failure to disclose this information is a material breach of this Contract.

2.233 Bankruptcy

The State may, without prejudice to any other right or remedy, terminate this Contract, in whole or in part, and, at its option, may take possession of the “Work in Process” and finish the Works in Process by whatever appropriate method the State may deem expedient if:

- (a) the Contractor files for protection under the bankruptcy laws;
- (b) an involuntary petition is filed against the Contractor and not removed within 30 days;
- (c) the Contractor becomes insolvent or if a receiver is appointed due to the Contractor's insolvency;
- (d) the Contractor makes a general assignment for the benefit of creditors; or
- (e) the Contractor or its affiliates are unable to provide reasonable assurances that the Contractor or its affiliates can deliver the services under this Contract.

Contractor will fix appropriate notices or labels on the Work in Process to indicate ownership by the State. To the extent reasonably possible, materials and Work in Process must be stored separately from other stock and marked conspicuously with labels indicating ownership by the State.

2.240 Performance

2.241 Time of Performance

- (a) Contractor must use commercially reasonable efforts to provide the resources necessary to complete all Services and Deliverables according to the time schedules contained in the Statements of Work and other Exhibits governing the work, and with professional quality.
- (b) Without limiting the generality of **Section 2.241(a)**, Contractor must notify the State in a timely manner upon becoming aware of any circumstances that may reasonably be expected to jeopardize the timely and successful completion of any Deliverables/Services on the scheduled due dates in the latest State-approved delivery schedule and must inform the State of the projected actual delivery date.



(c) If the Contractor believes that a delay in performance by the State has caused or will cause the Contractor to be unable to perform its obligations according to specified Contract time periods, the Contractor must notify the State in a timely manner and must use commercially reasonable efforts to perform its obligations according to the Contract time periods notwithstanding the State's failure. Contractor will not be in default for a delay in performance to the extent the delay is caused by the State.

(d) Should the State of Michigan issue an Executive Order thru the Office of State Employer mandating furlough days, the furlough days will not be considered a Business Day. The Contractor will not seek additional costs from the State for project schedule extensions to the extent such extensions are needed due to Contractor's inability to complete deliverables and milestones in accordance with the project schedule as a result of the above mentioned furlough days.

2.242 Service Level Agreements (SLAs) – Deleted, Not Applicable

2.243 Liquidated Damages – Deleted, Not Applicable

2.244 Excusable Failure

Neither party will be liable for any default, damage or delay in the performance of its obligations under the Contract to the extent the default, damage or delay is caused by government regulations or requirements (executive, legislative, judicial, military or otherwise), power failure, electrical surges or current fluctuations, lightning, earthquake, war, water or other forces of nature or acts of God, delays or failures of transportation, equipment shortages, suppliers' failures, or acts or omissions of common carriers, fire; riots, civil disorders; strikes or other labor disputes, embargoes; 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 a party; provided the non-performing party and its Subcontractors are without fault in causing the default or delay, and the 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.

If a party does not perform its contractual obligations for any of the reasons listed above, the non-performing party will be excused from any further performance of its affected obligation(s) for as long as the circumstances prevail. But the party must use commercially reasonable efforts to recommence performance whenever and to whatever extent possible without delay. A party must promptly notify the other party in writing immediately after the excusable failure occurs, and also when it abates or ends.

If any of the above-enumerated circumstances substantially prevent, hinder, or delay the Contractor's performance of the Services/provision of Deliverables for more than 10 Business 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/Deliverables from an alternate source, and the State is not be liable for payment for the unperformed Services/ Deliverables not provided under the Contract for so long as the delay in performance continues; (b) the State may terminate any portion of the Contract so affected and the charges payable will be equitably adjusted to reflect those Services/Deliverables terminated; or (c) the State may terminate the affected Statement of Work without liability to Contractor as of a date specified by the State in a written notice of termination to the Contractor, except to the extent that the State must pay for Services/Deliverables provided through the date of termination.

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/Deliverables not provided as a result of the Excusable Failure condition. Defaults or delays in performance by Contractor which are caused by acts or omissions of its Subcontractors will not relieve Contractor of its obligations under the Contract except to the extent that a Subcontractor is itself subject to an Excusable Failure condition described above and 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.



2.250 Approval of Deliverables

2.251 Delivery Responsibilities

Unless otherwise specified by the State within an individual order, the following must be applicable to all orders issued under this Contract.

- (a) Shipment responsibilities - Services performed/Deliverables provided under this Contract must be delivered "F.O.B. Destination, within Government Premises." The Contractor must have complete responsibility for providing all Services/Deliverables to all site(s) unless otherwise stated. Actual delivery dates will be specified on the individual purchase order.
- (b) Delivery locations - Services will be performed/Deliverables will be provided at every State of Michigan location within Michigan unless otherwise stated in the SOW. Specific locations will be provided by the State or upon issuance of individual purchase orders.
- (c) Damage Disputes - At the time of delivery to State Locations, the State must examine all packages. The quantity of packages delivered must be recorded and any obvious visible or suspected damage must be noted at time of delivery using the shipper's delivery document(s) and appropriate procedures to record the damage. Where there is no obvious or suspected damage, all deliveries to a State Location must be opened by the State and the contents inspected for possible internal damage not visible externally within 14 days of receipt. Any damage must be reported to the Contractor within five days of inspection.

2.252 Delivery of Deliverables

Where applicable, the Statements of Work/POs contain lists of the Deliverables to be prepared and delivered by Contractor including, for each Deliverable, the scheduled delivery date and a designation of whether the Deliverable is a document ("Written Deliverable"), a good ("Physical Deliverable") or a Service. All Deliverables must be completed and delivered for State review and written approval and, where applicable, installed according to the State-approved delivery schedule and any other applicable terms and conditions of the Contract.

2.253 Testing

- (a) Before delivering any of the above-mentioned Statement of Work Physical Deliverables or Services to the State, Contractor will first perform all required quality assurance activities to verify that the Physical Deliverable or Service is complete and conforms with its specifications listed in the applicable Statement of Work or Purchase Order. Before delivering a Physical Deliverable or Service to the State, Contractor must certify to the State that (1) it has performed the quality assurance activities, (2) it has performed any applicable testing, (3) it has corrected all material deficiencies discovered during the quality assurance activities and testing, (4) the Deliverable or Service is in a suitable state of readiness for the State's review and approval, and (5) the Deliverable/Service has all Critical Security patches/updates applied.
- (b) If a Deliverable includes installation at a State Location, then Contractor must (1) perform any applicable testing, (2) correct all material deficiencies discovered during the quality assurance activities and testing, and (3) inform the State that the Deliverable is in a suitable state of readiness for the State's review and approval. To the extent that testing occurs at State Locations, the State is entitled to observe or otherwise participate in testing.

2.254 Approval of Deliverables, In General

(a) All Deliverables (Physical Deliverables and Written Deliverables) and Services require formal written approval by the State, according to the following procedures. Formal approval by the State requires the State to confirm in writing that the Deliverable meets its specifications. Formal approval may include the successful completion of Testing as applicable in **Section 2.253**, to be led by the State with the support and assistance of Contractor. The approval process will be facilitated by ongoing consultation between the parties, inspection of interim and intermediate Deliverables and collaboration on key decisions.

(b) The State's obligation to comply with any State Review Period is conditioned on the timely delivery of Deliverables/Services being reviewed.

(c) Before commencement of its review or testing of a Deliverable/Service, the State may inspect the Deliverable/Service to confirm that all components of the Deliverable/Service have been delivered without



material deficiencies. If the State determines that the Deliverable/Service has material deficiencies, the State may refuse delivery of the Deliverable/Service without performing any further inspection or testing of the Deliverable/Service. Otherwise, the review period will be deemed to have started on the day the State receives the Deliverable or the Service begins, and the State and Contractor agree that the Deliverable/Service is ready for use and, where applicable, certification by Contractor according to **Section 2.253**.

(d) The State will approve in writing a Deliverable/Service after confirming that it conforms to and performs according to its specifications without material deficiency. The State may, but is not be required to, conditionally approve in writing a Deliverable/Service that contains material deficiencies if the State elects to permit Contractor to rectify them post-approval. In any case, Contractor will be responsible for working diligently to correct within a reasonable time at Contractor's expense all deficiencies in the Deliverable/Service that remain outstanding at the time of State approval.

(e) If, after three opportunities (the original and two repeat efforts), the Contractor is unable to correct all deficiencies preventing Final Acceptance of a Deliverable/Service, the State may: (i) demand that the Contractor cure the failure and give the Contractor additional time to cure the failure at the sole expense of the Contractor; or (ii) keep the Contract in force and do, either itself or through other parties, whatever the Contractor has failed to do, and recover the difference between the cost to cure the deficiency and the contract price plus an additional sum equal to 10% of the cost to cure the deficiency to cover the State's general expenses provided the State can furnish proof of the general expenses; or (iii) terminate the particular Statement of Work for default, either in whole or in part by notice to Contractor provided Contractor is unable to cure the breach. Notwithstanding the foregoing, the State cannot use, as a basis for exercising its termination rights under this Section, deficiencies discovered in a repeat State Review Period that could reasonably have been discovered during a prior State Review Period.

(f) The State, at any time and in its reasonable discretion, may halt the testing or approval process if the process reveals deficiencies in or problems with a Deliverable/Service in a sufficient quantity or of a sufficient severity that renders continuing the process unproductive or unworkable. If that happens, the State may stop using the Service or return the applicable Deliverable to Contractor for correction and re-delivery before resuming the testing or approval process.

2.255 Process For Approval of Written Deliverables – Deleted, Not Applicable

2.256 Process for Approval of Services

The State Review Period for approval of Services is governed by the applicable Statement of Work (and if the Statement of Work does not state the State Review Period, it is by default 30 Business Days for Services). The State agrees to notify the Contractor in writing by the end of the State Review Period either stating that the Service is approved in the form delivered by the Contractor or describing any deficiencies that must be corrected before approval of the Services (or at the State's election, after approval of the Service). If the State delivers to the Contractor a notice of deficiencies, the Contractor will correct the described deficiencies and within 30 Business Days resubmit the Service in a form that shows all revisions made to the original version delivered to the State. The Contractor's correction efforts will be made at no additional charge. Upon implementation of a corrected Service from Contractor, the State will have a reasonable additional period of time, not to exceed the length of the original State Review Period, to review the corrected Service for conformity and that the identified deficiencies have been corrected.

2.257 Process for Approval of Physical Deliverables

The State Review Period for approval of Physical Deliverables is governed by the applicable Statement of Work (and if the Statement of Work does not state the State Review Period, it is by default 30 continuous Business Days for a Physical Deliverable). The State agrees to notify the Contractor in writing by the end of the State Review Period either stating that the Deliverable is approved in the form delivered by the Contractor or describing any deficiencies that must be corrected before approval of the Deliverable (or at the State's election, after approval of the Deliverable). If the State delivers to the Contractor a notice of deficiencies, the Contractor will correct the described deficiencies and within 30 Business Days resubmit the Deliverable in a form that shows all revisions made to the original version delivered to the State. The Contractor's correction efforts will be made at no additional charge. Upon receipt of a corrected Deliverable from the Contractor, the State will have a reasonable



additional period of time, not to exceed the length of the original State Review Period, to review the corrected Deliverable to confirm that the identified deficiencies have been corrected.

2.258 Final Acceptance

Unless otherwise stated in the Article 1, Statement of Work or Purchase Order, “Final Acceptance” of each Deliverable must occur when each Deliverable/Service has been approved by the State following the State Review Periods identified in **Sections 2.251-2.257**. Payment will be made for Deliverables installed and accepted. Upon acceptance of a Service, the State will pay for all Services provided during the State Review Period that conformed to the acceptance criteria.

2.260 Ownership

2.261 Ownership of Work Product by State – Deleted, Not Applicable

2.262 Vesting of Rights

With the sole exception of any preexisting licensed works identified in the SOW, the Contractor assigns, and upon creation of each Deliverable automatically assigns, to the State, ownership of all United States and international copyrights, trademarks, patents, or other proprietary rights in each and every Deliverable, whether or not registered by the Contractor, insofar as any the Deliverable, by operation of law, may not be considered work made for hire by the Contractor for the State. From time to time upon the State’s request, the Contractor must confirm the assignment by execution and delivery of the assignments, confirmations of assignment, or other written instruments as the State may request. The State may obtain and hold in its own name all copyright, trademark, and patent registrations and other evidence of rights that may be available for Deliverables.

2.263 Rights in Data – Deleted, Not Applicable

2.264 Ownership of Materials

The State and the Contractor will continue to own their respective proprietary technologies developed before entering into the Contract. Any hardware bought through the Contractor by the State, and paid for by the State, will be owned by the State. Any software licensed through the Contractor and sold to the State, will be licensed directly to the State.

2.270 State Standards

2.271 Existing Technology Standards

The Contractor will adhere to all existing standards as described within the comprehensive listing of the State’s existing technology standards at <http://www.michigan.gov/dit>.

2.272 Acceptable Use Policy

To the extent that Contractor has access to the State computer system, Contractor must comply with the State’s Acceptable Use Policy, see <http://www.michigan.gov/ditservice>. All Contractor employees must be required, in writing, to agree to the State’s Acceptable Use Policy before accessing the State system. The State reserves the right to terminate Contractor’s access to the State system if a violation occurs.

2.273 Systems Changes

Contractor is not responsible for and not authorized to make changes to any State systems without written authorization from the Project Manager. Any changes Contractor makes to State systems with the State’s approval must be done according to applicable State procedures, including security, access and configuration management procedures.

2.280 Extended Purchasing

2.281 MiDEAL

Act Number 431 of the Public Acts of 1984 permits the State of Michigan, Department of Technology, Management and Budget, to provide purchasing services to any city, village, county, township, school district,



intermediate school district, non-profit hospital, institution of higher education, community, or junior college. As a result of the enactment of this legislation, the MiDEAL Program has been developed. This program extends the use of state contracts to program members. The governmental agency must enter into an agreement with the State of Michigan to become authorized to participate, thus ensuring that local units of government secure a greater return for the expenditure of public funds.

In those cases, contract vendors supply merchandise at the established State of Michigan contract prices and terms. The contract vendor must submit invoices and pay the authorized MiDEAL member on a direct and individual basis according to contract terms.

IT IS MANDATORY THAT THIS CONTRACT BE MADE AVAILABLE TO ALL STATE OF MICHIGAN AGENCIES, AUTHORIZED MIDEAL PURCHASING PROGRAM MEMBERS, AND NASPO MEMBER STATES.

Please Visit Mi DEAL at www.michigan.gov/mideal under MiDEAL.

2.282 State Employee Purchases – Deleted, Not Applicable

2.290 Environmental Provision

2.291 Environmental Provision

Energy Efficiency Purchasing Policy – The State seeks wherever possible to purchase energy efficient products. This includes giving preference to U.S. Environmental Protection Agency (EPA) certified ‘Energy Star’ products for any category of products for which EPA has established Energy Star certification. For other purchases, the State may include energy efficiency as one of the priority factors to consider when choosing among comparable products.

Environmental Purchasing Policy – The State of Michigan is committed to encouraging the use of products and services that impact the environment less than competing products. The State is accomplishing this by including environmental considerations in purchasing decisions, while remaining fiscally responsible, to promote practices that improve worker health, conserve natural resources, and prevent pollution. Environmental components that are to be considered include: recycled content and recyclability; energy efficiency; and the presence of undesirable materials in the products, especially those toxic chemicals which are persistent and bioaccumulative. The Contractor should be able to supply products containing recycled and environmentally preferable materials that meet performance requirements and is encouraged to offer such products throughout the duration of this Contract. Information on any relevant third party certification (such as Green Seal, Energy Star, etc.) should also be provided.

Hazardous Materials:

For the purposes of this Section, “Hazardous Materials” is a generic term used to describe asbestos, ACBMs, PCBs, petroleum products, construction materials including paint thinners, solvents, gasoline, oil, and any other material the manufacture, use, treatment, storage, transportation or disposal of which is regulated by the federal, state or local laws governing the protection of the public health, natural resources or the environment. This includes, but is not limited to, materials the as batteries and circuit packs, and other materials that are regulated as (1) “Hazardous Materials” under the Hazardous Materials Transportation Act, (2) “chemical hazards” under the Occupational Safety and Health Administration standards, (3) “chemical substances or mixtures” under the Toxic Substances Control Act, (4) “pesticides” under the Federal Insecticide Fungicide and Rodenticide Act, and (5) “hazardous wastes” as defined or listed under the Resource Conservation and Recovery Act.

(a) The Contractor must use, handle, store, dispose of, process, transport and transfer any material considered a Hazardous Material according to all federal, State and local laws. The State must provide a safe and suitable environment for performance of Contractor’s Work. Before the commencement of Work, the State must advise the Contractor of the presence at the work site of any Hazardous Material to the extent that the State is aware of the Hazardous Material. If the Contractor encounters material reasonably believed to be a Hazardous Material and which may present a substantial danger, the Contractor must immediately stop all affected Work, notify the State in writing about the conditions encountered, and take appropriate health and safety precautions.



(b) Upon receipt of a written notice, the State will investigate the conditions. If (a) the material is a Hazardous Material that may present a substantial danger, and (b) the Hazardous Material was not brought to the site by the Contractor, or does not result in whole or in part from any violation by the Contractor of any laws covering the use, handling, storage, disposal of, processing, transport and transfer of Hazardous Materials, the State must order a suspension of Work in writing. The State must proceed to have the Hazardous Material removed or rendered harmless. In the alternative, the State must terminate the affected Work for the State's convenience.

(c) Once the Hazardous Material has been removed or rendered harmless by the State, the Contractor must resume Work as directed in writing by the State. Any determination by the Michigan Department of Community Health or the Michigan Department of Environmental Quality that the Hazardous Material has either been removed or rendered harmless is binding upon the State and Contractor for the purposes of resuming the Work. If any incident with Hazardous Material results in delay not reasonable anticipatable under the circumstances and which is attributable to the State, the applicable SLAs for the affected Work will not be counted in time as mutually agreed by the parties.

(d) If the Hazardous Material was brought to the site by the Contractor, or results in whole or in part from any violation by the Contractor of any laws covering the use, handling, storage, disposal of, processing, transport and transfer of Hazardous Material, or from any other act or omission within the control of the Contractor, the Contractor must bear its proportionate share of the delay and costs involved in cleaning up the site and removing and rendering harmless the Hazardous Material according to Applicable Laws to the condition approved by applicable regulatory agency(ies).

Michigan has a Consumer Products Rule pertaining to labeling of certain products containing volatile organic compounds. For specific details visit http://www.michigan.gov/deq/0,1607,7-135-3310_4108-173523--,00.html

Refrigeration and Air Conditioning:

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

Environmental Performance:

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

2.300 Other Provisions

2.301 Forced Labor, Convict Labor, Forced or Indentured Child Labor, or Indentured Servitude Made Materials

Equipment, materials, or supplies, that will be furnished to the State under the Contract must not be produced in whole or in part by forced labor, convict labor, forced or indentured child labor, or indentured servitude.

“Forced or indentured child labor” means all work or service: exacted from any person under the age of 18 under the menace of any penalty for its nonperformance and for which the worker does not offer himself voluntarily; or performed by any person under the age of 18 under a contract the enforcement of which can be accomplished by process or penalties.

2.400 Lease Option

2.401 Delivery and Installation

Lessee shall order the Equipment, cause the Equipment to be delivered and installed at the location agreed upon by the parties and pay any and all delivery and installation costs in connection therewith.

**2.402 Marking; Inspection**

Lessor shall have the right to mark or affix a nonpermanent label on the Equipment for purposes of identifying it at a later date. Lessor or its agents shall have the right, from time to time, with prior written notice, during reasonable business hours, and subject to the needs of Lessee, to enter into and upon the property of Lessee for the purpose of inspecting the existence, condition and proper maintenance of the Equipment.

2.403 Title to the Equipment

During the Term of this Lease, title to the Equipment shall remain in Lessor. Title to the Equipment shall be conveyed to Lessee upon the occurrence of one of the following: (a) the exercise by Lessee of the purchase option under Section 22; or (b) the payment by Lessee of all sums required to be paid under this Lease as specified in the Lease Payment Schedule. Upon Lessee's exercise of the purchase option or Lessee's payment of all sums due under the Lease Payment Schedule, Lessor shall transfer free and clear title to Lessee.

2.404 Taxes, Other Governmental Chares and utility Charges

The parties to this Lease contemplate that the Equipment will be used for governmental purposes of Lessee and that the Equipment will therefore be exempt from all property taxes. If the use, possession or acquisition of any Equipment is nevertheless determined to be subject to taxation, Lessee shall pay when due all taxes and governmental charges lawfully assessed or levied against or with respect to such Equipment. Lessee shall pay all utility and other charges incurred in the use and maintenance of the Equipment. Lessee shall pay such taxes or charges as the same may become due.

2.405 Insurance

Lessee is self-insured for all risk, physical damage, and public liability and will provide proof of such self-insurance in letterform together with a copy of the statute authorizing this form of insurance.

2.406 Risk of Loss or Damage

Lessee shall assume all risk of loss, theft, damage to, or destruction of the Equipment for any cause ("Loss or Damage") upon acceptance, as described in Section 11. In the event of Loss or Damage to the Equipment, Lessee shall promptly report the same to Lessor and concerned governmental agencies. Lessee shall not be relieved of its obligation to pay Lease Payments or to perform any other obligations under this Lease by reason of any Loss or Damage. In the event of any Loss or Damage, Lessee shall either: (a) promptly replace lost Equipment or promptly repair damaged Equipment and place it in good repair and working condition and continue to make all Lease Payments; or (b) within sixty (60) business days of notifying Lessor that the Equipment will not be repaired, pay Lessor the outstanding principal balance and any unpaid accrued interest as of the payoff date, as described in the Lease Payment Schedule. Lessee shall have the right to retain any residual insurance benefit, which remains after payment to Lessor of the outstanding principal balance and unpaid accrued interest.



**Article 5 - Terms and Conditions for American Recovery and Reinvestment (ARRA) of 2009/2010
Funded Contracts**

5.000 Sub-Recipients Requirements

Contractor shall include these terms, including this requirement, in any of its subcontracts or subgrants in connection with projects funded in whole or in part with funds available under the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5.

5.010 Reporting & Registration Requirements (Section 1512)

Division A, Title XV, Section 1512 of the ARRA outlines reporting requirements. Not later than ten calendar days after the end of each calendar quarter, the State must submit a report that, at a minimum, contains the information specified in Section 1512 of the ARRA. It is imperative all contracts involving the use of ARRA funds include requirements that the Contractor supply the State with the necessary information to provide these reports (see RFP Section 1.042 Reports) in a timely manner.

The Contractor’s failure to provide complete, accurate, and timely reports shall constitute an “Event of Default”. Upon the occurrence of an Event of Default, the state department or agency may terminate this contract upon 30 days prior written notice if the default remains uncured within five calendar days following the last day of the calendar quarter, in addition to any other remedy available to the state department or agency in law or equity.

5.020 Buy American Requirement (Section 1605)

5.022 Required Use of American Iron, Steel, and Other Manufactured Goods

(a) **Definitions.** As used in this Section 5.020 —

“Designated Country” means Aruba, Australia, Austria, Belgium, Bulgaria, Chile, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hong Kong, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea (Republic of), Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Romania, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, and United Kingdom.

“Designated country iron, steel, and/or manufactured goods” mean iron, steel and/or a manufactured good that:

- (1) Is wholly the growth, product or manufacture of a Designated Country; or
- (2) In the case of a manufactured good that consists in whole or in part of materials from another country, has been substantially transformed in a Designated County into a new and different manufactured good distinct from the materials from which it was transformed.

“Domestic iron, steel and/or manufactured good” is iron, steel and/or a manufactured good that:

- (1) Is wholly the growth, product or manufacture of the United States; or
- (2) In the case of a manufactured good that consists in whole or in part of materials from another county, has been substantially transformed in the United States into a new and different manufactured good distinct from the materials from which it was transformed. There in no requirement with regard to the origin of components or subcomponents in manufactured goods or products, as long as the manufacture of goods occurs in the United States.

“Federal Agency” means the department or agency of the federal government that awarded funds to the State of Michigan from the ARRA that finance the project described in this RFP.

“Foreign iron, steel and/or manufactured good” means iron, steel and/or manufactured good that is not domestic or Designated country iron, steel and/or manufactured goods.

“Manufactured good” means a good brought to the construction site for incorporation into the building or work that has been--

- (1) Processed into a specific form and shape; or
- (2) Combined with other raw material to create a material that has different properties than the properties of the individual raw materials.

“Public building” and "public work" means a public building of, and a public work of, a governmental entity (the United States; the District of Columbia; commonwealths, territories, and minor outlying islands of the



United States; State and local governments; and multi-State, regional, or interstate entities which have governmental functions). These buildings and works may include, without limitation, bridges, dams, plants, highways, parkways, streets, subways, tunnels, sewers, mains, power lines, pumping stations, heavy generators, railways, airports, terminals, docks, piers, wharves, ways, lighthouses, buoys, jetties, breakwaters, levees, and canals, and the construction, alteration, maintenance, or repair of such buildings and works. “Steel” means an alloy that includes at least 50 percent iron, between .02 and 2 percent carbon, and may include other elements.

(b) *Domestic preference.*

(1) This term and condition implements:

- (i) Section 1605(a) of Division A, Title XVI of the ARRA by requiring that all iron, steel, and manufactured goods used in the public building or public work are produced in the United States; and
 - (ii) Section 1605(d) of Division A, Title XVI of the ARRA, which requires the application of the Buy American requirement in a manner consistent with U.S. obligations under international agreements. The restrictions of Section 1605 of the ARRA do not apply to Designated country iron, steel, and/or manufactured goods procured for projects with an estimated value of \$7,433,000 or more.
- (2) The Contractor shall use only domestic or Designated country iron, steel and/or manufactured goods in performing work funded in whole or in part with funds available under the ARRA, except as provided in subparagraphs (3) and (4) of this paragraph (b).
- (3) [The requirement in paragraph \(2\) of this Section 5.022\(b\) does not apply to the material listed by the Federal Agency as follows: None](#)

[List applicable excepted materials or indicate “none”]

- (4) The Federal Agency may add other iron, steel, and/or manufactured goods to the list in paragraph (b) (3) of this Section if the Federal government determines that—
- (i) The cost of the domestic iron, steel, and/or manufactured goods would be unreasonable. The cost of domestic iron, steel, or manufactured goods used in the project is unreasonable when the cumulative cost of such material will increase the cost of the overall project by more than 25 percent;
 - (ii) The iron, steel, and/or manufactured good is not produced, or manufactured in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or
 - (iii) The application of section 1605 of the ARRA would be inconsistent with the public interest.
- (c) *Request for determination of inapplicability of Section 1605 of the ARRA.*
- (1)(i) Any Bidder’s request to use foreign iron, steel, and/or manufactured goods in accordance with paragraph (b) (4) of this Section shall include adequate information for Federal Agency evaluation of the request, including—
- (A) A description of the foreign and domestic iron, steel, and/or manufactured goods;
 - (B) Unit of measure;
 - (C) Quantity;
 - (D) Cost;
 - (E) Time of delivery or availability;
 - (F) Location of the project;
 - (G) Name and address of the proposed supplier; and
 - (H) A detailed justification of the reason for use of foreign iron, steel, and/or manufactured goods cited in accordance with paragraph (b)(3) of this term and condition.
- (ii) A request based on unreasonable cost shall include a reasonable survey of the market and a completed cost comparison table in the format in paragraph (d) of this Section.
- (iii) The cost of iron, steel, and/or manufactured goods material shall include all delivery costs to the construction site and any applicable duty.
- (iv) Any Contractor’s request for a determination submitted after ARRA funds have been obligated for a project for construction, alteration, maintenance, or repair shall explain why the Contractor could not reasonably foresee the need for such determination and could not have requested the determination before the funds were obligated. If the Contractor does not submit a satisfactory explanation, the Federal Agency need not make a determination.



- (2) If the Federal Agency determines after funds have been obligated for a project for construction, alteration, maintenance, or repair that an exception to section 1605 of the ARRA applies, the State will amend the contract to allow use of the foreign iron, steel, and/or relevant manufactured goods. When the basis for the exception is nonavailability or public interest, the amended contract shall reflect adjustment of the contract amount, redistribution of budgeted funds, and/or other actions taken to cover costs associated with acquiring or using the foreign iron, steel, and/or relevant manufactured goods. When the basis for the exception is the unreasonable cost of the domestic iron, steel, or manufactured goods, the State shall adjust the award amount or redistribute budgeted funds by at least the differential established in 2 CFR 176.110(a).
- (3) Unless the Federal Agency determines that an exception to section 1605 of the ARRA applies, use of foreign iron, steel, and/or manufactured goods is noncompliant with section 1605 of the American Recovery and Reinvestment Act.
- (d) **Data.** To permit evaluation of requests under subparagraph (b)(4) of this Section based on unreasonable cost, the Bidder shall include the following information and any applicable supporting data based on the survey of suppliers:

FOREIGN AND DOMESTIC ITEMS COST COMPARISON				
Description	Unit of Measure	Quantity	Cost (Dollars)*	
Item 1:				
Foreign steel, iron, or manufactured good	_____	_____	_____	
Domestic steel, iron, or manufactured good	_____	_____	_____	
Item 2:				
Foreign steel, iron, or manufactured good	_____	_____	_____	
Domestic steel, iron, or manufactured good	_____	_____	_____	
<p>[List name, address, telephone number, email address, and contact for suppliers surveyed. Attach copy of response; if oral, attach summary.]</p> <p>[Include other applicable supporting information.]</p> <p>[* Include all delivery costs to the construction site.]</p>				

5.024 Notice of Required Use of American Iron, Steel, and Other Manufactured Goods

REQUIRED USE OF AMERICAN IRON, STEEL, AND MANUFACTURED GOODS—SECTION 1605 OF THE AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009

- (a) Definitions. “Designated country iron, steel and/or manufactured goods,” “domestic iron, steel and/or manufactured goods,” “Federal Agency”, “Foreign iron, steel and/or manufactured good”, “Manufactured good,” “public building and public work,” and “steel,” as used in this Section, are defined in Section 6.022(a).
- (b) **Requests for determinations of inapplicability.** A prospective Bidder requesting a determination regarding the inapplicability of section 1605 of the ARRA should submit the request to the Federal Agency in time to allow a determination before submission of applications or proposals. Bidders should provide a copy of this request to DTMB. The prospective applicant shall include the information and applicable supporting data required by paragraphs (c) and (d) of Section 5.022 of this RFP in the request. If Bidder has not requested a determination regarding the inapplicability of Section 1605 of the ARRA before submitting its application or proposal, or has not received a response to a previous request, the applicant shall include the information and supporting data in the application or proposal. The Federal Agency is sole entity authorized to make determinations regarding the inapplicability of Section 1605 of the ARRA.



(c) Evaluation of project proposals.

If the Federal Agency determines that an exception based on unreasonable cost of domestic iron, steel, and/or manufactured goods applies, the State will evaluate a project requesting an exception to the requirements of section 1605 of the ARRA by adding to the estimated total cost of the project 25 percent of the project cost, if foreign iron, steel, or manufactured goods are used in the project based on unreasonable cost of comparable manufactured domestic iron, steel, and/or manufactured goods.

(d) Alternate project proposals.

- (1) When a project proposal includes foreign iron, steel, and/or manufactured goods, other than Designated country iron, steel and/or manufactured goods, not listed in paragraph (b)(3) of the Section 5.022, the Bidder also may submit an alternate proposal based on use of equivalent domestic iron, steel, and/or manufactured goods.
- (2) If an alternate proposal is submitted, the Bidder shall submit a separate cost comparison table prepared in accordance with paragraphs (c) and (d) of Section 5.022 the this RFP for the proposal that is based on the use of any foreign iron, steel, and/or manufactured goods for which the Federal Agency has not yet determined an exception applies.
- (3) If the Federal Agency determines that a particular exception requested in accordance with paragraph (b) of Section 5.022 of this RFP does not apply, the State will evaluate only those proposals based on use of the equivalent domestic or designated country iron, steel, and/or manufactured goods, and the Contractor shall be required to furnish such domestic or designated country items.

5.030 Wage Rate Requirements (Section 1606)

All laborers and mechanics employed by contractors and subcontractors on projects funded in whole or in part with funds available under the ARRA shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality, as determined by the United States Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40 of the United States Code. (See ARRA Sec. 1606 & RFP Section 2.204 Prevailing Wage). The Secretary of Labor's determination regarding the prevailing wages applicable in Michigan is available at <http://www.gpo.gov/davisbacon/mi.html>.

5.040 Inspection & Audit of Records

The Contractor shall permit the United States Comptroller General or his representative or the appropriate inspector general appointed under section 3 or 8G of the Inspector General Act of 1998 or his representative (1) to examine any records that directly pertain to, and involve transactions relating to, this contract; and (2) to interview any officer or employee of the Contractor or any of its subcontractors/subgrantees regarding the activities funded with funds appropriated or otherwise made available by the ARRA.

5.050 Whistle Blower Protection for Recipients of Funds

Contractor shall not discharge, demote or otherwise discriminate against an employee for disclosures by the employee that the employee reasonably believes are evidence of: (1) gross mismanagement of a contract or grant relating to Covered Funds; (2) a gross waste of Covered Funds; (3) a substantial and specific danger to public health or safety related to the implementation or use of Covered Funds; an abuse of authority related to implementation or use of Covered Funds; or (5) a violation of law, rule, or regulation related to an agency contract (including the competition for or negotiation of a contract) or grant, awarded or issued relating to Covered Funds. In this Subsection, "Covered Funds" shall have the same meaning as set forth in Section 1553(g)(2) of Division A, Title XV of the ARRA.

(a) Recipient must post notice of the rights and remedies available to employees under Section 1553 of Division A, Title XV of the ARRA. (For the Michigan Civil Service Whistle Blowers Rule 2-10 link to: http://www.michigan.gov/mdcs/0,1607,7-147-6877_8155-72500--,00.html)

(b) The Contractor shall include the substance of this clause including this paragraph (b) in all subcontracts.



5.060 Funding of Programs

The Contractor acknowledges that the programs supported with temporary federal funds made available by the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, will not be continued with state financed appropriations once the temporary federal funds are expended.

5.070 Fixed Price- Competitively Bid

Contractor, to the maximum extent possible, shall award any subcontracts funded, in whole or in part, with ARRA funds as fixed-price contracts through the use of competitive procedures.

5.080 Segregation of Costs

Contractor shall segregate **obligations and expenditures of ARRA funds from other funding. No part of funds made available under the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, may be comingled with any other funds or used for a purpose other than that of making payments for costs allowable under the ARRA.**

5.090 Publication

All contract solicitations funded in whole or in part with ARRA funds will be posted on the www.bid4michigan.com website. All contracts resulting from the ARRA will be published on the State of Michigan's Recovery Web site, www.michigan.gov/recovery.

Contractor shall include the Michigan Recovery logo on all signage or other publications in connection with the activities funded by the State of Michigan through funds made available by the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5.

5.100 Buy Michigan Preference

A preference is given to products manufactured or services offered by Michigan-based firms if all other things are equal and if not inconsistent with federal statute (see MCL 18.1261).

5.110 Non-Discrimination

The Contractor shall comply with Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, Title IX of the Education Amendments of 1972, the Age Discrimination Act of 1975, and other civil rights laws applicable to recipients of Federal financial assistance (see RFP Section 2.201 Non-Discrimination).

5.120 Prohibition on Use of Funds

None of the funds made available under this contract may be used for any casino or other gambling establishment, aquarium, zoo, golf course, swimming pools, or similar projects.

5.130 False Claims Act

The Contractor shall promptly refer to an appropriate federal inspector general any credible evidence that a principal, employee, agent, contractor, sub-grantee, subcontractor or other person has committed a false claim under the False Claims Act or has committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity, or similar misconduct involving those funds.



5.140 Conflicting Requirements

Where ARRA requirements conflict with existing state requirements, ARRA requirements control.

5.150 Job Opportunity Posting Requirements

Contractor shall post notice of job opportunities created in connection with activities funded in whole or in part with ARRA funds in the Michigan Talent Bank, www.michworks.org/mtb.



APPENDIX A - PRICING

Item	Make/Model Bid	Estimated Quantity	Unit Price
Asphalt Heater, two ton per MDOT spec 36-04012T.07	FALCON S2D1XI	1 to 5	\$17,758
Asphalt Heater, four ton per MDOT spec. 36-0401.4T.05	FALCON P4D1XI	1 to 5	\$13,750
Asphalt Heater, two ton, diesel fired, per MDOT spec 36-0401.2TOJ.5	FALCON P2D1XI	1 to 5	\$17,552



I GENERAL

It is the intent of this specification to provide three (3) portable, tandem axle, two-ton capacity, asphalt heater/trailers, diesel fired, for heating and transporting asphalt material used for road pothole patching. The units shall to be provided with all standard features normal to the industry whether or not specified herein and are to be fully operational when delivered.

II PRODUCT LITERATURE

Bidder is to return manufacturer's product literature for the make and model offered with the bid. The literature is to show supporting data for performance and design characteristics required in the specification.

III EQUIPMENT IDENTIFICATION NUMBER

Unit number **36-0484 – 36-0486 shall** be bead-welded in 2 inch high numeral in a conspicuous location where the functioning of the units will not be affected.

IV DELIVERY AND TRAINING

48 hours prior to delivery the bidder shall contact the Delivery Contact Person listed below for each delivery location. Delivery shall be at the “ship to address” between the hours of 8:30 am to 2:30 pm Monday through Friday except on public holiday.

Unit number 36-0484 with guillotine type rear material door to be delivered to:
MDOT Grand Ledge Garage
731 N. Canal Rd.
Lansing, MI, 48917
517-627-3276
Delivery contact: John Knoop ph: 517-622-5015

Unit number 36-0485 with flip-up rear material door to be delivered to:
MDOT Mt. Pleasant Garage
1212 Corporate Drive
Mt. Pleasant, MI, 48858
989-773-3532
Delivery contact: Jeff Loper ph: 989-754-0784

IV DELIVERY AND TRAINING - continued

Unit number 36-0486 with flip-up rear material door to be delivered to:
MDOT Saginaw East Garage
3510 E. Washington Ave.
Saginaw, MI, 48917
989-754-0784
Delivery contact: Jeff Loper ph: 989-754-0784

After the equipment has been checked for specification compliance and accepted by MDOT, the bidder will be contacted to schedule and provide 4 hours of mechanics and operators training to approximately six MDOT personnel. The training is to be held at each ship to address. Training at time of delivery is **Not Acceptable**.



V MANUALS

Bidder shall furnish two (2) sets per unit of operating, maintenance and parts manuals at the same time the equipment is delivered.

VI WARRANTY

Bidder shall provide a one year warranty on workmanship and materials.

VII LIQUIDATED DAMAGES

The delivery of vehicles/equipment must be consistent with the scheduling as established within the Purchase Order. If any vehicles/equipment are not delivered within the delivery schedule specified, the delay will interfere with the proper implementation of the fleet management programs utilizing these vehicles/equipment, to the loss and damage of the State of Michigan. From the nature of the case, it would be impracticable and extremely difficult to fix the actual damage sustained in the event of any such delay.

The State of Michigan and the Contractor, therefore, agree that in the event of any such delay, the amount of damage which will be sustained from a delay will be the amount set forth in Paragraphs A and B. They agree that in the event of such delay, the contractor shall pay such amounts as liquidated damages and not a penalty. The State of Michigan as its option for amounts due as liquidated damages, may deduct such from any money payable to the Contractor or may bill the Contractor as a separate item.

IV LIQUIDATED DAMAGES - continued

- A. If the Contractor does not deliver the vehicles/equipment before the delivery date scheduled, the Contractor shall pay to the State of Michigan fixed and agreed, liquidated damages, for each calendar day between the due date and the date the vehicle/equipment is received, but not more than 30 calendar days. In lieu of all other damages due to such non-delivery, an amount of 2/10th of 1% of per unit cost of the Purchase Order for each unit that is not delivered by the delivery date.
- B. If the Contractor delivers the vehicles/equipment before the delivery due date specified and the vehicles/equipment do not comply with the Purchase Order Specifications and therefore, are not ready for operation, the State of Michigan may, at its option, delay the implementation of the vehicles/equipment into fleet operation. The Contractor shall pay to the State of Michigan, as fixed and agreed liquidated damages in the amount of 2/10 of 1% of the Purchase Order unit cost per vehicle/equipment, for each calendar day beginning from the delivery date scheduled in the Purchase Order, and the date the vehicle/equipment accepted as being in compliance with Purchase Order Specifications, but not more than 30 calendar days. **The delivery date for all units on this PO shall be 60 days from the day the Purchase Order is issued.**
- C. Exception - Except with respect to defaults of subcontractors, the Contractor shall not be liable for liquidated damages when delays arise out of causes beyond the control and without the fault or negligence of the Contractor. Such causes may include, but not be restricted to, acts of God, or of the public enemy, acts of the State in either its' sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, or unusually severe weather; but, in every case, the delays must be beyond the control and without the fault or negligence of the Contractor. If the delays are caused by the default of



the subcontractor, and if such default arises out of causes beyond the control of both the Contractor and subcontractor and without the fault or negligence of any of them, the Contractor shall not be liable for liquidated damages for delays, unless the supplies or services to be furnished by their subcontractors were obtainable from other sources in sufficient time to permit the Contractor to meet the required performance schedule.

VIII SPECIFICATIONS

Bidder is to complete and return the following portions of the specification. This shall provide detailed information for the equipment offered with this quotation. This information will be used by the Office of Purchasing in determining acceptability of the bid prior to award of purchase order. In addition, MDOT will use this information when comparing as delivered equipment with the information provided here by the vendor.

Quotations will be considered acceptable only in the following circumstances:

1. All blank spaces are completed with either yes or no, and if no list the type of deviation.
2. MDOT minimum requirements are met or exceeded.
3. MDOT maximum requirements are not exceeded.
4. The bidder's offering falls within the minimum and maximum range if both are noted in the same specification item.

If requirements are not available from the manufacturer, the bidder will be expected to make the appropriate substitution at the dealership prior to delivery. **When an appropriate substitution is required vendor shall note this in the Deviation to Specifications section of this specification.** Failure to make such alteration will be cause for non-acceptance by MDOT. **MDOT must approve any deviations to this specification.**

1. **I.T.B. No.** _RFP - 071I02000129
2. **Date:** June 16, 2010
3. **Name and Address of Bidder** Falcon Road Maintenance Equipment, Inc.
120 Waldo Avenue, Midland, MI 48642

4. **Phone Number** (989) 495-9332

VIII SPECIFICATIONS – continued

5. **Name, address, and phone number of Michigan dealership for warranty, parts and, service.**

Falcon Road Maintenance Equipment, Inc. 120 Waldo Avenue Midland, MI 48642

6. **Vendor Contact Person**

A. Print name: Gretchen Groulx



B. Signature:

C. Phone: 989 495 9332

D. Fax: 989 495 9342

7. Subcontractor, body installer, Etc.

A. Company Name and Address

NO SUBCONTRACTORS

B. Subcontractor contact person

1. Printed Name: N/A

2. Phone: _____

3. Fax: _____

8. BASIC SPECIFICATIONS

YES NO DEVIATION

Make: FALCON

Model: P4D1XI

Delivery required:
60 days ARO

 X _____

Product literature provided with bid

 X _____

Weight of patch trailer shall be on Certificate of Origin

 X _____

Warranty:

1 year parts and labor or manufacturer's warranty
which ever is greater

 X _____

Equipment Identification:

Unit number shall be bead welded in 2 inch high
numerals in a conspicuous location where
functionality will not be affected

 X _____

Training:

Vendor shall provide 4 hours operator and mechanic
training at each "ship to" address

 X _____

Heater/hauler shall be tandem axle trailer mounted type
with 2 ton material capacity

 X _____



Clearance, marker, stop, tail, and turn lights shall be LED type _____

Stop and tail lights shall be four (4) light system, stop to be independent of tail lights, 50 inch mounting height _____

Two rear facing Oval, LED type yellow strobe lights shall be mounted on each side as high as practical on each side, 4 inches to 6 inches from the rear edge of the unit _____

Power to strobe lights will be provided by the battery on the unit with switch to be in the burner control box and clearly labeled _____

8. BASIC SPECIFICATIONS - continued

YES NO DEVIATION

All electrical connections shall be in an approved, sealed junction box or sealed with heat shrink type connectors **Scotch Lock type connectors are not acceptable** _____

Pintle type hitch, 3 inch ring, height adjustable between 18 inches and 24 inches _____

Safety chains with clip hooks shall be provided and shall meet or exceed GVW _____

Trailer connector shall be 7-way round pin Berg type _____

Tandem axles shall be heavy wall, 3,500 pound Torsion bar type, 7,000 pound total GVWR with electric trailer brakes, including safety breakaway _____

Axles shall **NOT** be mobile home type axle _____

Wheels shall be solid dished 5 bolt type _____

Tires shall be heavy duty commercial to meet GVWR _____

Spare tire and rim shall be provided _____

5,000 pound (minimum) parking jack with removable caster wheel shall be provided _____

Trailer frame shall be 2 inch x 6 inch x 3/16 inch rectangular tubing and 10 inch x 15.3 pound channel _____

All welds shall be continuous _____

Ground clearance shall be 17 inches to bottom of frame minimum _____

8. BASIC SPECIFICATIONS - continued

YES NO DEVIATION

Fenders shall be back plated 10 gauge steel and bolted on _____



Eight (8) crossmembers shall be on the horizontal and four (4) on the vertical

¼ inch gussets shall reinforce burner box and floor

Comment _____

9. HOPPER

YES NO DEVIATION

Hopper shall be two (2) ton capacity, triple wall, low profile construction

1-½ inch space between material and air walls

1-½ inch space between air and insulation walls

Insulated wall chambers shall hold 2 inches of high heat temperature insulation secure

All panel walls shall be one (1) piece construction

Inner walls shall be 10 gauge, baffled

Outer walls shall be 12 gauge

Heat chambers under floor shall be ¼ inch plate, baffled

Work table shall allow full hopper access from ground

Heat shall radiate from front to back and side to side

Replaceable work table shall be 28 inches from ground maximum

9. HOPPER - continued

YES NO DEVIATION

All corners shall be reinforced with 3 inch overwrap

Rear material door shall be a single insulated door design with a 17 inch x 30 inch opening minimum allowing full access to the hopper

Door shall be a material metering, capable of being locked in 3 open positions minimum, one (1) with guillotine type equipped with low friction bearings mounted on unit #36-0484 and two (2) with flip-up doors mounted on 36-0485 and 36-0486

Door opening for work table shall provide full access to 51 inches of ¼ inch plate floor for removing asphalt with shovel from ground level



Capped corner shall have continuous welds

Two (2) top loading doors shall approximately 41 inches wide x 48-1/2 inches long, insulated

18 gauge outer skins framed on 1-1/4 inch square tubing with angle iron reinforced cross members

Top loading doors shall have removable, manually retractable, centered handles constructed of 3/4 inch schedule 80 pipe

Bolt on safety latch with ball pin for top loading doors shall be provided

50°F – 500°F thermometer shall be located in back hopper

Comment _____

10. HEATING SYSTEM

YES NO DEVIATION

Diesel fuel burner with spark ignition and fuel solenoids powered by 12v system, 105,000BTU minimum

Diesel fuel burner shall be capable of burning Bio-Diesel, standard diesel and ultra-low sulphur diesel and any mixture of commercially available diesel fuel

The burner shall be capable of operation while unit is being towed at highway speeds without extinguishing the flame

Automatic recycle on spark system shall be provided

Fuel for burner shall be controlled by a pressure pump and equipped with fuel pressure gauge

Burner shall be mounted inside of a bolt-on guard box with inspection lid

The combustion chamber shall be easily serviceable and changeable

Fuel tank shall be 18 gallon minimum capacity with diesel rated spin-on inline filter and with water separator

Combustion chamber of approximately 810 square inches shall be bolted to the front of hopper

Fuel system to be powered by 12 volt deep cycle battery(s),



1,100cca total, minimum, mounted in enclosed battery box(es)
bolted to the unit

Battery shall be charged by tow vehicle when in use

10. HEATING SYSTEM – continued **YES NO DEVIATION**

When not attached to a tow vehicle, battery(s) shall be
charged by a 120 volt marine grade dual bank battery
charger with automatic shut off to prevent overcharging

Battery charger shall be able to completely
charge battery(s) in less than 12 hours

Charger shall be hard wired to the heater batteries and
mounted in an enclosed box

Comment _____

11. CONTROLS **YES NO DEVIATION**

Automatic shut down safety system shall be Cad cell eye
control for flame in burner

Automatic temperature control heat system with
temperature range of 0°F to 350°F shall be provided

Burner shall automatically turn on and off as heat is required

Power switch with digital, programmable controller, shall
be in a NEMA 3r lockable box bolted on hopper

Comment _____



I GENERAL

It is the intent of this specification to provide a portable, tandem axle, four-ton capacity, asphalt heater/trailer, diesel fired, for heating and transporting asphalt material used for road pothole patching. The unit is to be provided with all standard features normal to the industry whether or not specified herein and is to be fully operational when delivered. The unit must be the latest model in current production, satisfactory to meet the performance and design characteristics required in the specification. The unit shall be built in accordance with all FMVSS, OSHA, MIOSHA, and ANSI standards.

II PRODUCT LITERATURE

Bidder is to return manufacturer's product literature for the make and model offered with the bid. The literature is to show supporting data for performance and design characteristics required in the specification.

III EQUIPMENT IDENTIFICATION NUMBER

Unit number **36-0477** shall be bead-welded in 2 inch high numerals in a conspicuous location where the functioning of the unit will not be affected.

IV DELIVERY

Delivery for unit number **36-0477** shall be to MDOT's Paw Paw Central Repair Facility, 1003 E. Michigan, Paw Paw, MI, 49708, Contact: **Mark Lester**, ph: 269-657-4980. Delivery shall be made between the hours of 8:30 am and 2:30 pm Monday through Friday except public holidays. Contact shall be at least 48 hours prior to delivery.

V MANUALS

Bidder shall provide two sets of operating, parts, and maintenance manuals with each unit delivered.

VI WARRANTY

Bidder shall provide a one year warranty on workmanship and materials.



VII LIQUIDATED DAMAGES

The delivery of vehicles/equipment must be consistent with the scheduling as established within the Purchase Order. If any vehicles/equipment are not delivered within the delivery schedule specified, the delay will interfere with the proper implementation of the fleet management programs utilizing these vehicles/equipment, to the loss and damage of the State of Michigan. From the nature of the case, it would be impracticable and extremely difficult to fix the actual damage sustained in the event of any such delay.

The State of Michigan and the Contractor, therefore, agree that in the event of any such delay, the amount of damage which will be sustained from a delay will be the amount set forth in Paragraphs A and B. They agree that in the event of such delay, the contractor shall pay such amounts as liquidated damages and not a penalty. The State of Michigan as its option for amounts due as liquidated damages, may deduct such from any money payable to the Contractor or may bill the Contractor as a separate item.

- A. If the Contractor does not deliver the vehicles/equipment before the delivery date scheduled, the Contractor shall pay to the State of Michigan fixed and agreed, liquidated damages, for each calendar day between the due date and the date the vehicle/equipment is received, but not more than 30 calendar days. In lieu of all other damages due to such non-delivery, an amount of 2/10th of 1% of per unit cost of the Purchase Order for each unit that is not delivered by the delivery date.
- B. If the Contractor delivers the vehicles/equipment before the delivery due date specified and the vehicles/equipment do not comply with the Purchase Order Specifications and therefore, are not ready for operation, the State of Michigan may, at its option, delay the implementation of the vehicles/equipment into fleet operation. The Contractor shall pay to the State of Michigan, as fixed and agreed liquidated damages in the amount of 2/10 of 1% of the Purchase Order unit cost per vehicle/equipment, for each calendar day beginning from the delivery date scheduled in the Purchase Order, and the date the vehicle/equipment accepted as being in compliance with Purchase Order Specifications, but not more than 30 calendar days. **The delivery date for all units on this PO shall be 60 days from the day the Purchase Order is issued.**

VII LIQUIDATED DAMAGES - continued

- C. Exception - Except with respect to defaults of subcontractors, the Contractor shall not be liable for liquidated damages when delays arise out of causes beyond the control and without the fault or negligence of the Contractor. Such causes may include, but not be restricted to, acts of God, or of the public enemy, acts of the State in either its' sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, or unusually severe weather; but, in every case, the delays must be beyond the control and without the fault or negligence of the Contractor. If the delays are caused by the default of the subcontractor, and if such default arises out of causes beyond the control of both the Contractor and subcontractor and without the fault or negligence of any of them, the Contractor shall not be liable for liquidated damages for delays, unless the supplies



or services to be furnished by their subcontractors were obtainable from other sources in sufficient time to permit the Contractor to meet the required performance schedule.

VIII SPECIFICATIONS

Bidder is to complete and return the following portions of the specification. This shall provide detailed information for the equipment offered with this quotation. This information will be used by the Office of Purchasing in determining acceptability of the bid prior to award of purchase order. In addition, MDOT will use this information when comparing as delivered equipment with the information provided here by the vendor.

Quotations may be considered acceptable only in the following circumstances:

1. All blank spaces are completed with either yes or no, and if no list the type of deviation.
2. MDOT minimum requirements are met or exceeded.
3. MDOT maximum requirements are not exceeded.
4. The bidder's offering falls within the minimum and maximum range if both are noted in the same specification item.

VIII SPECIFICATIONS – continued

If requirements are not available from the manufacturer, the bidder will be expected to make the appropriate substitution at the dealership prior to delivery. **When an appropriate substitution is required vendor shall note this in the Deviation to Specifications section of this specification.** Failure to make such alteration will be cause for non-acceptance by MDOT.

1. I.T.B. No. RFP 071I02000129 **2. Date:** June 16, 2010

3. Name and Address of Bidder Falcon Road Maintenance Equipment Inc.

120 Waldo Avenue, Midland, MI 48642

4. Phone Number (989) 495-9332

5. Name, address, and phone number of Michigan dealership for warranty, parts and, service.

Falcon Road Maintenance Equipment, Inc.

120 Waldo Avenue, Midland, MI 48642

6. Vendor Contact Person

A. Print name: Gretchen Groulx



B. Signature: _____

C. Phone: 989 495 9332

D. Fax: 989 495 9342

VIII SPECIFICATIONS – continued

7. Subcontractor, body installer, Etc.

A. Company Name and Address

No subcontractors

B. Subcontractor contact person

1. Printed Name: _____N/A_____

2. Phone: _____

3. Fax: _____

8. BASIC SPECIFICATIONS

	YES	NO	DEVIATION
Delivery for complete PO shall be 60 days ARO	_Y_	___	_____
Product literature provided with bid	_Y_	___	_____
Warranty: 1 year parts and labor or manufacturer’s warranty which ever is greater	_Y_	___	_____
Equipment Identification: Unit number shall be bead welded in 2 inch high numerals in a conspicuous location where functionality will not be affected	_Y_	___	_____
Training: Vendor shall provide 4 hours operator and mechanic training at each “ship to” address	_Y_	___	_____



Heater/hauler shall be tandem axle trailer mounted type with four (4) ton material capacity	<u> </u> Y <u> </u>	<u> </u>	<u> </u>
Clearance, running, stop, tail, and turn lights shall be LED type	<u> </u> Y <u> </u>	<u> </u>	<u> </u>
Stop and tail lights shall be four (4) light system, stop to be independent of tail lights, 50 inch mounting height	<u> </u> Y <u> </u>	<u> </u>	<u> </u>
Pintle type hitch, 3 inch ring, height adjustable between 18 inches and 24 inches	Y <u> </u>	<u> </u>	<u> </u>
Safety chains with clip hooks shall be provided which meet or exceed GVW	Y <u> </u>	<u> </u>	<u> </u>
Trailer connector shall be 7-way round pin Berg type	<u> </u> Y <u> </u>	<u> </u>	<u> </u>
Axles shall be heavy wall, 7,000 pound GVWR with electric trailer brakes, including breakaway	Y <u> </u>	<u> </u>	<u> </u>
Springs shall be 2 inch wide double eye leaf type	<u> </u> Y <u> </u>	<u> </u>	<u> </u>
Tires shall be heavy duty commercial to meet GVWR	<u> </u> Y <u> </u>	<u> </u>	<u> </u>
7,000 pound parking jack with caster wheel shall be provided	<u> </u> Y <u> </u>	<u> </u>	<u> </u>
Trailer frame shall be 6 inch x 2 inch x 3/16 inch rectangular tubing and 10 inch x 15.3 pound channel	<u> </u> Y <u> </u>	<u> </u>	<u> </u>

8. BASIC SPECIFICATIONS - continued

YES NO DEVIATION

All welds shall be continuous	<u> </u> Y <u> </u>	<u> </u>	<u> </u>
Ground clearance shall be 17 inches to bottom of frame	<u> </u> Y <u> </u>	<u> </u>	<u> </u>
Fenders shall be back plated, 10 gauge steel, and bolted on	<u> </u> Y <u> </u>	<u> </u>	<u> </u>
Eight (8) crossmembers shall be on the horizontal and four (4) on the vertical	<u> </u> Y <u> </u>	<u> </u>	<u> </u>
1/4 inch gussets to reinforce burner box and floor	<u> </u> Y <u> </u>	<u> </u>	<u> </u>

Comment _____

9. HOPPER

YES NO DEVIATION

Hopper shall be two (2) ton capacity, triple wall, low profile construction	<u> </u> Y <u> </u>	<u> </u>	<u> </u>
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1 1/2 inch space between material and air walls	<u> </u> Y <u> </u>	<u> </u>	<u> </u>
1 1/2 inch space between air and insulation walls	<u> </u> Y <u> </u>	<u> </u>	<u> </u>
Insulated wall chambers shall hold 2 inches of high heat temperature insulation secure	<u> </u> Y <u> </u>	<u> </u>	<u> </u>
Air baffles shall circulate heat	<u> </u> Y <u> </u>	<u> </u>	<u> </u>
Center wall heat duct shall be angled inside of hopper	<u> </u> Y <u> </u>	<u> </u>	<u> </u>
All panel walls shall be one (1) piece construction	Y <u> </u>	<u> </u>	<u> </u>
Inner walls shall be 10 gauge, baffled	<u> </u> Y <u> </u>	<u> </u>	<u> </u>
Middle walls shall be 12 gauge, baffled	<u> </u> Y <u> </u>	<u> </u>	<u> </u>
9. HOPPER - continued	YES	NO	DEVIATION
Outer walls shall be 14 gauge, screwed to middle with screw heads removable at outer wall	<u> </u> Y <u> </u>	<u> </u>	<u> </u>
Heat chambers under floor shall be 1/4 inch plate, baffled	<u> </u> Y <u> </u>	<u> </u>	<u> </u>
Full hopper access from ground	<u> </u> Y <u> </u>	<u> </u>	<u> </u>
Heat shall radiate from front to back and side to side	<u> </u> Y <u> </u>	<u> </u>	<u> </u>
Replaceable work table shall be 28 inches from ground	<u> </u> Y <u> </u>	<u> </u>	<u> </u>
All corners shall be reinforced with 3 inch overwrap	<u> </u> Y <u> </u>	<u> </u>	<u> </u>
One 21 1/2 inch x 33 3/4 inch insulated door opening with handle to open with one hand slide	<u> </u> Y <u> </u>	<u> </u>	<u> </u>
Open and close latch shall be spring loaded and bolted on	<u> </u> Y <u> </u>	<u> </u>	<u> </u>
There shall be an automatic lock action	<u> </u> Y <u> </u>	<u> </u>	<u> </u>
Door opening shall provide full access to 51 inches of 1/4 inch plate floor for removing asphalt with shovel from ground level	<u> </u> Y <u> </u>	<u> </u>	<u> </u>
Capped corner shall have more continuous welds	<u> </u> Y <u> </u>	<u> </u>	<u> </u>
Two top loading doors shall be 18 gauge top and bottom, insulated, 3/4 bore bearing hinged and bolted	<u> </u> Y <u> </u>	<u> </u>	<u> </u>



18 gauge outer skins framed on 1-1/4 inch square tubing with angle iron reinforced cross members Y

Doors shall have removable, manually retractable, centered handles constructed of 3/4 inch schedule 80 pipe Y

7 inch grab handles shall be solid round stock with no open ends Y

9. HOPPER - continued

YES NO DEVIATION

Bolt on safety latch with ball pin for side loading doors shall be provided Y

7 inch grab handles shall be solid round stock with no open ends Y

50°F – 500°F thermometer shall be located in back hopper Y

Comment Based on the specification description, it appears like you want a 4-ton hopper instead of a 2-ton hopper. We assume you meant 4-ton.

10. HEATING SYSTEM

YES NO DEVIATION

Diesel fuel burner with spark ignition and fuel solenoids powered by 12v system, 105,000BTU Y

Automatic recycle on spark system shall be provided Y

Fuel for burner shall be controlled by a pressure pump and pressure gauge Y

Burner shall be mounted inside of a bolt-on guard box with inspection lid Y

A removable bottom drop box insulated with an inspection cover shall be provided Y

Fuel tank shall be 30 gallon capacity with spin-on 20 micron inline filter Y

Combustion chamber of approximately 100 square inches shall be bolted to the front of hopper Y

A stainless steel insert with ceramic wool insulation and removable top cover of combustion chamber for replacement of liner Y

10. HEATING SYSTEM - continued

YES NO DEVIATION

Chamber shall be connected to a burner box of 10 inch



channel with three (3) cross members 34 inches wide x 51 inches long Y NO DEVIATION

Comment _____

11. CONTROLS **YES** **NO** **DEVIATION**

Automatic shut down safety system shall be Cad cell eye control for flame in burner Y NO DEVIATION

Spark ignition coil supply to electrodes shall ignite fuel Y NO DEVIATION

Control shall be by a 1/16 Din microprocessor-based auto temp control Y NO DEVIATION

Deep cycle battery shall be set in battery box ready for recharge Y NO DEVIATION

Automatic temperature control heat system with temperature range of 0°F to 350°F shall be provided Y NO DEVIATION

Burner shall automatically turn on and off as heat is required Y NO DEVIATION

Power switch and digital snap in thermostat shall be in a nema 3r lockable box bolted on hopper Y NO DEVIATION

Comment _____

12. PAINT **YES** **NO** **DEVIATION**

Heaters shall have two (2) coats orange to match Dupont IMRON #43106-U or equal Y NO DEVIATION

All wiring, switches, nema boxes, pumps, hoses, etc., shall not be painted Y NO DEVIATION

All bolt on parts shall be disassembled before painting Y NO DEVIATION

All parts, trailer, and hopper shall be sanded and ground smooth of sharp edges, two (2) coats of primer on entire unit Y NO DEVIATION

Comment _____



FALCON RME ASPHALT HOT PATCHER LIMITED WARRANTY

Falcon Road Maintenance Equipment, Incorporated (Falcon RME) warrants that the Hot Patcher will be free from defects in material and workmanship under normal use for a period of one (1) year from the date of purchase provided that no unauthorized modifications are made to the equipment.

Users of any fuel not meeting the burner manufacturers' (RW Beckett) published fuel specification requirements assume warranty liability for failure of components or emissions certification traceable to the fuel.

Falcon RME will, at its option, repair or replace, any defective part returned to Falcon RME during the one (1) year warranty period. Parts must be returned to receive credit.

Shipping, and transportation costs, in connection with repair or replacement of defective parts, is the sole responsibility of the original purchaser.

This limited warranty does not apply, and no warranty, either expressed or implied, shall be applicable ---

- a) to damages resulting from an accident, normal wear and tear, unauthorized alteration, misuse or abuse,
- b) if the product is not operated and maintained according to procedures recommended by Falcon RME.

In no event shall Falcon RME have any monetary liability to the original purchaser in excess of the price paid by the original purchaser for the product in question.

This warranty shall extend only to the original purchaser and is non-transferable.

IMPLIED WARRANTIES INCLUDING THAT OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE ARE EXPRESSLY LIMITED IN DURATION TO THE DURATION OF THIS WARRANTY. FALCON RME DISCLAIMS ANY LIABILITY FOR SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES.

Some states/provinces do not allow limitations on how long an implied warranty lasts, or the exclusion or limitation of special, incidental or consequential damages so these limitations and exclusions may not apply to the original purchaser. This warranty gives you specific legal rights. You may also have other rights which vary from state/province to state/province.

NO DEALER, DISTRIBUTOR OR OTHER REPRESENTATIVE OF FALCON RME IS AUTHORIZED TO CHANGE THIS WARRANTY IN ANY WAY OR TO GRANT ANY OTHER WARRANTY.

NOTICE: Any and all warning, safety and instructional labels affixed to the machine must not be removed or covered. Falcon RME agrees to replace warning, safety and instructional labels that become damaged, free of charge.



December 13, 2005



OPERATOR WARNINGS

WARNING INSTRUCTIONS ARE SUMMARIZED BELOW AND APPEAR THROUGHOUT THE MANUAL WHERE APPLICABLE.

DO NOT USE THE ASPHALT HOT PATCHER UNTIL YOU HAVE READ AND UNDERSTAND ALL THE SAFETY INFORMATION CONTAINED IN THIS DOCUMENT.

SHOULD ANY SAFETY OR WARNING DECALS BECOME UNREADABLE, NOTIFY FALCON at (989) 495-9332 AND REPLACEMENTS WILL BE SENT AT NO CHARGE.

DANGER: NEVER USE FLAMMABLE MATERIAL IN OR NEAR THE HOPPER. DOING SO MAY CAUSE SERIOUS INJURY.

DANGER: TO AVOID INJURY OR DEATH WHEN USING THE ASPHALT HOT PATCHER, STAND BACK WHEN ASPHALT IS FLOWING OUT THE MATERIAL DOOR OF A TILTED HOPPER (i.e. DUMP BOX TRAILER or SLIP-IN PATCHER MOUNTED ON DUMP TRUCK BED).

DANGER: NEVER LIFT THE DUMP BOX TRAILER OR SLIP-IN ASPHALT HOT PATCHER WITHOUT FIRST OPENING THE MATERIAL DOOR TO THE DESIRED POSITION.

DANGER: THE TEMPERATURE CONTROLLER ON AN OIL JACKETED HOT PATCHER IS PROGRAMMED FOR A MAXIMUM TEMPERATURE OF 350 DEGREES FAHRENHEIT. NEVER REPROGRAM THIS TEMPERATURE LIMIT OR THE OIL MAY OVERHEAT AND IGNITE CAUSING SERIOUS INJURY OR DEATH.

DANGER: NEVER OVERFILL OIL LEVEL IN OIL JACKET OF HOPPER OR TACK TANK. CHECK OIL LEVEL BEFORE EACH USE WHEN OIL IS COLD AND NEVER FILL BEYOND FILL LINE IDENTIFIED ON DIP STICK.



DANGER: RAISE JACK BEFORE MOVING TRAILER. FAILURE TO RAISE THE JACK CAN CAUSE THE TRAILER TO FLIP AND CAUSE SERIOUS INJURIES.

DANGER: NEVER ATTEMPT TO SERVICE THE HOT PATCHER WHEN OIL OR COMPONENTS ARE HOT OR SERIOUS INJURY COULD OCCUR.

DANGER: ALWAYS USE SAFETY CHAINS AND CONFIRM PROPER COUPLING OF TRAILER TO TOWING VEHICLE BEFORE MOVING AN ASPHALT TRAILER.

DANGER: FAILURE TO USE SAFETY PINS LOCATED ON SIDEWALLS OF HOPPER TO HOLD MANUALLY OPERATED LOADING DOORS OPEN COULD CAUSE DOORS TO CLOSE ON THE OPERATOR CAUSING SERIOUS INJURY.

CAUTION: FALCON RME RECOMMENDS WEARING PROTECTIVE CLOTHING WHILE OPERATING OR CLEANING THE ASPHALT HOT PATCHER AND TACK TANK.

WARNING: PRIOR TO OPENING HYDRAULIC LOADING DOORS, MAKE SURE THERE IS CLEARANCE ABOVE AND AROUND THE ENTIRE PERIMETER OF THE PATCHER WHILE LOADING DOORS ARE OPEN/OPENING.

CAUTION: TO AVOID SERIOUS INJURY, DO NOT PUT HANDS NEAR HYDRAULIC MATERIAL DOOR WHEN LIFTING OR LOWERING.

WARNING: ENSURE NO PERSONNEL ARE NEAR ASPHALT HOT PATCHER WHEN HYDRAULIC LOADING DOORS ARE CLOSING.

WARNING: TO PREVENT SERIOUS INJURY AND TO PREVENT DAMAGE TO THE ASPHALT HOT PATCHER AND TOW VEHICLE, IT IS ESSENTIAL THAT A QUALIFIED HYDRAULICS TECHNICIAN PERFORM HYDRAULIC CONNECTIONS AND ADJUSTMENTS.

CAUTION: DO NOT ATTEMPT TO TRANSPORT SLIP-IN UNIT WITH A FORK TRUCK WITHOUT USING FORK POCKETS.

WARNING: TO AVOID SERIOUS INJURY, ENSURE THAT ONLY TRAINED PERSONNEL LOAD AND SECURE A SLIP-IN UNIT TO THE TOWING VEHICLE PER ORGANIZATION PROCEDURES.

WARNING: REMOVE ALL ASPHALT FROM PATCHER BEFORE LOADING OR UNLOADING A SLIP-IN UNIT.



WARNING: ENSURE LOADING/UNLOADING EQUIPMENT (I.E. FORKTRCK) HAS CAPACITY TO HANDLE THE WEIGHT OF THE PATCHER BEFORE MOVING.

WARNING: DUE TO THE WEIGHT OF THE SHOVELING APRON, USE FORK TRUCK TO LIFT AND LOWER ONTO PATCHER OR SERIOUS INJURY COULD OCCUR.

CAUTION: NEVER EXCEED THE LOAD LIMIT OF THE HOPPER.

CAUTION: STANDING TOO CLOSE TO THE PATCHER WHILE CLOSING THE LOADING DOORS COULD CAUSE OPERATOR INJURY.

CAUTION: THE SHOVELING PLATFORM OF THE PATCHER IS HOT. BE CAREFUL WHEN WORKING NEAR THE SHOVELING PLATFORM AND NEVER TOUCH THE PLATFORM WITHOUT PROTECTIVE GEAR.

DANGER: ENSURE THAT ALL EQUIPMENT IS SECURED TO THE PATCHER BEFORE MOVING OR SERIOUS INJURY AND OR DEATH COULD RESULT.

DANGER: DO NOT ALLOW THE DIESEL BURNER(S) TO RUN IN AN AREA THAT IS NOT WELL-VETILATED.

DANGER: SECURE ALL EQUIPMENT TO THE HOT PATCHER BEFORE MOVING OR SERIOUS INJURY COULD BE CAUSE BY EQUIPMENT FALLING OFF THE PATCHER.

WARNING: FAILURE TO RAISE OUTRIGGERS WHEN TRAILER IS IN TOW CAN CAUSE THE TRAILER TO FLIP AND CAUSE SERIOUS INJURIES OR DEATH.

WARNING: CHANGE TRANSFER OIL IN TACK TANK, OIL-JACKETED HOPPER, 50/550 THERMOMETERS WHEN OIL IS COLD.

DANGER: STAND BACK WHILE CONFIRMING THAT SLIP-IN PATCHER IS SECURED IN DUMP BOX. IF NOT SECURED PROPERLY, PATCHER COULD FALL OUT AND CAUSE SERIOUS INJURY OR DEATH.

CAUTION: STAND BACK 10 FEET FROM PATCHER ANYTIME THE DUMP BOX IS IN MOTION OR IN THE "UP" POSITION.

NOTICE: PROTECT THE REMOTE HOPPER CONTROL FROM BEING DAMAGED AT ALL TIMES. IF CONTROLLER IS EVER DAMAGED, REPAIR OR REPLACE BY AN AUTHORIZED SERVICE TECHNICIAN. DO NOT ALLOW CONTROLLER CORD TO GET PINCHED WHEN DUMP BOX LOWERS.



CAUTION: ALWAYS USE THE CYLINDER GUARD (STORED ON HINGED SIDE OF TOOLBOX) WHEN THE HOPPER IS IN THE RAISED POSITION AND REMOVE/REPLACE BEFORE LOWERING.

DANGER: NEVER LEAVE THE HOPPER OF A DUMPBOX TRAILER RAISED WHEN MOVING THE PATCHER.

CAUTION: BEFORE THE DUMP BOX IS RAISED, LOWER THE OUTRIGGERS TO A POINT WHERE 10% MINIMUM TONGUE WEIGHT IS MAINTAINED. WEIGHT TRANSFER OCCURS REQUIRING THE LOWERING OF THE OUTRIGGERS. THIS WILL PREVENT DUMP BOX FROM FALLING BACKWARD SHOULD UNCOUPLING FROM TOW VEHICLE OCCUR.

CAUTION: NEVER RAISE DUMP BOX WITH TOP DOORS OPEN.

WARNING: FAILURE TO USE LOCKING PINS TO HOLD LOADING DOORS OPEN COULD CAUSE DOORS TO CLOSE ON THE OPERATOR CAUSING INJURY.

WARNING: ENSURE THAT NO PERSONNEL ARE NEAR HYDRAULIC LOADING DOORS WHEN OPENING OR CLOSING.

CAUTION: TO AVOID SERIOUS INJURY, DO NOT PUT HANDS NEAR THE HYDRAULIC MATERIAL DOOR WHEN RAISING OR LOWERING.

WARNING: ALLOW TACK MATERIAL TO COOL BEFORE REMOVING EXCESS TACK FROM THE TANK AT THE END OF THE DAY.

NOTICE: NEVER HANG ON MATERIAL METERING DOOR CROSSBAR.

WARNING: WHEN PLUGGING IN 24-HOUR TIMER OR BATTERY CHARGER TO BUILDING POWER, ENSURE THAT A 120VAC GROUND FAULT CIRCUIT INTERRUPT OUTLET IS USED.

CAUTION: NEVER FILL THE TOP CYLINDER OF THE TACK TANK WITH TACK MATERIAL.

NOTICE: DO NOT SPRAY TACK MATERIAL THROUGH SPRAY SYSTEM UNLESS IT HAS BEEN DILUTED ACCORDING TO MANUFACTURER'S DIRECTIONS. INSUFFICIENTLY DILUTED TACK MATERIAL SPRAYED THROUGH THE SPRAY SYSTEM WILL CAUSE THE SPRAY SYSTEM TO FAIL.



NOTICE: FAILURE TO PERFORM SPRAY SYSTEM FLUSH PROCEDURE AFTER EACH USE WILL CAUSE THE SPRAY SYSTEM COMPONENTS TO FAIL.

BEFORE YOU BEGIN USING YOUR ASPHALT HOT PATCHER READ AND REREAD THE FOLLOWING COMMONLY ASKED QUESTIONS. YOU WILL INCREASE THE LIFE OF YOUR MACHINE AND SAVE YOURSELF TIME AND MONEY.

WHAT ARE THE CONSIDERATIONS WHEN HOOKING UP THE PATCHER TO THE TOWING VEHICLE?

When hooking up the patcher to the towing vehicle, adjust the vehicle hitch and the patcher hitch so that the patcher rides level.

WHAT DO I NEED TO DO BEFORE PUTTING ASPHALT IN THE HOPPER FOR THE FIRST TIME?

- 1) FALCON RME RECOMMENDS WEARING PROTECTIVE CLOTHING WHILE OPERATING THE ASPHALT HOT PATCHER OR TACK TANK.
- 2) Coat the inside hopper walls with an asphalt release agent before filling hopper with asphalt to facilitate cleaning at the end of the day.

CAN I USE BIO-DIESEL FUEL?

The Beckett diesel burners are currently designed to handle B5 or lower bio-diesel fuel. Never use any fuel that is not recommended by RW Beckett -- the diesel burner manufacturer. Doing so will void the warranty on the burner and associated component failure.

WHEN SHOULD KEROSENE BE MIXED WITH #2 DIESEL FUEL?

Kerosene should only be used in cold weather conditions because the fuel pump on the diesel burner needs to extract oil from #2 diesel fuel to function as designed. Mix 1:1 with #2 Diesel fuel when the weather is cold

ARE THERE THINGS I NEED TO DO DIFFERENTLY WITH MY PATCHER WHEN THE WEATHER GETS COLD?

- When outdoor temperatures are below 40 degrees Fahrenheit,
- 1) Add a diesel fuel conditioner to the fuel tank per instructions on fuel conditioner label.
 - 2) Mix diesel fuel with Kerosene at a 1:1 ratio.
 - 3) Bring the patcher indoors until box reaches room temperature -- then attempt to start the burner.



- 4) Never store patcher with dead battery at freezing temperatures, battery will freeze when voltage is low.
- 5) As temperatures drop, tires may need more air to achieve the psi rating printed on the tires.

HOW IMPORTANT IS IT TO KEEP THE BATTERY FULLY CHARGED?

Nine times out of ten, the reason for the failure of a burner to light is a low battery.

It is critical to keep the battery fully charged at 12.8 volts or the burner(s) will not light. A low battery, anything below 12.8 volts, may be the reason for a burner failing to light. Falcon RME recommends charger the patcher battery from the tow vehicle to keep it charged throughout the day. The battery may also be hooked up to a battery charger overnight.

IF THE PATCHER WON'T START, WHAT SHOULD I DO?

- 1) Check to make sure there is fuel in the tank. In colder temperatures, the viscosity of the fuel changes. The addition of diesel fuel conditioner may alleviate the problems of the 15 second burner shutdown and/or heavy smoke.
- 2) Check battery for 12.8 volts. If battery is low, hook battery up to a charger and try burner again.
- 3) Check the diesel burner CAD cell. If the burner starts up for 15 seconds, then shuts down, the CAD cell could be dirty. Wipe the eye of the CAD cell with a clean cloth or a cotton swab. In most cases, this will fix the problem. If the problem persists, refer to the trouble shooting documentation for the CAD cell.
- 4) Check for bad electrical connections. Corrosion is the primary reason for bad electrical connections. Always start at the pigtail and work back to the battery. Corrosion can cause a drop in voltage that results in poor battery charging and insufficient voltage to the diesel burner.
- 5) See cold-weather start-up instructions identified earlier in this document.
- 6) If burner still does not start, contact your service technician for assistance.

HOW DO I KNOW THE CORRECT TEMPERATURE SETTING ON THE CONTROLLER?

Typical temperatures ranges are:

COLD MIX 100 – 120 degrees Fahrenheit

HOT MIX 240 – 300 degrees Fahrenheit

Follow the recommendations of your particular brand/supplier of asphalt.

The general rule of thumb is to not run the burner any hotter than necessary. Most customers have success applying hot mix at a temperature of approximately 240 - 270 degrees Fahrenheit. The useful life of the machine will be extended and less fuel will be used if the burner runs at a lower temperature.

The controller temperature should be set on the lower end of the recommended range -- see the supplier of the asphalt material for the appropriate application temperature range. If the asphalt



material gets too hot, the operator may notice blue smoke emanating from the asphalt. This means that oils are being burned from the material and the diesel burner is running too hot. If this is observed, lower the temperature on the hopper controller (located inside the electrical enclosure) and monitor the material to ensure that the material is not too hot. The temperature change will not be observable immediately -- monitor every 15 minutes and make additional adjustments if necessary.

ARE THERE ANY INDICATORS THAT THE HOPPER TEMPERATURE IS TOO HOT?

- 1) If you can see the asphalt cement (from hot mix) dripping onto the shoveling apron from beneath the material metering door, it is an indicator that the material temperature is too hot. The operator should lower the temperature on the controller.
- 2) If blue smoke is emanating from the asphalt inside the hopper, oils essential to creating a permanent pothole repair are being burned out of the material. The operator should lower the temperature on the controller.

WHY MIGHT THE TEMPERATURE ON THE REAR 50/550 GAUGE BE DIFFERENT THAN THE TEMPERATURE ON THE HOPPER CONTROLLER?

The thermometer on the rear of the hopper measures the temperature of the material inside the hopper. The temperature on the controller measures the temperature of the air in the hopper wall. They should be close -- not necessarily identical.

WHY IS IT SO IMPORTANT TO KEEP THE HOPPER FLOOR CLEAN? HOW CAN I EXTEND THE USEFUL LIFE OF MY PATCHER?

Failure to clean the bottom of the hopper shortens the life of your asphalt hot patcher and prevents the patcher from working as designed. Built up asphalt acts as an insulator and prevents the heat in the burner box from evenly heating the material inside the hopper. Not only does built up asphalt prevent the material from heating as designed, it forces too much heat to build up in the burner box. The heat cannot escape through the layers of built up asphalt so it escapes into the burner and can result in problems like a melted CAD cell. Once the material has reached the "set temperature" of the controller, the burner cycles on and off periodically as the temperature of the material inside the hopper drops 10 degrees Fahrenheit. If the heat is not allowed to radiate through the hopper floor and warm the material inside the hopper, the controller won't get the message to turn off and the burner will continue to run.

SHOULD I BE CONCERNED ABOUT ASPHALT MATERIAL OVERSPILL ON THE TOP CAPS OF THE HOPPER WALLS?

Yes! Asphalt must be cleared away from top of hopper walls before closing loading doors or bearings may crack.



WHY SHOULDN'T I PUT ASPHALT INTO A HOT EMPTY HOPPER?

Be careful how hot the hopper is when adding asphalt material. When the burner(s) lights, it begins to heat the steel inside the hopper. It is similar to heating a pan on a stove without any contents. If there is nothing to heat inside the hopper, the steel heats to the temperature set on the controller. Once material is put into the hopper, it will burn and sizzle just like food that is put into a hot pan on the stove. Instead, the hopper burner can be turned on shortly before the asphalt is added to the hopper so that is warm -- NOT HOT -- when asphalt is added. Again, use the lower end of the manufacturer's recommended temperature range when setting the temperature on the controller.

WHEN SHOULD I USE THE TOP BURNER (AVAILABLE ON A RECYCLING PATCHER ONLY)?

NEVER RUN THE TOP BURNER WHEN MATERIAL INSIDE THE HOPPER IS BELOW THE CENTER CRISSCROSS DUCTWORK.

There are two reasons to use the top burner.

1) If cold mix is covered with ice and snow, the top burner can be used to help melt the ice and warm the cold mix

(as long as the cold mix covers the inner ductwork). Once the ice is melted, the top burner must be turned off.

2) The top burner is used when asphalt is being recycled. Best recycling results are achieved when both burners are used, therefore a full hopper of recycled asphalt pavement (RAP) is recommended. If a small amount of RAP is being recycled (below the CRISSCROSS DUCTWORK), DO NOT USE THE TOP BURNER. Once the recycled asphalt material has been thoroughly heated, the top burner should be turned off. The temperature of the material should be maintained using the main burner only. If picking up hot mix at an asphalt plant, do not use the top burner.

CAN I ALLOW THE BURNERS TO RUN IF THERE IS NO FUEL?

No, The fuel tank holds 18 gallons of diesel fuel. Do not allow any burner to run when the tank is near empty. Make sure the tank is full if you are going to keep material warm overnight or if you have set the 24-hour timer and are planning to recycle asphalt overnight.

WHAT IS THE PROCESS TO KEEP MATERIAL WARM OVERNIGHT?

When using cold mix, you can turn the hopper off and leave the material in the hopper for the next day. The following morning, turn the hopper on to the temperature recommended by the manufacturer for cold mix. You would not want to leave the same cold mix material in the bottom of the hopper day after day. Over time, you will bake out essential oils in the cold mix, then the cold mix will bake to the bottom of the hopper and act as an insulator that prevents future asphalt from heating properly.

Hot mix contains asphalt cement and must be kept above 180 degrees or it will harden and act as an insulator as described above. If hot mix is to be kept overnight, drop the burner controller temperature to 190 degrees, hook the battery up to a battery charger, make sure the fuel tank is full, leave the patcher in a well ventilated area and turn the hopper toggle switch up (to the "ON" position). In the morning, turn the controller temperature up to approximately 270 degrees, then check the rear thermometer to ensure the material is hot enough to use. If the patcher has the recycling top burner, you WOULD NOT want to turn it on to keep material heated overnight



CAN I RUN THE TACK BURNER WITHOUT MATERIAL INSIDE THE TACK TANK?

No! The tack tank burner should never be turned on when there is no tack material inside the tank.

WHAT HAPPENS IF I FAIL TO FLUSH THE TACK TANK SPRAY SYSTEM AFTER EACH USE?

The tack material will build up in the spray system hose and pump, then you will not be able to spray tack. **You must flush tack material from the spray system after each use.**

CAN I LEAVE TACK MATERIAL IN THE TANK AT THE END OF THE DAY?

NO. DO NOT USE TACK TANK AS A STORAGE RESOVIOR. Empty any remaining tack material from tack tank each and every day.

HOW DO I OPERATE THE MATERIAL METERING DOOR?

To open the rear material metering door, lift the door, with both hands, by the crossbar until you hear a click, then let go of the crossbar. This process can be repeated two times as there are three preset open positions. To close the door, push crossbar up with left hand, depress the finger and **hold it down** while lowering the crossbar of the material door. Leave the finger depressed until the door is in the closed position or in the desired open position. **NEVER HANG ON THE MATERIAL METERING DOOR CROSSBAR.** If the door doesn't move up and down freely for you, reread these instructions.

WHAT ARE SOME IMPORTANT ONGOING MAINTENANCE/SAFETY ITEMS?

Lugnuts must be kept at 100 foot pounds of torque and tire pressure at 100 psi.

Keep hopper floor clean.

Rotate tires on 4-ton patcher, back to front, based on usage (every 200 hours). Following this procedure will increase the useful life of the tires.

Fill the solvent tank with **two inches** of a release agent – just enough to cover the tip of the shovels.

Always use detention pins when loading doors are open to prevent them from closing inadvertently.

Grease flange door bearings and suspension equalizers on a 3 or 4-ton patcher every 2,000 hours.

Inspect equalizers every 6 months or 6,000 miles.

At every oil change, check the battery supply wires of the tow vehicle to ensure the patcher battery is receiving **AT LEAST 12.8 volts.**

Every 1,000 hours, inspect the combustion chamber flange gasket to ensure a good seal.

Check water separator (located on the bottom of the fuel filter) regularly and empty water as needed. CAUTION: Bad diesel fuel or condensation build-up in the bottom of the tank could cause fuel filter, fuel lines and/or fuel pump to freeze and break.

Change burner nozzle and diesel fuel filter annually or more frequent depending on usage.



SUMMARY

ALWAYS KEEP BATTERY(S) CHARGED TO 12.8 VOLTS.

CLEAN HOPPER FLOOR AT THE END OF THE DAY (UNLESS KEEPING HOT MIX WARM OVERNIGHT)

TURN OFF TOP BURNER AFTER RECYCLED ASPHALT IS THOROUGHLY HEATED OR ICE IS NOT VISIBLE ON COLD MIX.

DO FLUSH THE TACK TANK SPRAY SYSTEM AFTER EACH USE.

DO DILLUTE WATER-BASED TACK MATERIAL AND BLEND BEFORE USING SPRAY SYSTEM.

DO USE A FUEL CONDITIONER WHEN TEMPERATURES ARE BELOW 40 DEGREES.

DO HOOK UP THE PATCHER TO THE TOWING VEHICLE SO THAT IT RIDES LEVEL.

DO PERFORM ONGOING MAINTENANCE.

DO NOT CLOSE LOADING DOORS IF ASPHALT MATERIAL IS ON CAPS OF HOPPER WALLS.

DO NOT USE HIGHER THAN B5 BIO-DIESEL FUEL PER DIESEL BURNER INSTRUCTIONS.

DO NOT RUN THE BURNERS TOO HOT.

DO NOT RUN THE BURNERS ON AN EMPTY FUEL TANK.

DO NOT RUN ANY BURUNER WHEN THERE IS NO MATERIAL TO HEAT.

DO NOT OVERHEAT ASPHALT.

DO NOT USE TOP BURNER UNLESS:

- 1) Recycling Asphalt or
- 2) MELTING ice from cold mix

DO NOT USE TOP BURNER (on a 4-ton Recycling Patcher) WHEN MATERIAL IS BELOW THE CRISSCROSS DUCTWORK.

DO NOT HANG ON THE MATERIAL METERING DOOR