Form No. DMB 234 (Rev. 1/96)
AUTHORITY: Act 431 of 1984
COMPLETION: Required
PENALTY: Contract will not be executed unless form is filed

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

January 6, 2010

CHANGE NOTICE NO. 2
TO
CONTRACT NO. 071B8200143
between
THE STATE OF MICHIGAN
and

NAME & ADDRESS OF CONTRACTOR **Varsity Ford** **3480 Jackson Rd.** **P.O. Box 2507** **Ann Arbor, MI 48106-2507** **Email: patmaurer@varsityford.com**	TELEPHONE Patrick Maurer **(734) 996-2300 ext. 219** CONTRACTOR NUMBER/MAIL CODE BUYER/CA (517) 373-1455 **Laura Gyorkos, CPPB**
Contract Compliance Inspector: Laura Gyorkos (517) 373-1455 **Vehicles, Passenger Cars, Pick-Up Trucks, Vans, for MiDeal Members ONLY**	
CONTRACT PERIOD: From: **March 1, 2008** To: **September 30, 2010**	
TERMS **Net 30 Days**	SHIPMENT **90-120 Days A.R.O.**
F.O.B. **Dealership**	SHIPPED FROM **Ann Arbor, MI**
MINIMUM DELIVERY REQUIREMENTS **N/A**	
MISCELLANEOUS INFORMATION:	

THIS CONTRACT IS EXTENDED TO LOCAL UNITS OF GOVERNMENT ONLY.

NATURE OF CHANGE(S):

Effective January 1, 2010, this Contract is hereby EXTENDED through September 30, 2010 or the end of 2010 Model year for ordering whichever comes first. However, pricing for 2011 Model Year SuperDuty Models F250, F350, F450 and F550 (if applicable) are included in this contract through the contract expiration date (9/30/10).

Due to design changes in safety features, fuel efficiency, and in order to meet emission requirements, the following models have increased in price as follows: (Additional manufacturing changes are noted on the attached supporting documentation)

Mi Spec #	Ford Vehicle	Old Price	New Price
3905-0018	Escape - 5 Passenger, 4-Door	$14,650.22	$15,467.00

Please refer to the attached revised pricing sheet for each model. All other specifications, pricing, terms and conditions remain the same.

AUTHORITY/REASON:

Per vendor letter (Patrick Maurer) dated December 30, 2009 and DMB Purchasing Operations agreement.

TOTAL ESTIMATED CONTRACT VALUE REMAINS: $33,371.95

STATE OF MICHIGAN
DEPARTMENT OF MANAGEMENT AND BUDGET
PURCHASING OPERATIONS

PRICING SHEET

Multi-Functional Utility Vehicle, Front Wheel Drive **5 Passenger, 4 Door, Automatic Transmission** **Mich. Spec. #3905-0018**	
Standard Equipped Per above Specification	**Standard Equipped Cost**
Make: Ford Model: Escape XLS ***F.O.B. - Dealership*** **Delivery Cost Per Mile $2.50**	**$15,467.00***
Final Point of Assembly: Kansas City, MO	
Dealer Information	
Dealer Name: Varsity Ford	
Street Address: **3480 Jackson Rd. P.O. Box 2507**	
City: Ann Arbor	**State: MI** **Zip: 48106-2507**
Contact Name: Pat Maurer	
Telephone: (734) 996-2300	
E-mail: patmaurer@varsityford.com	

***Please Note: A vehicle order confirmation sheet is included for each vehicle. These documents shall include all the "standard options" as listed for the State of Michigan standard specification.**

Varsity Ford		MiDEAL Contract #071B8200143						**Signature**			
Mi Spec #	**Spec Description**	**Ford Vehicle**	**Old Price**	**New Price**	**Difference**	**%**	**Justification**	**Old Price**	**New Price**	**Difference**	**%**
3905-0018	Escape - 5 Passenger, 4-Door	Escape	$14,650.22	$15,467.00	$816.78	6%	Integrated Blind Spot mirror, Easy Fill Capless Refueling, Speed Sensitive Volume ,New 205L I4 Engine with increased horsepower and improved fuel economy, all Escapes are capable of flat Neutral Towing, 16" 5-Spoke aluminum wheels are standard.	$14,600.00	$15,146.99	$546.99	4%

Form No. DMB 234 (Rev. 1/96)
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STATE OF MICHIGAN
DEPARTMENT OF MANAGEMENT AND BUDGET
PURCHASING OPERATIONS
P.O. BOX 30026, LANSING, MI 48909
OR
530 W. ALLEGAN, LANSING, MI 48933

September 30, 2009

CHANGE NOTICE NO. 1
TO
CONTRACT NO. 071B8200143
between
THE STATE OF MICHIGAN
and

NAME & ADDRESS OF CONTRACTOR **Varsity Ford** **3480 Jackson Rd.** **P.O. Box 2507** **Ann Arbor, MI 48106-2507** **Email: patmaurer@varsityford.com**	TELEPHONE Patrick Maurer **(734) 996-2300 ext. 219** CONTRACTOR NUMBER/MAIL CODE BUYER/CA (517) 373-1455 **Laura Gyorkos, CPPB**
Contract Compliance Inspector: Laura Gyorkos (517) 373-1455 **Vehicles, Passenger Cars, Pick-Up Trucks, Vans, for MiDeal Members ONLY**	
CONTRACT PERIOD: From: **March 1, 2008** To: **December 31, 2009**	
TERMS **Net 30 Days**	SHIPMENT **90-120 Days A.R.O.**
F.O.B. **Dealership**	SHIPPED FROM **Ann Arbor, MI**
MINIMUM DELIVERY REQUIREMENTS **N/A**	
MISCELLANEOUS INFORMATION:	

THIS CONTRACT IS EXTENDED TO LOCAL UNITS OF GOVERNMENT ONLY.

NATURE OF CHANGE(S):

Effective immediately this Contract is hereby EXTENDED three (3) months through December 31, 2009.

Current Contract pricing will be held for orders received by Ford Motor Company on or Before December 31, 2009, with the exception of the 2010 Super Duty Trucks (F-250 through F-550), for which orders must be received on or before November 27, 2009 and Medium Duty Trucks (F-650 and F-750) for which orders must be received on or before October 2, 2009.

AUTHORITY/REASON:

Per vendor letter (Patrick Maurer) dated September 22, 2009 and DMB Purchasing Operations agreement.

TOTAL ESTIMATED CONTRACT VALUE REMAINS: $33,371.95

Form No. DMB 234 (Rev. 1/96)
AUTHORITY: Act 431 of 1984
COMPLETION: Required
PENALTY: Contract will not be executed unless form is filed

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

April 22, 2008

NOTICE
OF
CONTRACT NO. 071B8200143
between
THE STATE OF MICHIGAN
and

NAME & ADDRESS OF CONTRACTOR **Varsity Ford** **3480 Jackson Rd.** **P.O. Box 2507** **Ann Arbor, MI 48106-2507** **Email: patmaurer@varsityford.com**	TELEPHONE Patrick Maurer **(734) 996-2300 ext. 219** CONTRACTOR NUMBER/MAIL CODE BUYER/CA (517) 373-1455 **Laura Gyorkos, CPPB**
Contract Compliance Inspector: Laura Gyorkos (517) 373-1455 **Vehicles, Passenger Cars, Pick-Up Trucks, Vans, for MiDeal Members ONLY**	
CONTRACT PERIOD: From: **March 1, 2008** To: **October 1, 2009**	
TERMS **Net 30 Days**	SHIPMENT **90-120 Days A.R.O.**
F.O.B. **Dealership**	SHIPPED FROM **Ann Arbor, MI**
MINIMUM DELIVERY REQUIREMENTS **N/A**	
MISCELLANEOUS INFORMATION:	

THIS CONTRACT IS EXTENDED TO LOCAL UNITS OF GOVERNMENT ONLY.

The terms and conditions of this Contract are those of ITB #071I8200027 this Contract Agreement and the vendor's quote dated 1/3/08. 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: $33,371.95

Form No. DMB 234 (Rev. 1/96)
AUTHORITY: Act 431 of 1984
COMPLETION: Required
PENALTY: Contract will not be executed unless form is filed

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

CONTRACT NO. 071B8200143
between
THE STATE OF MICHIGAN
and

NAME & ADDRESS OF CONTRACTOR **Varsity Ford** **3480 Jackson Rd.** **P.O. Box 2507** **Ann Arbor, MI 48106-2507** **Email: patmaurer@varsityford.com**	TELEPHONE Patrick Maurer **(734) 996-2300 ext. 219** CONTRACTOR NUMBER/MAIL CODE BUYER/CA (517) 373-1455 **Laura Gyorkos, CPPB**
Contract Compliance Inspector: Laura Gyorkos (517) 373-1455 **Vehicles, Passenger Cars, Pick-Up Trucks, Vans, for MiDeal Members ONLY**	
CONTRACT PERIOD: From: **March 1, 2008** To: **October 1, 2009**	
TERMS **Net 30 Days**	SHIPMENT **90-120 Days A.R.O.**
F.O.B. **Dealership**	SHIPPED FROM **Ann Arbor, MI**
MINIMUM DELIVERY REQUIREMENTS **N/A**	

MISCELLANEOUS INFORMATION:
THIS CONTRACT IS EXTENDED TO LOCAL UNITS OF GOVERNMENT ONLY.

The terms and conditions of this Contract are those of ITB #071I8200027 this Contract Agreement and the vendor's quote dated 1/3/08. 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: $33,371.95

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

FOR THE CONTRACTOR:	**FOR THE STATE:**
Varsity Ford Firm Name	Signature
Authorized Agent Signature	**Laura Gyorkos, Buyer** Name/Title
Authorized Agent (Print or Type)	**Commodities Division, Purchasing Operations** Division
Date	Date

STATE OF MICHIGAN
Department of Management and Budget
Purchasing Operations

Contract No. 071B8200143
Passenger Vehicles and Trucks – F.O.B. Dealership

Buyer Name: Laura Gyorkos
Telephone Number: (517) 373-1455
E-Mail Address: gyorkosL@michigan.gov

Passenger Vehicles and Trucks

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Appendix A – Specifications and Pricing Information for Passenger Vehicles and Trucks 2008 Model Year

Article1 – Statement of Work (SOW)

1.0 Introduction

1.001 DEFINING DOCUMENT

This is a contract. This is a formal agreement between the prime contractor and the State of Michigan. This document contains or incorporates defined requirements, the specifications and scope of work, and all contractual terms and conditions.

1.002 PROJECT TITLE AND DESCRIPTION

The purpose of this contract is for the purchase of a vehicle(s) as defined within the contract. Article 1 is designed to provide the contractor with information on requirements associated with this agreement.

1.003 PROJECT CONTROL

Project Control

a. The Contractor will carry out this project under the direction and control of the State of Michigan and Authorized Local Units of Government.

1.004 COMMENCEMENT OF WORK

Contractor shall not proceed with performance of the work to be done under this "Contract Agreement" until they receive a formal executed Purchase Order, including the purchase of necessary materials.

1.1 Product Quality

1.101 SPECIFICATIONS

Definite Specifications - All commodities and/or services to be furnished hereunder shall conform to the specifications as noted in the "State of Michigan, Department of Management and Budget, Specifications, Passenger Vehicles and Trucks, 2008 Model Year", as updated for model years covered by this contract, and/or copies of specifications attached.

Contracts will be for the 2008, 2009, and 2010 model year, for Passenger Vehicles and Trucks, per State of Michigan, Specifications, dated August 2007.

All vehicles must be new and of the manufacturer's current models in production at the time of order. All standard or optional equipment to be included shall be as advertised by the manufacturer (OEM) and factory installed and shall not consist of substitute or after market equipment. Equipment not available from the factory may be dealer installed, in compliance with specifications.

1.102 RESEARCH AND DEVELOPMENT- **Reserved**

1.103 QUALITY ASSURANCE PROGRAM - **Reserved**

1.104 WARRANTY FOR PRODUCTS OR SERVICES

The prime contractor will be responsible for all materials and accessories used in the vehicle, whether the same is ready made or from an outside source; and this responsibility may not be transferred, conveyed, assigned to any other person, company, corporation or entity without the previous written approval of the State.

Extension of warranty and or other policy adjustments will be considered when constant maintenance is required or if replacement parts prove unsound. The State of Michigan shall expect the manufacturer to have an adequate stock of replacement parts available to service State of Michigan and Authorized Local Units of Government vehicles and to make delivery of all replacement parts to their dealers who may service State of Michigan and Authorized Local Units of Government vehicles, within a reasonable time. The prime contractor will be required to contact the State of Michigan and Authorized Local Units of Government within ten (10) days after receipt of a contract release or purchase order, to arrange procedures concerning the implementation of warranty claims and to designate personnel to handle claims.

The State further expects that warranty service and repairs as well as non-warranty service and repairs will be handled without prejudice.

1.2 Service Capabilities

1.201 CUSTOMER SERVICE/ORDERING

Orders can be received by the contractor electronically, by phone, facsimile, and by written order. It is the preference of the State that the Contractor provide a statewide toll-free phone number for service.

The Contractor's customer service must respond to State agency and Authorized Local Units of Government inquiries promptly.

The dealership's contact information can be found on the pricing page contained in Appendix A.

1.202 TRAINING **- Reserved**

1.203 REPORTING **-Reserved**

1.204 SPECIAL PROGRAMS**-Reserved**

1.205 SECURITY- **Reserved**

1.3 Delivery Capabilities

1.301 TIME FRAMES

All vehicles ordered from this contract shall be for the 2008, 2009, and possibly partial 2010 model years.

Delivery shall be within:

- **90-120 calendar days after receipt of the order for passenger vehicles, Light Trucks, Vans, and Cab & Chassis without body equipment**
- **120-240 calendar days after receipt of order for Cab & Chassis equipped with Dump, Stake, or Van Type Bodies**

Alternate schedules may be mutually agreed upon in writing by the contractor and the ordering agency. Exact Delivery Due Date will be determined by the delivery schedule, plus (+) seven (7) calendar days from the order date indicated on the Departmental Contract Release/Purchase Order.

1.302 MINIMUM ORDER

It is required that the minimum order shall be one (1) unit.

1.303 PACKAGING **- Reserved**

1.304 PALLETIZING - **Reserved**

1.305 DELIVERY TERM

F.O.B. DEALERSHIP ITEMS

Prices are "F.O.B. Dealership" with transportation charges prepaid to the primary contractor location on all orders for Authorized Local Units of Government. The delivery cost per mile will be added to the unit cost of the vehicle unit price to determine the "Total Unit Price". Mileage will be calculated based upon the "Official Michigan Department of Transportation Highway Map".

1.306 ACCEPTABLE DELIVERABLES/PPM EXPLANATION

A. **Principle Period of Maintenance (PPM) will be the same hours as the State's normal working hours (currently Monday through Friday, 8:00 A.M. to 5:00 P.M., excluding a one (1) hour lunch period, excepting State observed holidays).**

B. **The PPM hours may be changed upon thirty (30) days written notice by mutual agreement, except the Contractor shall make every reasonable effort to change his schedule in a shorter period of time.**

The contractor will proceed expeditiously to complete the repair of any defect or failure reported by the State in the shortest practicable time except that it shall not exceed five (5) State working days following notice of defect unless agency and contractor mutually agree on alternate repair arrangements. Such alternate arrangements shall be made within five (5) State working days of defect notice. If the Contractor fails to repair the equipment within five (5) State working days, the State shall have as its option the right to obtain the required repair from other sources, or to complete the work itself and hold the contractor liable for any cost incurred. The State as it option for amounts due may deduct such from any money payable to the Contractor or may bill the Contractor as a separate item.

If the Contractor fails to remit amounts due, these claims shall be subject to the standard State of Michigan Collection Claim Procedures by the State Treasury Department, in addition failure to remit amounts due may be considered cause for a contractor to be considered in default.

1.307 DRIVER DELIVERY

Contractors will be permitted to drive vehicles to final destinations in compliance with the "Affidavit for Driver Delivery" attached, however, the affidavit must be completed, submitted, and in the contract file within Purchasing Operations to be applicable.

Delivery must be made between the hours of 8:00 A.M. and 4:00 P.M., Monday through Friday ONLY, excluding State Holidays. Contractors must contact the ordering agency 48 hours prior to scheduled delivery time and date, to obtain confirmation of staff availability.

1.308 PRE-DELIVERY SERVICE & CONDITIONS

Prior to delivery, each vehicle shall be serviced and inspected by the dealer or his agent. At a minimum, this pre-delivery service and inspection shall cover the specifications listed in the State of Michigan Specifications. A copy of the contractor's inspection and service check, including the contractors and vehicle identification, check off of service and inspection performed and the service manager's signature shall be furnished with each vehicle delivered. The vehicles crank case, differential and transmission shall be filled to the manufacturer's recommended capacity and the fuel tank shall have a minimum of one-fourth (3) of a tank of fuel when the vehicle arrives at the delivery destination. The vehicle shall be clean and free from defects when delivered.

Each unit shall have an initial fill of windshield washer solution with solvent giving winter protection.

The receiving Departments have been instructed to make immediate inspection on receipt of units and to process payment documents promptly. Payment documents, however, will be delayed if the vehicle fails to comply with specification requirements. Therefore, we wish to impress on contract dealers that close pre-delivery inspection in accordance with specifications be made.

1.4 Project Price

1.401 PROPOSAL PRICING

Pricing for the items included on this contract are shown in the appropriate space on Appendix A – Specification and Pricing Information packet. The Contract prices include the Administrative Fee to be remitted by the contractor to the State of Michigan.

STATE ADMINISTRATIVE FEE

The Contractor must collect an Administrative Fee on the sales transacted under this contract for Authorized Local Units of Government purchases only, not orders from Michigan Department of Transportation. The 1% Administrative Fee shall be based upon the contract unit cost, without consideration of the addition of optional equipment. The Contractor must remit the Administrative Fee in U.S. dollars within thirty (30) days after the end of the quarterly sales reporting period. The Contractor must include the Administrative Fee in their bid prices for "F.O.B. Dealership" items.

The Contractor must pay the Administrative Fee collected 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:

An itemized quarterly reports, each line shall state the BPO (Contract Number), name of the local unit of government which made a purchase, the item number purchased, the unit cost of the item purchased, the quantity purchased, the sales amount subject to the administrative fee, and the amount of the 1% administrative fee due the State of Michigan.

QUARTERLY CHECKS:
Contractor must forward the check to the following address:

Department of 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

QUARTERLY REPORTS

An itemized quarterly reports, each line shall state the BPO (Contract Number), name of the local unit of government which made a purchase, the item number purchased, the unit cost of the item purchased, the quantity purchased, the sales amount subject to the administrative fee, and the amount of the 1% administrative fee due the State of Michigan.

E-mail Reports to: mideal@michigan.gov

Any questions about reports or checks, e-mail the address above.

1.402 QUICK PAYMENT TERMS- **Reserved**

1.403 PRICE TERM

Prices quoted are the maximum to be charged during the contract period, with the following exceptions; the state shall receive the benefit of any decrease in price that may occur, if changes in manufacturer standard equipment or federal regulations affect the cost of the vehicles required during the contract period by more than fifty-dollars ($50), the prime contractor may request a price revision to reflect the actual cost increase experienced. The request must be accompanied by evidence that the change actually affected the prime contractor's cost.

If the State of Michigan raises the cost of the vehicle title fees during the contract period, contractors may request a price adjustment to reflect the actual cost increase experienced.

Changes may be either increases or decreases, and may be requested by either party. Approved changes shall be firm for the next 365 day period, and shall take effect 30 days after authorization of the revision by Purchasing Operations. The postmark date on the Contract Release/Purchase Order shall determine prices to be charged on order that may have been in transit prior to implementation of price revisions.

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

1.404 INVOICING

The contractor shall submit two (2) copies of invoices, one (1) to the "Bill To" address and one (1) the "Ship To" address.

1.405 TITLE FEES

Prices shall include the cost of title fees for each vehicle.

If the State of Michigan modifies the cost of vehicle titles during the contract period, either the state or the contractor may request a price adjustment to reflect the actual change.

1.406 LATE PAYMENT TERMS

The maximum payment of "Vendor Late Payment Charges" will be approved if the deliveries are within the specified time and if the vehicles satisfactorily comply with the inspections requirements of this contract in accordance with Public Act 279 of 1984. If a bidder proposes "Vendor Late Payment Charges" that exceed those established within Public Act 279 will not be accepted.

1.407 MANUFACTURER'S REBATE (INCENTIVES)

In any circumstance during or prior to completion of the contract, whereupon the State of Michigan and/or Authorized Local Units of Government (customer) becomes eligible to receive a rebate for any vehicle purchased under the contract, it shall be the prime contractors responsibility to inform the State of Michigan and/or Authorized Local Units of Government, in writing, of its qualification for such rebate and to advise the procedures of obtaining such rebates.

1.5 Quantity term

(X) Requirements – Vendor agrees to supply all that the State of Michigan and Authorized Local Units of Government may order.

1.6 Other Terms and Conditions Needed for this Contract

1.601 NON-FACTORY INSTALLED EQUIPMENT

The contract includes, if applicable, a listing of equipment to be furnished that is not installed at the point of vehicle manufacturer. The list of non-factory installed equipment is identified with the item number(s) to which it applies and list the description of equipment involved.

1.602 COMPLIANCE WITH SPECIFICATIONS

If equipment does not fully comply with specifications, the contract shall include a list of designated exceptions to specifications. When no statement of exception is indicated, conformance to specifications will be required. Exceptions must be registered with the item number(s) to which it applies and list the description of equipment involved.

1.603 OPTIONAL EQUIPMENT AND ACCESSORIES

Factory Equipment not specifically listed in the contract and/or State of Michigan Specifications may be added in accordance with the current Kelley Blue Book in effect at the time of order, using the Dealer Cost Column. Authorized Local Units of Government may implement such changes on a direct basis with the contractor.

1.604 AFFIDAVIT FOR DRIVER DELIVERY

Vehicles may be driven to the final delivery destination if the following conditions are met:

1. **The drivers of the vehicles are correctly licensed and trained in proper vehicle operation.**
2. **The dealership accepts all responsibility and liability for vehicles in transit.**
3. **The requesting contractor must sign the affidavit below and submit this with the bid.**

The contractor accepts all responsibility and liability for vehicles in transit and guarantees vehicles shall be transported in a safe, proper, and efficient manner.

I understand that the State may cancel approval of this affidavit at any time during the contract if the contractor fails to meet the above obligations.

Signed	**Dated**
Title	
Contractor	

Article 2 – General Terms and Conditions

2.0 Introduction

2.001 GENERAL PURPOSE

The Contract is for *Passenger Vehicles and Trucks* for the State of Michigan and local units of government. 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.

2.002 ISSUING OFFICE AND CONTRACT ADMINISTRATOR

This contract is issued by Purchasing Operations, State of Michigan, Department of Management and Budget, and for Authorized Local Units of Government. Where actions are a combination of those of the State and Authorized Local Units of Government, the authority will be known as the State.

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

Contractor proceeds at its own risk if it takes negotiation, changes, modification, alterations, amendments, clarification, etc., of the specifications, terms, or conditions of the contract from any individual or office other than Purchasing Operations and the listed contract administrator

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

Department of Management
Purchasing Operations
Attn: Laura Gyorkos
2nd Floor, Mason Building
P.O. Box 30026
Lansing, Michigan 48909
(517) 373-1455
gyorkosL@michigan.gov

2.003 NOTICE

Any notice given to a party under this Contract must be written and shall be deemed effective, if addressed to such party as addressed below upon (i) delivery, if hand delivered; (ii) receipt of a confirmed transmission by facsimile if a copy of the notice is sent by another means specified in this section; (iii) the third (3rd) Business Day after being sent by U.S. mail, postage pre-paid, return receipt requested; or (iv) the next Business Day after being sent by a nationally recognized overnight express courier with a reliable tracking system.

2.004 CONTRACT TERM

The term of this Contract will be for two (2) calendar years and will commence with the issuance of a Contract. This will be approximately March 1, 2008 through October 1, 2009

Option. **The State reserves the right to exercise (1) one-year options, at the sole option of the State. Contractor performance, quality of products, price, cost savings, and the contractor's ability to deliver on time are some of the criteria that will be used as a basis for any decision by Purchasing Operations to exercise an option year.**

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

2.005 GOVERNING LAW

The Contract shall in all respects be governed by, and construed in accordance with, the laws of the State of Michigan. By signing this agreement, vendor consents to personal jurisdiction in the state of Michigan. Any dispute arising herein shall be resolved in the State of Michigan.

2.006 APPLICABLE STATUTES

The following statutes, rules, and laws are applicable to the performance of this contract; some statutes are reflected in the clauses of this contract. This list is NOT exhaustive.

MI Uniform Commercial Code (MIUCC) MCL 440. (All sections unless otherwise altered by agreement)
MI OSHA MCL §§ 408.1001 – 408.1094
Freedom of Information Act (FIOA) MCL §§ 15.231, et seq.
Natural Resources and Environmental Protection Act MCL §§ 324.101, et seq.
MI Consumer Protection Act MCL §§ 445.901 – 445.922
Laws relating to wages, payments of wages, and fringe benefits on state projects MCL §§ 408.551 – 408.558, 408.471 – 408.490, 1965 PA 390.
Department of Civil Service Rules and regulations
Elliot Larsen Civil Rights Act MCL §§ 37.2201, et seq.
Persons with disabilities Civil Rights Act MCL §§ 37.1101, et seq.
MCL §§ 423.321, et seq.
MCL § 18.1264 (law regarding debarment)
Davis-Bacon Act (DBA) 40 USCU §§ 276(a), et seq.
Contract Work Hours and Safety Standards Act (CWHSAA) 40 USCS § 327, et seq.
Business Opportunity Act for Persons with Disabilities MCL §§ 450.791 – 450.795
Rules and regulations of the Environmental Protection Agency
Internal Revenue Code
Rules and regulations of the Equal Employment Opportunity Commission (EEOC)
The Civil Rights Act of 1964, USCS Chapter 42
Title VII, 42 USCS §§ 2000e et seq.
The Americans with Disabilities Act (ADA), 42 USCS §§ 12101 et seq.
The Age Discrimination in Employment Act of 1967 (ADEA), 29 USCS §§ 621, 623 et seq.
The Old Workers Benefit and Protection Act of 1990 (OWBPA), 29 USCS §§ 626, et seq.
The Family Medical Leave Act of 1993 (FMLA), 29 USC §§ 651 et seq.
The Fair Labor Standards Act (FLSA), 29 USC §§ 201 et seq.
Pollution Prevention Act of 1990 (PPA) 42 U.S.C. §13106
Sherman Act, 15 U.S.C.S. § 1 et seq.
Robinson-Patman Act, 15 U.S.C.S. § 13 et. seq.
Clayton Act, 15 U.S.C.S. § 14 et seq.

2.007 RELATIONSHIP OF THE PARTIES

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

2.008 HEADINGS

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

2.009 MERGER

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

2.010 SEVERABILITY

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

2.011 SURVIVORSHIP

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

2.012 NO WAIVER OF DEFAULT

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

2.013 PURCHASE ORDERS

Orders for delivery of commodities and/or services will be issued directly by Authorized Local Units of Government through the issuance of a Purchase Order referencing this Contract and the terms and conditions contained herein. Contractor is asked to reference the Purchase Order Number on all invoices for payment.

2.1 Vendor/Contractor Obligations

2.101 ACCOUNTING RECORDS

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

2.102 NOTIFICATION OF OWNERSHIP

The Contractor shall make the following notifications in writing:

1. **When the Contractor becomes aware that a change in its ownership or officers has occurred, or is certain to occur, that could result in changes in the valuation of its capitalized assets in the accounting records, the Contractor shall notify Purchasing Operations within 30 days.**

2. **The Contractor shall also notify the Purchasing Operations within 30 days whenever changes to asset valuations or any other cost changes have occurred or are certain to occur as a result of a change in ownership or officers.**

The Contractor shall:

1. **Maintain current, accurate, and complete inventory records of assets and their costs;**

2. **Provide Purchasing Operations or designated representative ready access to the records upon request;**

3. Ensure that all individual and grouped assets, their capitalized values, accumulated depreciation or amortization, and remaining useful lives are identified accurately before and after each of the Contractor's ownership or officer changes; and

4. Retain and continue to maintain depreciation and amortization schedules based on the asset records maintained before each Contractor ownership or officer change.

2.103 SOFTWARE COMPLIANCE - **Reserved**

2.104 LIABILITY INSURANCE

A. Insurance

The Contractor is required to provide proof of the minimum levels of insurance coverage as indicated below. The purpose of this coverage shall be to protect the State from claims which may arise out of or result from the Contractor's performance of services under the terms of this Contract, whether such services are performed by the Contractor, or by any subcontractor, or by anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable.

The Contractor waives all rights against the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees and agents for recovery of damages to the extent these damages are covered by the insurance policies the Contractor is required to maintain pursuant to this Contract.

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

The insurance shall be written for not less than any minimum coverage specified in this Contract or required by law, whichever is greater.

The insurers selected by Contractor shall have an A.M. Best rating of A or better, or as otherwise approved in writing by the State, or if such ratings are no longer available, with a comparable rating from a recognized insurance rating agency. Companies that have been approved to do business in the State shall issue all policies of insurance required in this Contract.

See www.michigan.gov/cis

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

Before both parties sign the Contract or before the purchase order is issued by the State, the Contractor must furnish to the Director of Purchasing Operations, certificate(s) of insurance verifying insurance coverage ("Certificates"). The Certificate must be on the standard "accord" form or equivalent. THE CONTRACT OR PURCHASE ORDER NO. MUST BE SHOWN ON THE CERTIFICATE OF INSURANCE TO ASSURE CORRECT FILING. **All Certificate(s) are to be prepared and submitted by the Insurance Provider. All Certificate(s) shall contain a provision indicating that coverage afforded under the policies WILL NOT BE CANCELED, MATERIALLY CHANGED, OR NOT RENEWED without THIRTY (30) days prior written notice, except for ten (10) days for non-payment of premium, having been given to the Director of Purchasing Operations, Department of Management and Budget. The notice must include the Contract or Purchase Order number affected and be mailed to: Director, Purchasing Operations, Department of Management and Budget, P.O. Box 30026, Lansing, Michigan 48909. Failure to provide evidence of coverage, may, at the State's sole option, result in this Contract's termination.**

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

☑ **1. Commercial General Liability with the following minimum coverage:**

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

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

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

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

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

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

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

☑ **4. Employers liability insurance with the following minimum limits:**

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

☐ **5. Employee Fidelity, including Computer Crimes, insurance naming the State as a loss payee, providing coverage for direct loss to the State and any legal liability of the State arising out of or related to fraudulent or dishonest acts committed by the employees of Contractor or its 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 shall apply, at a minimum, to the insurance required in Subsection 1 (Commercial General Liability) above.**

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

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

B. Subcontractors

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

C. Certificates of Insurance and Other Requirements

Contractor shall furnish to the Office of Purchasing Operations certificate(s) of insurance verifying insurance coverage or providing satisfactory evidence of self-insurance as required in this Section (the "Certificates"). Before the Contract is signed, and not less than 20 days before the insurance expiration date every year thereafter, the Contractor shall provide evidence that the State and its agents, officers and employees are listed as additional insureds, but only to the extent of liabilities assumed by Contractor as set forth in Indemnification Section of this Contract, under each commercial general liability and commercial automobile liability policy. In the event the State approves the representation of the State by the insurer's attorney, the attorney may be required to be designated as a Special Assistant Attorney General by the Attorney General of the State of Michigan.

Contractor shall maintain all required insurance coverage throughout the term of the Contract and any extensions thereto and, in the case of claims-made Commercial General Liability policies, shall secure tail coverage for at least three (3) years following the expiration or termination for any reason of this Contract. The minimum limits of coverage specified above are not intended, and shall not be construed, to limit any liability or indemnity of Contractor under this Contract to any indemnified party or other persons. Contractor shall be responsible for all deductibles with regard to such insurance. If Contractor fails to pay any premium for required insurance as specified in this Contract, or if any insurer cancels or significantly reduces any required insurance as specified in this Contract without the State's written consent, at the State's election (but without any obligation to do so) after the State has given Contractor at least thirty (30) days written notice, the State may pay such premium or procure similar insurance coverage from another company or companies; and at the State's election, the State may deduct the entire cost (or part thereof) from any payment due Contractor, or Contractor shall pay the entire cost (or any part thereof) upon demand by the State.

2.105 PERFORMANCE AND RELIABILTIY EVALUATION (PARE) - **Reserved**

2.106 PREVAILING WAGE **- Reserved**

2.107 PAYROLL AND BASIC RECORDS - **Reserved**

2.108 COMPETITION IN SUB-CONTRACTING

The Contractor shall select subcontractors (including suppliers) on a competitive basis to the maximum practical extent consistent with the objectives and requirements of the contract.

2.109 CALL CENTER DISCLOSURE

Vendor and/or all subcontractors involved in the performance of this contract providing call or contact center services to the State of Michigan must disclose the location of its call or contact center services to inbound callers. Failure to disclose this information shall be a material breach of this agreement.

2.110 WORKPLACE DISCRIMINATION

The Contractor represents and warrants that in performing services for the State pursuant to this Contract, the Contractor agrees not to discriminate against any employee or applicant for employment, with respect to their hire, tenure, terms, conditions or privileges of employment, or any matter directly or indirectly related to employment, because of race, color, religion, national origin, ancestry, age, sex, height, weight, marital status, physical or mental handicap or disability. The Contractor further agrees that every subcontract entered into for the performance of any Contract or purchase order resulting here from will contain a provision requiring non-discrimination in employment, as herein specified, binding upon each subcontractor. This covenant is required pursuant to the Elliot Larsen Civil Rights Act, 1976 Public Act 453, as amended, MCL 37.2201, et seq., and the Persons With Disabilities Civil Rights Act, 1976 Public Act 220, as amended, MCL 37.1101, et seq., and any breach thereof may be regarded as a material breach of the Contract or purchase order.

Vendor hereby represents that in performing this contract it will not violate The Civil Rights Act of 1964, USCS Chapter 42, including, but not limited to, Title VII, 42 USCS §§ 2000e et seq.; the Americans with Disabilities Act (ADA), 42 USCS §§ 12101 et seq.; or The Age Discrimination in Employment Act of 1967 (ADEA), 29 USCS §§ 621, 623 et seq.; the Old Workers Benefit and Protection Act of 1990 (OWBPA), 29 USCS §§ 626 et seq.; the Family Medical Leave Act of 1993 (FMLA), 29 USC §§ 651 et seq.; or the Fair Labor Standards Act (FLSA), 29 USC §§ 201 et seq.

_____ **(Initial)**

2.111 LABOR RELATIONS

Pursuant to 1980 Public Act 278, as amended, MCL 423.231, et seq., the State shall not award a Contract or subcontract to an employer whose name appears in the current register of employers failing to correct an unfair labor practice **compiled pursuant to Section 2 of the Act. A Contractor of the State, in relation to the Contract, shall not enter into a Contract with a subcontractor, manufacturer, or supplier whose name appears in this register. Pursuant to Section 4 of 1980 Public Act 278, MCL 423.324, the State may void any Contract if, subsequent to award of the Contract, the name of the Contractor as an employer, or the name of the subcontractor, manufacturer or supplier of the Contractor appears in the register.**

The Contractor represents and warrants that the company does not appear in the current register of employers failing to correct an unfair labor practice.

_____ **(Initial)**

2.2 Contract Performance

2.201 TIME IS OF THE ESSENCE

Contractor/Vendor is on notice that time is of the essence in the performance of this contract. Late performance will be considered a material breach of this contract, giving the State a right to invoke all remedies available to it under this contract.

2.202 CONTRACT PAYMENT SCHEDULE

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.

2.203 POSSIBLE PROGRESS PAYMENTS- **Reserved**

2.204 POSSIBLE PERFORMANCE-BASED PAYMENTS (Actual performance rendered) - **Reserved**

2.205 ELECTRONIC PAYMENT REQUIREMENT

Electronic transfer of funds is available to State contractors. Contractor is required to register with the State electronically at http://www.cpexpress.state.mi.us. Public Act 533 of 2004 requires all payments be transitioned over to EFT for State of Michigan payments.

2.206 PERFORMANCE OF WORK BY CONTRACTOR **- Reserved**

2.207 QUALIFIED BIDDERS

In order to be considered for award of any contract(s) the primary contractor must have been an "Authorized Dealership", at the time the bid was submitted, for the manufacturer of the vehicles, which the bidder proposed to furnish.

2.3 Contract Rights and Obligations

2.301 INCURRING COSTS

The State of Michigan is not liable for any cost incurred by the Contractor prior to signing of the Contract. The State fiscal year is October 1st through September 30th. The Contractor(s) should realize that payments in any given fiscal year are contingent upon enactment of legislative appropriations. Total liability of the State is limited to terms and conditions of the Contract.

2.302 CONTRACTOR RESPONSIBILITIES

The Contractor will be required to assume responsibility for all contractual activities, whether or not that Contractor performs them. Further, the State will consider the Contractor to be the sole point of contact with regard to contractual matters, including payment of any and all charges resulting from the anticipated Contract. If any part of the work is to be subcontracted, the Contract must include a list of subcontractors, including firm name and address, contact person and a complete description of work to be subcontracted. The State reserves the right to approve subcontractors and to require the Contractor to replace subcontractors found to be unacceptable. The Contractor is totally responsible for adherence by the subcontractor to all provisions of the Contract. Any change in subcontractors must be approved by the State, in writing, prior to such change.

2.303 ASSIGNMENT AND DELEGATION

The Contractor shall not have the right to assign this Contract, to assign its rights under this contract, or delegate any of its duties or obligations under the Contract to any other party (whether by operation of law or otherwise), without the prior written consent of the State. Any purported assignment in violation of this Section shall be null and void. Further, the Contractor may not assign the right to receive money due under the Contract without the prior written consent of the Director of Purchasing Operations.

The Contractor shall not delegate any duties or obligations under the Contract to a subcontractor other than a subcontractor named and approved in the bid unless the Director of Purchasing Operations has given written consent to the delegation.

The Contractor must obtain the approval of the Director of Purchasing Operations before using a place of performance that is different from the address that bidder provided in the bid.

2.304 TAXES

Sales Tax: For purchases made directly by the State of Michigan, the State is exempt from State and Local Sales Tax. Prices shall not include such taxes. Exemption Certificates for State Sales Tax will be furnished upon request.

Federal Excise Tax: The State of Michigan may be exempt for Federal Excise Tax, or such taxes may be reimbursable, if articles purchased under this Contract are used for the State's exclusive use. Certificates exclusive use for the purposes of substantiating a tax-free, or tax-reimbursable sale will be sent to the Contractor upon request. If a sale is tax exempt or tax reimbursable under the Internal Revenue Code, prices shall not include the Federal Excise Tax.

The State's Tax Exempt Certification is available for vendor viewing upon request to the Contract Administrator.

2.305 INDEMNIFICATION

General Indemnification

To the fullest extent permitted by law, the Contractor shall indemnify, defend and hold harmless the State, its departments, divisions, agencies, sections, commissions, officers, employees and agents, from and against all losses, liabilities, penalties, fines, damages and claims (including taxes), and all related costs and expenses (including reasonable attorneys' fees and disbursements and costs of investigation, litigation, settlement, judgments, interest and penalties), arising from or in connection with any of the following:

1. **Any claim, demand, action, citation or legal proceeding against the State, its employees and agents arising out of or resulting from (1) the product provided or (2) performance of the work, duties, responsibilities, actions or omissions of the Contractor or any of its subcontractors under this Contract.**

2. **Any claim, demand, action, citation or legal proceeding against the State, its employees and agents arising out of or resulting from a breach by the Contractor of any representation or warranty made by the Contractor in the Contract;**

3. **Any claim, demand, action, citation or legal proceeding against the State, its employees and agents arising out of or related to occurrences that the Contractor is required to insure against as provided for in this Contract;**

4. **Any claim, demand, action, citation or legal proceeding against the State, its employees and agents arising out of or resulting from the death or bodily injury of any person, or the damage, loss or destruction of any real or tangible personal property, in connection**

with the performance of services by the Contractor, by any of its subcontractors, by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable; provided, however, that this indemnification obligation shall not apply to the extent, if any, that such death, bodily injury or property damage is caused solely by the negligence or reckless or intentional wrongful conduct of the State;

5. Any claim, demand, action, citation or legal proceeding against the State, its employees and agents which results from an act or omission of the Contractor or any of its subcontractors in its or their capacity as an employer of a person.

Patent/Copyright Infringement Indemnification

To the fullest extent permitted by law, the Contractor shall indemnify, defend and hold harmless the State, its employees and agents from and against all losses, liabilities, damages (including taxes), and all related costs and expenses (including reasonable attorneys' fees and disbursements and costs of investigation, litigation, settlement, judgments, interest and penalties) incurred in connection with any action or proceeding threatened or brought against the State to the extent that such action or proceeding is based on a claim that any piece of equipment, software, commodity or service supplied by the Contractor or its subcontractors, or the operation of such equipment, software, commodity or service, or the use or reproduction of any documentation provided with such equipment, software, commodity or service infringes any United States or foreign patent, copyright, trade secret or other proprietary right of any person or entity, which right is enforceable under the laws of the United States. In addition, should the equipment, software, commodity, or service, or the operation thereof, become or in the Contractor's opinion be likely to become the subject of a claim of infringement, the Contractor shall at the Contractor's sole expense (i) procure for the State the right to continue using the equipment, software, commodity or service or, if such option is not reasonably available to the Contractor, (ii) replace or modify the same with equipment, software, commodity or service of equivalent function and performance so that it becomes non-infringing, or, if such option is not reasonably available to Contractor, (iii) accept its return by the State with appropriate credits to the State against the Contractor's charges and reimburse the State for any losses or costs incurred as a consequence of the State ceasing its use and returning it.

Code Indemnification

To the extent permitted by law, the Contractor shall indemnify, defend and hold harmless the State from any claim, loss, or expense arising from Contractor's breach of the No Surreptitious Code Warranty.

Indemnification Obligation Not Limited

In any and all claims against the State of Michigan, or any of its agents or employees, by any employee of the Contractor or any of its subcontractors, the indemnification obligation under the Contract shall not be limited in any way by the amount or type of damages, compensation or benefits payable by or for the Contractor or any of its subcontractors under worker's disability compensation acts, disability benefits acts, or other employee benefits acts. This indemnification clause is intended to be comprehensive. Any overlap in sub clauses, or the fact that greater specificity is provided as to some categories of risk, is not intended to limit the scope of indemnification under any other sub clause.

Continuation of Indemnification Obligation

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

Indemnification Procedures

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

(a) After receipt by the State of notice of the action or proceeding involving a claim in respect of which it will seek indemnification, the State shall promptly notify Contractor of such claim in writing and take or assist Contractor in taking, as the case may be, any reasonable action to avoid the imposition of a default judgment against Contractor. No failure to so notify Contractor shall relieve Contractor of its indemnification obligations except to the extent that Contractor can demonstrate damages attributable to such failure. Within ten (10) days following receipt of written notice from the State relating to any claim, Contractor shall notify the State in writing whether Contractor agrees to assume control of the defense and settlement of that claim (a "Notice of Election"). After notifying Contractor of a claim and prior to the State receiving Contractor's Notice of Election, the State shall be entitled to defend against the claim, at Contractor's expense, and Contractor will be responsible for any reasonable costs incurred by the State in defending against the claim during such period.

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

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

2.306 LIMITATION OF LIABILITY- **Reserved**

2.307 CONTRACT DISTRIBUTION

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

2.308 FORM, FUNCTION, AND UTILITY

If the Contract is for use of more than one State agency and if the good or service provided under this Contract do not the meet the form, function, and utility required by a State agency, that agency may, subject to State purchasing policies, procure the good or service from another source.

2.309 ASSIGNMENT OF ANTITRUST CAUSE OF ACTION

For and in consideration of the opportunity to submit a quotation and other good and valuable consideration, the contractor hereby assigns, sells and transfers to the State of Michigan all rights, title and interest in and to all causes of action it may have under the antitrust laws of the United States or this State for price fixing, which causes of action have accrued prior to the date of payment and which relate solely to the particular goods, commodities, or services purchased or procured by this State pursuant to this transaction.

2.310 PURCHASING FROM OTHER STATE AGENCIES - **Reserved**

2.311 TRANSITION ASSISTANCE - **Reserved**

2.312 RESERVED

2.313 RESERVED

2.314 WEBSITE INCORPORATION

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

2.4 Contract Review and Evaluation

2.401 CONTRACT COMPLIANCE INSPECTOR

The persons named below will be allowed to oversee the contract performance on a day-to-day basis. However, overseeing the Contract implies no authority to negotiate, change, modify, clarify, amend, or otherwise alter the terms, conditions, and specifications of such Contract(s). That authority is retained by Purchasing Operations. The Contract Compliance Inspectors for this project are:

Laura Gyorkos
Department of Management and Budget
Purchasing Operations
Commodities Division
Lansing, MI
Telephone No. (517) 373-1455
gyorkosL@michigan.gov

2.402 PERFORMANCE REVIEWS

Purchasing Operations may review with the Contractor their performance under the Contract. Performance reviews shall be conducted quarterly, semi-annually or annually depending on Contractor's past performance with the State. Performance reviews shall include, but not limited to, quality of products/services being delivered and provided, timeliness of delivery, percentage of completion of orders, the amount of back orders, status of such orders, accuracy of billings, customer service, completion and submission of required paperwork, the number of substitutions and the reasons for substitutions, and other requirements of the Contract.

Upon a finding of poor performance, which has been documented by Purchasing Operations, the Contractor shall be given an opportunity to respond and take corrective action. If corrective action is not taken in a reasonable amount of time as determined by Purchasing Operations, the Contract may be canceled for default. Delivery by the Contractor of unsafe and/or adulterated or off-condition products to any State agency is considered a material breach of Contract subject to the cancellation provisions contained herein.

2.403 AUDIT OF CONTRACT COMPLIANCE/ RECORDS AND INSPECTIONS

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

(a) Inspection of Work Performed. The State's authorized representatives shall at all reasonable times and with ten (10) days prior written request, have the right to enter Contractor's premises, or any other places, where the Services are being performed, and shall have access, upon reasonable request, to interim drafts of Deliverables or work-in-progress. Upon ten (10) Days prior written notice and during business hours, the State's representatives shall be allowed to inspect, monitor, or otherwise evaluate the work being performed and to the extent that such access will not interfere or jeopardize the safety or operation of the systems or facilities. Contractor must provide all reasonable facilities and assistance for the State's representatives, so long as no security, labor relations policies and propriety information policies are violated.

(b) Examination of Records. No more than once per year, Contractor agrees that the State, including its duly authorized representatives, until the expiration of seven (7) years following the creation of the material (collectively, the "Audit Period"), shall, upon twenty (20) days prior written notice, have access to and the right to examine and copy any of Contractor's books, records, documents and papers pertinent to establishing Contractor's compliance with the terms and conditions of the Contract and with applicable laws and rules, including the State's procurement rules, regulations and procedures, and actual performance of the Contract for the purpose of conducting an audit, examination, excerpt and/or transcription but the State shall not have access to any information deemed confidential to Contractor to the extent such access would require such confidential information to become publicly available. This provision also applies to the books, records, accounts, documents and papers, in print or electronic form, of any parent, affiliated or subsidiary organization of Contractor, or any Subcontractor of Contractor performing services in connection with the Contract.

(c) Retention of Records. Contractor shall maintain at least until the end of the Audit Period all pertinent financial and accounting records (including time sheets and payroll records, and information pertaining to the Contract and to the Services, equipment, and commodities provided under the Contract) pertaining to the Contract in accordance with generally accepted accounting principles and other procedures specified in this Section. Financial and accounting records shall be made available, upon request, to the State at any time during the Audit Period. If an audit, litigation, or other action involving Contractor's records is initiated before the end of the Audit Period, the records must be retained until all issues arising out of the audit, litigation, or other action are resolved or until the end of the Audit Period, whichever is later.

(d) Audit Resolution. If necessary, the Contractor and the State shall meet to review each audit report promptly after issuance. The Contractor will respond to each audit report in writing within thirty (30) days from receipt of such report, unless a shorter response time is specified in such report. The Contractor and the State shall develop and agree upon an action plan to promptly address and resolve any deficiencies, concerns, and/or recommendations in such audit report.

1. **Errors. If the audit demonstrates any errors in the statements provided to the State, then the amount in error shall be reflected as a credit or debit on the next invoice and in subsequent invoices until the amount is paid or refunded in full. However, a credit or debit may not be carried for more than four (4) quarterly statements. If a balance remains after four (4) quarterly statements, then the remaining amount will be due as a payment or refund within forty-five (45) days of the last quarterly statement that the balance appeared on or termination of the contract, whichever is earlier.**

2. **In addition to other available remedies, the difference between the payment received and the correct payment amount is greater than ten (10%), then the Contractor shall pay all of the reasonable costs of the audit.**

2.5 Quality and Warranties

2.501 PROHIBITED PRODUCTS

The State of Michigan and Authorized Local Units of Government will not accept salvage, distressed, outdated or discontinued merchandise. Shipping of such merchandise to any State of Michigan and Authorized Local Units of Government 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.

2.502 QUALITY ASSURANCE

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

1. **All costs of testing and laboratory analysis.**
2. **Disposal and/or replacement of all products which fail to meet specifications.**
3. **All costs of repair and/or replacement of equipment deemed to have been damaged by substandard products as determined by the State.**

2.503 INSPECTION

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

The contractor WILL NOT be responsible for any expense or transportation for Authorized Local Unit of Government employee involvement in any of the above meetings or inspections.

2.504 GENERAL WARRANTIES (goods)

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

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

***Warranty of title* – Vendor shall, in providing goods to the State, convey good title in those goods, whose transfer is right and lawful. All goods provided by vendor shall be delivered free from any security interest, lien, or encumbrance of which the State, at the time of contracting, has no knowledge. Goods provided by vendor, under this agreement, shall be delivered free of any rightful claim of any third person by of infringement or the like.**

2.505 CONTRACTOR WARRANTIES

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

1. **The Contractor will perform all services in accordance with high professional standards in the industry;**

2. **The Contractor will use adequate numbers of qualified individuals with suitable training, education, experience and skill to perform the services;**

3. **The Contractor will use its best efforts to use efficiently any resources or services necessary to provide the services that are separately chargeable to the State;**

4. **The Contractor will use its best efforts to perform the services in the most cost effective manner consistent with the required level of quality and performance;**

5. **The Contractor will perform the services in a manner that does not infringe the proprietary rights of any third party;**

6. **The Contractor will perform the services in a manner that complies with all applicable laws and regulations;**

7. **The Contractor has duly authorized the execution, delivery and performance of the Contract;**

8. **The Contractor is capable in all respects of fulfilling and shall fulfill all of its obligations under this contract.**

9. **The contract appendices, attachments, and exhibits identify all equipment and software services necessary for the deliverable(s) to perform and operate in compliance with the contract's requirements.**

10. **The Contractor is the lawful owner or licensee of any Deliverable licensed or sold to any local unit of Government by Contractor or developed by Contractor under this contract, and Contractor has all of the rights necessary to convey to the state the ownership rights or license use, as applicable, of any and all Deliverables.**

11. **If, under this Contract, Contractor procures any equipment, software or other Deliverable for any local unit of Government (including equipment, software and other Deliverables manufactured, re-marketed or otherwise sold by Contractor under Contractor's name), then in addition to Contractor's other responsibilities with respect to such items as set forth in this Contract, Contractor shall assign or otherwise transfer to any local unit of Government or its designees, or afford any local unit of Government the benefits of, any manufacturer's warranty for the Deliverable.**

12. **The contract signatory has the power and authority, including any necessary corporate authorizations, necessary to enter this contract, on behalf of Contractor.**

13. The Contractor is qualified and registered to transact business in all locations where required.

14. Neither the Contractor nor any Affiliates, nor any employee of either, has, shall have, or shall acquire, any contractual, financial, business, or other interest, direct or indirect, that would conflict in any manner or degree with Contractor's performance of its duties and responsibilities to the State under this Contract or otherwise create an appearance of impropriety with respect to the award or performance of this Agreement. Contractor shall notify the State within two (2) days of any such interest that may be incompatible with the interests of the State.

15. All financial statements, reports, and other information furnished by Contractor to the State as part of its response to the ITB or otherwise in connection with the award of this Contract fairly and accurately represent the business, properties, financial condition, and results of operations of Contractor as of the respective dates, or for the respective periods, covered by such financial statements, reports, other information. Since the respective dates or periods covered by such financial statements, reports, or other information, there have been no material adverse changes in the business, properties, financial condition, or results of operations of Contractor. All written information furnished to the State by or behalf of Contractor in connection with this Contract, including its bid, it true, accurate, and complete, and contains no untrue statement of material fact or omits any material fact necessary to make such information not misleading.

16. The successful contractor shall have a factory dealer with repair facilities and personnel in Michigan, or may be a factory dealer with repair facilities and personnel in Michigan capable of handling corrections, and warranty follow-up.

2.506 STAFF

The State reserves the right to approve the Contractor's assignment of Key Personnel to this project and to recommend reassignment of personnel deemed unsatisfactory by the State.

The Contractor shall not remove or reassign, without the State's prior written approval any of the Key Personnel until such time as the Key Personnel have completed all of their planned and assigned responsibilities in connection with performance of the Contractor's obligations under this Contract. The Contractor agrees that the continuity of Key Personnel is critical and agrees to the continuity of Key Personnel. Removal of Key Personnel without the written consent of the State may be considered by the State to be a material breach of this Contract. The prohibition against removal or reassignment shall not apply where Key Personnel must be replaced for reasons beyond the reasonable control of the Contractor including but not limited to illness, disability, resignation or termination of the Key Personnel's employment.

2.507 RESERVED

2.508 EQUIPMENT WARRANTY

A minimum warranty of one year shall be provided on all components of the utility body, including all parts and labor. The warranty shall start on the in-service date, which is when end user first begins to use the unit. The truck warranty shall also start on the in-service date.

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

A. Principle Period of Maintenance (PPM) will be the same hours as the State's normal working hours (currently Monday through Friday, 8:00 A.M. to 4:00 P.M., excluding a one (1) hour lunch period, excepting State observed holidays).

B. The PPM hours may be changed upon thirty (30) days written notice by mutual agreement, except the Contractor shall make every reasonable effort to change his schedule in a shorter period of time.

Within five (5) business days of notification from the State of Michigan and Authorized Local Units of Government, the Contractor shall adjust, repair or replace all equipment that is defective or not performing in compliance with the Contract. The Contractor shall assume all costs for replacing parts or units and their installation including transportation and delivery fees, if any.

The Contractor shall provide a toll-free telephone number to allow the State of Michigan and Authorized Local Units of Government to report equipment failures and problems to be remedied by the Contractor.

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

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

2.509 RESERVED

2.6 Breach of Contract

2.601 BREACH DEFINED

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

In addition to any remedies available in law and by the terms of this contract, if the Contractor breaches Sections 2.508, 2.509, or 2.510, such a breach may be considered as a default in the performance of a material obligation of this contract.

2.602 NOTICE AND THE RIGHT TO CURE

In the event of a curable breach by the Contractor, the State shall provide the Contractor written notice of the breach and a time period to cure said breach described in the notice. This section requiring notice and an opportunity to cure shall not be applicable in the event of successive or repeated breaches of the same nature or if the State determines in its sole discretion that the breach poses a serious and imminent threat to the health or safety of any person or the imminent loss, damage or destruction of any real or tangible personal property.

2.603 EXCUSABLE FAILURE

1. Neither party shall be liable for any default or delay in the performance of its obligations under the Contract if and to the extent such default or delay is caused, directly or indirectly, by: fire, flood, earthquake, elements of nature or acts of God; riots, civil disorders, rebellions or revolutions in any country; the failure of the other party to perform its material responsibilities under the Contract (either itself or through another contractor); injunctions (provided the injunction was not issued as a result of any fault or negligence of the party seeking to have its default or delay excused); or any other cause beyond the reasonable control of such party; provided the non-performing party and its subcontractors are without fault in causing such default or delay, and such default or delay could not have been prevented by reasonable precautions and cannot reasonably be circumvented by the non-performing party through the use of alternate sources, workaround plans or other means, including disaster recovery plans. In such event, the non-performing party will be excused from any further performance or

observance of the obligation(s) so affected for as long as such circumstances prevail and such party continues to use its best efforts to recommence performance or observance whenever and to whatever extent possible without delay provided such party promptly notifies the other party in writing of the inception of the excusable failure occurrence, and also of its abatement or cessation.

2. If any of the above enumerated circumstances substantially prevent, hinder, or delay performance of the services necessary for the performance of the State's functions for more than 14 consecutive days, and the State determines that performance is not likely to be resumed within a period of time that is satisfactory to the State in its reasonable discretion, then at the State's option: (a) the State may procure the affected services from an alternate source, and the State shall not be liable for payments for the unperformed services under the Contract for so long as the delay in performance shall continue; (b) the State may cancel any portions of the Contract so affected and the charges payable hereunder shall be equitably adjusted to reflect those services canceled; or (c) the Contract will be canceled without liability of the State to the Contractor as of the date specified by the State in a written notice of cancellation to the Contractor. The Contractor will not have the right to any additional payments from the State as a result of any excusable failure occurrence or to payments for services not rendered as a result of the excusable failure condition. Defaults or delays in performance by the Contractor which are caused by acts or omissions of its subcontractors will not relieve the Contractor of its obligations under the Contract except to the extent that a subcontractor is itself subject to any excusable failure condition described above and the Contractor cannot reasonably circumvent the effect of the subcontractor's default or delay in performance through the use of alternate sources, workaround plans or other means.

2.7 Remedies

2.701 CANCELLATION

The State may cancel this Contract without further liability or penalty to the State, its departments, divisions, agencies, offices, commissions, officers, agents, and employees for any of the following reasons:

1. <u>Material Breach by the Contractor</u>. In the event that the Contractor breaches any of its material duties or obligations under the Contract, which are either not capable of or subject to being cured, or are not cured within the time period specified in the written notice of breach provided by the State, or pose a serious and imminent threat to the health and safety of any person, or the imminent loss, damage or destruction of any real or tangible personal property, the State may, having provided written notice of cancellation to the Contractor, cancel this Contract in whole or in part, for cause, as of the date specified in the notice of cancellation.

In the event that this Contract is canceled for cause, in addition to any legal remedies otherwise available to the State by law or equity, the Contractor shall be responsible for all costs incurred by the State in canceling the Contract, including but not limited to, State administrative costs, attorneys fees and court costs, and any additional costs the State may incur to procure the services required by this Contract from other sources. All excess re-procurement costs and damages shall not be considered by the parties to be consequential, indirect or incidental, and shall not be excluded by any other terms otherwise included in the Contract.

In the event the State chooses to partially cancel this Contract for cause charges payable under this Contract will be equitably adjusted to reflect those services that are canceled.

In the event this Contract is canceled for cause pursuant to this section, and it is therefore determined, for any reason, that the Contractor was not in breach of contract pursuant to the provisions of this section, that cancellation for cause shall be deemed to have been a cancellation for convenience, effective as of the same date, and the rights and obligations of the parties shall be limited to that otherwise provided in the Contract for a cancellation for convenience.

2. <u>Cancellation For Convenience By the State</u>. The State may cancel this Contract for its convenience, in whole or part, if the State determines that such a cancellation is in the State's best interest. Reasons for such cancellation shall be left to the sole discretion of the State and may include, but not limited to (a) the State no longer needs the services or products specified in the Contract, (b) relocation of office, program changes, changes in laws, rules, or regulations make implementation of the Contract services no longer practical or feasible, and (c) unacceptable prices for additional services requested by the State. The State may cancel the Contract for its convenience, in whole or in part, by giving the Contractor written notice 30 days prior to the date of cancellation. If the State chooses to cancel this Contract in part, the charges payable under this Contract shall be equitably adjusted to reflect those services that are canceled.

3. <u>Non-Appropriation</u>. In the event that funds to enable the State to effect continued payment under this Contract are not appropriated or otherwise made available. The Contractor acknowledges that, if this Contract extends for several fiscal years, continuation of this Contract is subject to appropriation or availability of funds for this project. If funds are not appropriated or otherwise made available, the State shall have the right to cancel this Contract at the end of the last period for which funds have been appropriated or otherwise made available by giving written notice of cancellation to the Contractor. The State shall give the Contractor written notice of such non-appropriation or unavailability within 30 days after it receives notice of such non-appropriation or unavailability.

4. <u>Criminal Conviction</u>. In the event the Contractor, an officer of the Contractor, or an owner of a 25% or greater share of the Contractor, is convicted of a criminal offense incident to the application for or performance of a State, public or private Contract or subcontract; or convicted of a criminal offense including but not limited to any of the following: embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, attempting to influence a public employee to breach the ethical conduct standards for State of Michigan employees; convicted under State or federal antitrust statutes; or convicted of any other criminal offense which in the sole discretion of the State, reflects upon the Contractor's business integrity.

5. <u>Approvals Rescinded</u>. The State may terminate this Contract without further liability or penalty in the event any final administrative or judicial decision or adjudication disapproves a previously approved request for purchase of personal services pursuant to Constitution 1963, Article 11, section 5, and Civil Service Rule 7. Termination may be in whole or in part and may be immediate as of the date of the written notice to Contractor or may be effective as of the date stated in such written notice.

2.702 RIGHTS UPON CANCELLATION

A. Rights and Obligations Upon Termination

(1) If this Contract is terminated by the State for any reason, Contractor shall (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) in the event that the Contractor maintains title in equipment and software that is intended to be transferred to the State at the termination of the Contract, Contractor will transfer title in, and deliver to, the State, unless otherwise directed, all Deliverables and other Developed Materials intended to be transferred to the State at the termination of the Contract and which are resulting from the Contract (which shall be provided to the State on an "As-Is" basis except to the extent the amounts paid by the State in respect of such items included compensation to Contractor for the provision of warranty services in respect of such 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.

(2) In the event the State terminates this Contract prior to its expiration for its own convenience, the State shall pay Contractor for all charges due for Services provided prior to the date of termination and, if applicable, as a separate item of payment pursuant to this Contract, for partially completed Deliverables, on a percentage of completion basis. All completed or partially completed Deliverables prepared by Contractor pursuant to this Contract shall, at the option of the State, become the State's property, and Contractor shall be entitled to receive equitable fair compensation for such Deliverables. Regardless of the basis for the termination, the State shall not be 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.

(3.) If any such termination by the State is for cause, the State shall have the right to set-off against any amounts due Contractor the amount of any damages for which Contractor is liable to the State under this Contract or pursuant to law or equity.

(4.) Upon a good faith termination, the State shall have the right to assume, at its option, any and all subcontracts and agreements for services and materials provided under this Contract, and may further pursue completion of the Services under this Contract by replacement contract or otherwise as the State may in its sole judgment deem expedient.

B. Termination Assistance - **Reserved**

C. Reservation of Rights

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

D. End of Contract Transition - **Reserved**

E. Transition out of this Contract - **Reserved**

2.703 LIQUIDATED DAMAGES

A. The State of Michigan and Authorized Local Units of Government and the Contractor hereby agree to the specific standards set forth in this Contract. It is agreed between the Contractor and the State of Michigan and Authorized Local Units of Government that the actual damages to the State of Michigan and Authorized Local Units of Government as a result of Contractor's failure to provide promised services would be difficult or impossible to determine with accuracy. The State of Michigan and Authorized Local Units of Government and the Contractor therefore agree that liquidated damages as set out herein shall be a reasonable approximation of the damages that shall be suffered by the State of Michigan and Authorized Local Units of Government as a result thereof. Accordingly, in the event of such damages, at the written direction of the State of Michigan and Authorized Local Units of Government, the Contractor shall pay the State of Michigan or Authorized Local Units of Government the indicated amount as liquidated damages, and not as a penalty. Amounts due the State of Michigan and Authorized Local Units of Government as liquidated damages, if not paid by the Contractor within fifteen (15) days of notification of assessment, may be deducted by the State of Michigan and Authorized Local Units of Government from any money payable to the Contractor pursuant to this Contract. The State of Michigan or Authorized Local Units of Government will notify the Contractor in writing of any claim for liquidated damages pursuant

to this paragraph on or before the date the State of Michigan and Authorized Local Units of Government deducts such sums from money payable to the Contractor. No delay by the State of Michigan and Authorized Local Units of Government in assessing or collecting liquidated damages shall be construed as a waiver of such rights.

B. The Contractor shall not be liable for liquidated damages when, in the opinion of the State of Michigan and Authorized Local Units of Government, incidents or delays result directly from causes beyond the control and without the fault or negligence of the Contractor. Such causes may include, but are not restricted to, acts of God, fires, floods, epidemics, and labor unrest; but in every case the delays must be beyond the control and without the fault or negligence of the Contractor.

C. Liquidated damages will be assessed as follows:

If the contractor does not deliver the vehicle/s, ready for use on or before the scheduled delivery date, the contractor shall pay to the State and/or Local Unit of Government, as fixed and agreed, liquidated damages, for each calendar day between the delivery date specified and the date of final delivery, 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 the Purchase Order/Departmental Contract Release Form unit cost per vehicle.

If some, but not all, of the vehicle/s described in the Purchase Order/Departmental Contract Release Form are delivered ready for use, by the scheduled delivery date, liquidated damages shall not accrue against the vehicle/s delivered.

If the delay is more than thirty 30 calendar days, then by written notice to the Contractor, the State and/or Local Unit of Government may terminate the right of the contractor to deliver, and may obtain substitute vehicle/s. In this event, the Contractor shall be liable for liquidated damages in the amounts specified above until acceptable substitute vehicle/s are delivered, ready for use, or for 30 days from the scheduled delivery date, whichever occurs first.

2.704 STOP WORK

1. The State and/or Local Unit of Government may, at any time, by written stop work order to the Contractor, require that the Contractor stop all, or any part, of the work called for by this Contract for a period of up to 90 days after the stop work order is delivered to the Contractor, and for any further period to which the parties may agree. The stop work order shall be specifically identified as such and shall indicate that it is issued under this section. Upon receipt of the stop work order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the stop work order during the period of work stoppage. Within the period of the stop work order, the State shall either:

a) Cancel the stop work order; or
b) Cancel the work covered by the stop work order as provided in the cancellation section of this Contract.

2. If a stop work order issued under this section is canceled or the period of the stop work order or any extension thereof expires, the Contractor shall resume work. The State and/or Local Unit of Government shall make an equitable adjustment in the delivery schedule, the contract price, or both, and the Contract shall be modified, in writing, accordingly, if:

a) The stop work order results in an increase in the time required for, or in the Contractor's costs properly allocable to the performance of any part of this Contract; and
b) The Contractor asserts its right to an equitable adjustment within 30 days after the end of the period of work stoppage; provided, that if the State decides the facts justify the action, the State and/or Local Unit of Government may receive and act upon a proposal submitted at any time before final payment under this Contract.

3. If the stop work order is not canceled and the work covered by the stop work order is canceled for reasons other than material breach, the State and/or Local Unit of Government shall allow reasonable costs resulting from the stop work order in arriving at the cancellation settlement.

4. If a stop work order is not canceled and the work covered by the stop work order is canceled for material breach, the State and/or Local Unit of Government shall not allow, by equitable adjustment or otherwise, reasonable costs resulting from the stop work order.

An appropriate equitable adjustment may be made in any related contract of the Contractor that provides for adjustment and is affected by any stop work order under this section. The State and/or Local Unit of Government shall not be liable to the Contractor for loss of profits because of a stop work order issued under this section.

2.705 SUSPENSION OF WORK

The Contract Administrator may order the Contractor, in writing, to suspend, delay, or interrupt all or any part of the work of this contract for the period of time that the Contract Administrator determines appropriate for the convenience of the Government.

If the performance of all or any part of the work is, for an unreasonable period of time, suspended, delayed, or interrupted (1) by an act of the Contract Administrator in the administration of this contract, or (2) by the Contract Administrator's failure to act within the time specified in this contract (or within a reasonable time if not specified), an adjustment shall be made for any increase in the cost of performance of this contract (excluding profit) necessarily caused by the unreasonable suspension, delay, or interruption, and the contract modified in writing accordingly. However, no adjustment shall be made under this clause for any suspension, delay, or interruption to the extent that performance would have been so suspended, delayed, or interrupted by any other cause, including the fault or negligence of the Contractor, or for which an equitable adjustment is provided for or excluded under any other term or condition of this contract.

A claim under this clause shall not be allowed:

(1) For any costs incurred more than 20 days before the Contractor shall have notified the Contract Administrator in writing of the act or failure to act involved (but this requirement shall not apply as to a claim resulting from a suspension order); and
(2) Unless the claim, in an amount stated, is asserted in writing as soon as practicable after the termination of the suspension, delay, or interruption, but not later than the date of final payment under the contract.

2.8 Changes, Modifications, and Amendments

2.801 APPROVALS

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

2.802 TIME EXTENTIONS

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

2.803 MODIFICATION

Purchasing Operations reserves the right to modify this contract at any time during the contract term. Such modification may include changing the locations to be serviced, additional locations to be serviced, method or manner of performance of the work, number of days service is to be performed, addition or deletion of tasks to be performed, addition or deletion of items, and/or any other modifications deemed necessary. Any changes in pricing proposed by the Contractor resulting from the proposed changes are subject to acceptance by the State. Changes may be increases or decreases. IN THE EVENT PRICES ARE NOT ACCEPTABLE TO THE STATE, THE CONTRACT SHALL BE SUBJECT TO COMPETITIVE BIDDING BASED UPON THE NEW SPECIFICATION.

The State reserves the right to add an item(s) that is not described on the item listing and is available from the Contract vendor. **The item(s) may be included on the Contract, only if prior written approval has been granted by Purchasing Operations.**

2.804 AUDIT AND RECORDS UPON MODIFICATION

Some local units of government may be using Federal grants to purchase vehicles from this contract. Contractors may be required to provide evidence of compliance to the Federal Transportation Administration's (FTA) 49 DFR Part 663 for Pre-Order and Post Delivery Audits of Rolling Stock Purchases.

DEFINITION: records includes books, documents, accounting procedures and practices, and other data, regardless of whether such items are in written form, electronic form, or in any other form

Contractor shall be required to submit cost or pricing data with the pricing of any modification of this contract to the Contract Administrator in Acquisition Services. Data may include accounting records, payroll records, employee time sheets, and other information the state deems necessary to perform a fair evaluation of the modification proposal. Contract Administrator or authorized representative of the state shall have the right to examine and audit all of the contractor's records, including computations and projections, related to:

1. **The proposal for modification;**
2. **The discussions conducted on the proposal, including those related to negotiation;**
3. **Pricing of the modification; or**
4. **Performance of the modification.**

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

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

2.805 CHANGES

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

(1) In the specifications (including drawings and designs);
(2) In the method or manner of performance of the work;
(3) In the Government-furnished facilities, equipment, materials, services, or site; or
(4) Directing acceleration in the performance of the work.

(a) Any other written or oral order (which, as used in this paragraph (b), includes direction, instruction, interpretation, or determination) from the Contract Administrator that causes a change shall be treated as a change order under this clause; Provided, that the Contractor gives the Contract Administrator written notice stating:

(1) The date, circumstances, and source of the order; and
(2) That the Contractor regards the order as a change order.

(b) Except as provided in this clause, no order, statement, or conduct of the Contract Administrator shall be treated as a change under this clause or entitle the Contractor to an equitable adjustment.