STATE OF MICHIGAN
ENTERPRISE PROCUREMENT

Department of Technology, Management, and Budget
525 W. ALLEGAN ST., LANSING, MICHIGAN 48913
P.O. BOX 30026 LANSING, MICHIGAN 48909

CONTRACT CHANGE NOTICE

Change Notice Number **2**
to
Contract Number **071B3200138**

CONTRACTOR	
	CLOVERDALE EQUIPMENT CO
	13133 Cloverdale
	Oak Park, MI 48237
	Todd Moilanen
	248-593-8369
	Toddm@cloverdale-equip.com
	*******5331

STATE			
	Program Manager	Scott Poyer	MDOT
		517-284-6448	
		poyers@michigan.gov	
	Contract Administrator	Yvon Dufour	DTMB
		(517) 284-6996	
		dufoury@michigan.gov	

CONTRACT SUMMARY

DESCRIPTION: AIR COMPRESSOR

INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW
September 13, 2013	September 12, 2016	2 - 1 Year	September 12, 2016

PAYMENT TERMS	DELIVERY TIMEFRAME
N/A	N/A

ALTERNATE PAYMENT OPTIONS			EXTENDED PURCHASING	
☐ P-card	☐ Direct Voucher (DV)	☐ Other	☐ Yes	☒ No

MINIMUM DELIVERY REQUIREMENTS

DESCRIPTION OF CHANGE NOTICE

OPTION	LENGTH OF OPTION	EXTENSION	LENGTH OF EXTENSION	REVISED EXP. DATE
☒	12 Months	☐		September 12, 2017

CURRENT VALUE	VALUE OF CHANGE NOTICE	ESTIMATED AGGREGATE CONTRACT VALUE
$1,000,000.00	$ 0.00	$1,000,000.00

DESCRIPTION: Effective 5/17/2016, the option year available on this contract is hereby exercised. The revised contract expiration date is September 12, 2017. All other terms, conditions, specifications and pricing remain the same. Per contractor and agency agreement, and DTMB Procurement approval.

Form No. DTMB-3521 (Rev. 4/2012)
AUTHORITY: Act 431 of 1984
COMPLETION: Required
PENALTY: Contract change will not be executed unless form is filed

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

CHANGE NOTICE NO. 1

to

CONTRACT NO. 071B3200138

between

THE STATE OF MICHIGAN

and

NAME & ADDRESS OF CONTRACTOR:	PRIMARY CONTACT	EMAIL
Cloverdale Equipment Co.	Todd Moilanen	Toddm@cloverdale-equip.com
13133 Cloverdale	TELEPHONE	CONTRACTOR #, MAIL CODE
Oak Park, MI 48237	248-399-6600	

STATE CONTACTS	AGENCY	NAME	PHONE	EMAIL
CONTRACT COMPLIANCE INSPECTOR	MDOT	Daniel E. Smith	517-334-7767	Smithd4@michigan.gov
BUYER	DTMB	Yvon Dufour	517-284-6996	dufoury@michigan.gov

CONTRACT SUMMARY:

DESCRIPTION: **AIR COMPRESSOR**

INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW
September 13, 2013	September 12, 2016	2, 1 year options	September 12, 2016
PAYMENT TERMS	**F.O.B**	**SHIPPED**	**SHIPPED FROM**
N/A	N/A	N/A	N/A

ALTERNATE PAYMENT OPTIONS:			AVAILABLE TO MiDEAL PARTICIPANTS
☐ P-card	☐ Direct Voucher (DV)	☐ Other	☐ Yes ☒ No

MINIMUM DELIVERY REQUIREMENTS:

N/A

DESCRIPTION OF CHANGE NOTICE:

EXTEND CONTRACT EXPIRATION DATE	EXERCISE CONTRACT OPTION YEAR(S)	EXTENSION BEYOND CONTRACT OPTION YEARS	LENGTH OF OPTION/EXTENSION	EXPIRATION DATE AFTER CHANGE
☒ No ☐ Yes	☐	☐		

VALUE/COST OF CHANGE NOTICE:	ESTIMATED REVISED AGGREGATE CONTRACT VALUE:
$0.00	$1,000,000.00

Effective November 5, 2014, the following items are deleted from this contract. Delete portion of contract section 1.2.1 In Scope “MIDEAL members or other states and their political subdivisions”. Delete all of contract section 2.6.1 Administrative Fee and Reporting. Please note the Contract Administrator has been changed to Yvon Dufour.

All other terms, conditions, specifications and pricing remain the same. Per contractor and agency agreement, and DTMB Procurement approval.

Form No. DTMB-3522 (Rev. 4/2012)

AUTHORITY: Act 431 of 1984
COMPLETION: Required
PENALTY: Contract will not be executed unless form is filed

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

September 13, 2013

NOTICE
OF
CONTRACT NO. 071B3200138
between
THE STATE OF MICHIGAN
and

NAME & ADDRESS OF CONTRACTOR:	PRIMARY CONTACT	EMAIL
Cloverdale Equipment Co.	**Todd Moilanen**	**Toddm@cloverdale-equip.com**
13133 Cloverdale	TELEPHONE	CONTRACTOR #, MAIL CODE
Oak Park, MI 48237	**248-593-8369**	

STATE CONTACTS	AGENCY	NAME	PHONE	EMAIL
CONTRACT COMPLIANCE INSPECTOR:	**MDOT**	**Daniel E. Smith**	**517-334-7767**	**Smithd4@michigan.gov**
BUYER:	**DTMB**	**Jim Wilson**	**517-241-1916**	**Wilsonj4@michigan.gov**

CONTRACT SUMMARY:			
DESCRIPTION: Air Compressor			
INITIAL TERM	EFFECTIVE DATE	INITIAL EXPIRATION DATE	AVAILABLE OPTIONS
3 Years	**9/13/13**	**9/12/16**	**2, 1 Year Options**
PAYMENT TERMS	F.O.B	SHIPPED	SHIPPED FROM
N/A	**N/A**	**N/A**	**N/A**
ALTERNATE PAYMENT OPTIONS:			AVAILABLE TO MiDEAL PARTICIPANTS
☐ P-card ☐ Direct Voucher (DV) ☐ Other			☒ YES ☐ NO
MINIMUM DELIVERY REQUIREMENTS:			
N/A			
MISCELLANEOUS INFORMATION:			
The terms and conditions of this Contract are those of solicitation # 071I3200066 and this Contract Agreement. 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 AT TIME OF EXECUTION:			**$1,000,000.00**

Form No. DTMB-3522 (Rev. 4/2012)
AUTHORITY: Act 431 of 1984
COMPLETION: Required
PENALTY: Contract will not be executed unless form is filed

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

CONTRACT NO. 071B3200138
between
THE STATE OF MICHIGAN
and

NAME & ADDRESS OF CONTRACTOR:	PRIMARY CONTACT	EMAIL
Cloverdale Equipment Co.	**Todd Moilanen**	**Toddm@cloverdale-equip.com**
13133 Cloverdale	TELEPHONE	CONTRACTOR #, MAIL CODE
Oak Park, MI 48237	**248-593-8369**	

STATE CONTACTS	AGENCY	NAME	PHONE	EMAIL
CONTRACT COMPLIANCE INSPECTOR:	**MDOT**	**Daniel E. Smith**	**517-334-7767**	**Smithd4@michigan.gov**
BUYER:	**DTMB**	**Jim Wilson**	**517-241-1916**	**Wilsonj4@michigan.gov**

CONTRACT SUMMARY:			
DESCRIPTION: Air Compressor			
INITIAL TERM	EFFECTIVE DATE	INITIAL EXPIRATION DATE	AVAILABLE OPTIONS
3 Years	**9/13/13**	**9/12/16**	**2, 1 Year Options**
PAYMENT TERMS	F.O.B	SHIPPED	SHIPPED FROM
N/A	**N/A**	**N/A**	**N/A**
ALTERNATE PAYMENT OPTIONS:			AVAILABLE TO MiDEAL PARTICIPANTS
☐ P-card ☐ Direct Voucher (DV) ☐ Other			☒ YES ☐ NO
MINIMUM DELIVERY REQUIREMENTS:			
N/A			
MISCELLANEOUS INFORMATION:			
The terms and conditions of this Contract are those of solicitation # 071I3200066 and this Contract Agreement. 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 AT TIME OF EXECUTION:			**$1,000,000.00**

THIS IS NOT AN ORDER: This Contract Agreement is awarded on the basis of our inquiry bearing the solicitation #071I3200066. Orders for delivery will be issued directly by the Department of Transportation through the issuance of a Purchase Order Form.

Form No. DTMB-3522 (Rev. 4/2012)
Notice of Contract #: 071B3200138

FOR THE CONTRACTOR:	**FOR THE STATE:**
Cloverdale Equipment Co.	
Firm Name	Signature
	Rebecca Cook, Commodities Division Director
Authorized Agent Signature	Name/Title
	DTMB Procurement
Authorized Agent (Print or Type)	Enter Name of Agency
Date	Date

STATE OF MICHIGAN
Department of Technology, Management and Budget
Procurement

Contract No. 071B3200138
Air Compressors, Engine driven

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

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ATTACHMENT A – SEE SPECS. ***43***

Definitions

This section provides definitions for terms used throughout this document.

Business Day - whether capitalized or not, means any day other than a Saturday, Sunday, State employee temporary layoff day, or State-recognized legal holiday (as identified in the Collective Bargaining Agreement for State employees) from 8:00am through 5:00pm Eastern Time unless otherwise stated.

Buyer – the DTMB-Procurement employee identified on the cover page of the RFP.

Chronic Failure - as defined in applicable Service Level Agreements.

Contract – based on the RFP, an agreement that has been approved and executed by the awarded Bidder, the DTMB-Procurement Director, and the State Administrative Board.

Contractor – the awarded Bidder after the Effective Date.

Days – Calendar Days unless otherwise specified.

Deleted, Not Applicable - the section is not applicable or included in the RFP. This is used as a placeholder to maintain consistent numbering.

Deliverable(s) - physical goods or commodities as required or identified in a Statement of Work.

Eastern Time – either Eastern Standard Time or Eastern Daylight Time, whichever is prevailing in Lansing, Michigan.

Effective Date - the date that a binding contract is executed by the final party.

Final Acceptance - has the meaning provided in Section 2.8.7, Final Acceptance, unless otherwise stated in Article 1.

Key Personnel - any personnel designated as Key Personnel in Sections 1.3.3, Staff, Duties, and Responsibilities, and 2.4.2, Contractor Key Personnel, subject to the restrictions of Section 2.4.2.

Ordering Entity - the State or MiDeal members.

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

Purchase Order - a written document issued by the State that requests full or partial performance of the Contract.

State - the State of Michigan.

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

Stop Work Order - a notice requiring the Contractor to fully or partially stop work in accordance with the terms of the notice.

Subcontractor - a company or person that the Contractor delegates performance of a portion of the Deliverable(s) to, but does not include independent contractors engaged by the Contractor solely in a staff augmentation role.

Unauthorized Removal - the Contractor's removal of Key Personnel without the prior written consent of the State.

Article 1 – Statement of Work

1.1 Project Identification – Deleted, Not Applicable

1.1.1 Project Request

This is an optional use contract for Air Compressors.

1.1.2 Background – Deleted, Not Applicable

1.2 Scope of Work and Deliverable(s)

1.2.1 In Scope

This optional use Contract is for the delivery of Air Compressors to include customization needed for full operation. The Air Compressors shall be of heavy duty construction and built in accordance with all Federal Motor Vehicle Safety Standards (FMVSS), Occupational Safety Health Administration (OSHA), Michigan Occupational Safety Health Administration (MIOSHA), American National Standard Institution (ANSI), State, and Federal standards where applicable. The Air Compressors shall be the newest models in current production satisfactory to meet the performance and design characteristics as requested.

The State reserves the right to modify this Contract to include new models and services that best meet the State's needs, or extended purchasing members.

Contract may serve State, MIDEAL members or other states and their political subdivisions

1.2.2 Deliverable(s)

The Contractor shall provide descriptive product literature for each Air Compressor and any other equipment quoted on Attachment B, Price Proposal.

The Contractor shall provide their entire product catalog with sale price for each line item and a percentage discount off of the published Manufacture Suggested Retail Price (MSRP), Attachment C, Item /Equipment Catalog. Use the format as shown in the attachment.

At time of delivery, Contractor shall furnish two (2) sets per unit of operating, maintenance, and parts manuals.

1.2.3 Quantity

The State is not obligated to purchase in any specific quantity.

1.2.4 Ordering

Prior to issued purchase order, the Contractor will provide availability of requested specifications and or custom fabrications, options and costs, to the Ordering Entity.

If the listed specifications and or custom fabrication requirements are not available from the manufacturer at time of submitted purchase order, the Contractor will inform the Ordering Entity and make the appropriate recommended substitutions as a listed deviation.
After the Ordering Entity approves the recommended substitution, in writing, the Contractor will complete the approved substitutions, prior to delivery.

The Contractor is not authorized to begin work on any requested Deliverable until receipt of a purchase order, approved, in writing, by the Ordering Entity.

1.2.5 Alternate Bid – Deleted, Not Applicable

1.3 Management and Staffing

1.3.1 Project Management – Deleted, Not Applicable

1.3.2 Reports

The Contractor must submit reports of purchasing activities to DTMB, Procurement on a quarterly basis. Reports shall include, at a minimum:

(a) A listing of products sold, product description, quantity, total cost of purchase and administrative fees.
(b) The State reserves the right to request additional reports at no charge.

1.3.3 Staff, Duties, and Responsibilities

The Contractor shall supply Personnel name, title, address, phone number and email assigned during contract performance. (i.e. Account Manager, Quality Manager and Warranty Manager).

1.3.4 Meetings

The Contractor must attend the following meetings:

A. Preconstruction

A meeting may be required before the purchase order is created to determine availability of standard features, options and costs.

B. Progress Schedule

Within 30 days of the purchase order date the Contractor will be required to attending meetings at the locations designated by the Ordering Entity to provide a written progress schedule and completion date for the work and to review terms and requirements of the order.

C. The State may request other meetings as it deems appropriate.

1.3.5 Place of Performance

The Contractor must list the location of all facilities that will be involved in performing the Contract, including the city and state of any call centers:

Full address of place of performance	**Owner/operator of facility to be used**	**Percent (%) of Contract value to be performed at listed location**
13133 Cloverdale Ave	Cloverdale Equipment	100%

1.3.6 Reserved

1.3.7 Binding Commitments – Deleted, Not Applicable

1.3.8 Training

After the equipment has been delivered and meets the listed acceptance criteria (see Section 1.4.7) the Contractor will be contacted to provide six hours of mechanics and operators training to no less than six (6) State personnel.

Training will take place at the ship to address as listed on the purchase order.

1.3.9 Security – Deleted, Not Applicable

1.4 Delivery and Acceptance

1.4.1 Time Frames

All Deliverable(s) must be delivered within 120 Days after receipt of order. The receipt of order date is governed in the same manner as notices sent under Section 2.3.6, Notices.

1.4.2 Minimum Order

The State's requested minimum order is one.

1.4.3 Packaging – Deleted, Not Applicable

1.4.4 Palletizing – Deleted, Not Applicable

1.4.5 Delivery Term

Unless specified otherwise below, delivery is governed by Section 2.8.2, Delivery Responsibilities.

The Contractor must quote prices "F.O.B. Destination, within Government Premises" with transportation charges prepaid on all orders that meet the minimum order requirement specified in Section 1.4.2, Minimum Order.

A. Delivery

Delivery shall be to the Ordering Entity ship to address as listed on the purchase order.

The Contractor shall contact the Ordering Entity 48 hours in advance to schedule delivery.

Delivery must be made between the hours of 8:00 a.m. and 2:30 p.m., Monday through Friday ONLY, excluding Holidays.

1.4.6 Acceptance Process

The acceptance process is defined in Section 2.8.4, Acceptance of Deliverable(s), unless otherwise defined in this section.

1.4.7 Criteria

The State will use the following criteria to determine acceptance of Deliverable(s):

A unit will be inspected by the Ordering Entity after delivery. The unit shall meet the requested specifications, to include custom fabrication as indicated on the purchase order.

Failure to complete requested specifications, including custom fabrication requirements and approved substitutions prior to delivery will be cause for non-acceptance by the Ordering Entity.

1.5 Proposal Pricing

1.5.1 Pricing

The Contractor will supply a price proposal on the attached sample specification in **Attachment B, Price Proposal.** The attached specification is representative of a sample purchase order to be submitted to the Contractor; it is not to be considered all inclusive.

The Contractor shall provide their entire product catalog with sale price for each line item and a percentage discount off of the published Manufacture Suggested Retail Price (MSRP), Attachment C, Item/Equipment Catalog.

1.5.2 Quick Payment Terms

The Contractor is encouraged to offer quick payment terms. The number of days must not include processing time for payment to be received by the Contractor's financial institution.

1.5.3 Price Term

Prices in **Attachment B** are firm with prospective renegotiation at an agreed upon time. The criteria for a re-determination of pricing are under Section 2.3.5, Price Changes.

1.5.4 Tax Excluded from Price

(a) Sales Tax: The State is exempt from sales tax for direct purchases. The Bidder's prices must not include sales tax. DTMB-Procurement will furnish exemption certificates for sales tax upon request.

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

1.5.5 Invoices

The Bidder must provide a invoice that, at a minimum, includes:

(a) Date
(b) PO #
(c) Quantity
(d) Deliverable
(e) Unit Price
(f) Shipping Cost (if any)
(g) Total Price

A. Late Delivery

The Contractor acknowledges that late or improper completion of the Deliverable(s) will cause loss and damage to the Ordering Entity, and that it would be impracticable and extremely difficult to determine the actual damage sustained by the Ordering Entity as a result. If there is late or improper completion of the Deliverable(s), the Ordering Entity is entitled to collect in the amount of $2/10^{th}$ of 1% of the Purchase Order for each day the Contractor fails to remedy the late or improper completion of the Deliverable(s). In the event the Ordering Entity terminates the Contract under Section 2.16, Termination by the Ordering Entity, the Ordering Entity will be entitled to collect until the date of termination.

1.6 Commodity Requirements

1.6.1 Customer Service

The Contractor must be able to receive orders by any of the following methods: electronically, facsimile transmission, or by written order. The Contractor must have internal controls to: (a) ensure that only authorized individuals place orders; and (b) verify any orders that appear to be abnormal or excessive.

The Contractor must have: (a) one or more knowledgeable individual(s) specifically assigned to State of Michigan accounts that will respond to State agency inquiries promptly; and (b) a statewide toll-free number for customer service calls, specifying number and hours.

1.6.2 Reserved

1.6.3 Quality Assurance Program

The Contractor should have a Quality Assurance Program(s), to include notification process for any recalls.

1.6.4 Warranty for Deliverable(s)

The unit shall be warranted for defects for a minimum of one year from the in-service date. The manufacturer's standard warranty shall apply if it is longer the one year.

1.6.5 Special Incentives

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

Bidder Response:

1.6.6 Energy Efficiency

The State prefers to purchase energy-efficient products, including "Energy Star" certified products.

1.6.7 Environmental Requirements

The State prefers to purchase products that impact the environment less than competing products. Environmental components that may be considered include: recycled content, recyclability, and the presence of undesirable materials in the products, especially persistent, bioaccumulative, and toxic chemicals.

1.6.8 Recycled Content and Recyclability

(a) **Deliverable(s)**. Without compromising performance or quality, the State prefers Deliverable(s) containing higher percentages of recycled materials.

(b) **Packaging**. The State prefers packaging materials that:

(i) are made from recycled content that meets or exceeds all federal and state recycled content guidelines (currently 35% post-consumer for all corrugated cardboard);

(ii) minimize or eliminate the use of polystyrene and other difficult to recycle materials;

(iii) minimize or eliminate the use of packaging and containers or, in the alternative, minimize or eliminate the use of non-recyclable packaging and containers;

(iv) provide for a return program where packaging can be returned to a specific location for recycling; and

(v) contain materials that are easily recyclable in Michigan.

1.6.9 Materials Identification and Tracking

(a) **Hazardous Chemical Identification**. The Bidder must list any hazardous chemical, as defined in 40 CFR §370.2, to be delivered. Each hazardous chemical must be properly identified, including any applicable identification number, such as a National Stock Number or Special Item Number. Material Safety Data Sheets must be submitted in accordance with the federal Emergency Planning and Community Right-to-Know Act, 42 USC 11001 *et seq.*, as amended. This list must be updated whenever any other chemical to be delivered is hazardous.

Chemical (if none, enter 'None')	Identification Number

(b) **Mercury Content**. Under MCL 18.1261d, the Bidder must offer mercury-free products whenever possible. The Bidder must explain if it intends to provide products containing mercury and whether cost competitive alternatives exist. If cost competitive alternatives do not exist, the Bidder must disclose the amount or concentration of mercury and justification as to why this particular product is essential. All products containing mercury must be labeled as containing mercury.

(c) **Brominated Flame Retardants**. The State prefers to purchase products that do not contain brominated flame retardants (BFRs) whenever possible.

(d) **Environmental Permits and Requirements**. The Bidder must disclose whether any of its facilities are in violation of any environmental laws. The Bidder must immediately notify DTMB-Procurement of the receipt of any EPA, State, or local agency communication indicating that any of the Bidder's facilities are in violation of applicable environmental laws.

1.7 Reserved

Article 2 – Terms and Conditions

2.1 Contract Term

2.1.1 Contract Term

The Contract term begins September 13, 2013 and expires, September 12, 2016. All outstanding Purchase Orders will expire upon the termination of the Contract for any of the reasons listed in Section 2.16, Termination by the State, unless otherwise agreed to in writing by DTMB-Procurement. Absent an early termination, Purchase Orders issued, but not expired, by the end of the Contract's term will remain in effect until the next September 30.

2.1.2 Options to Renew

This Contract may be renewed for up to two additional one year period(s). Renewal must be by mutual written agreement of the parties, not less than 30 days before expiration of the Contract. The State reserves the right to exercise more than one option year at a time.

2.2 Payments and Taxes

2.2.1 Fixed Prices for Deliverable(s)

Prices are fixed for all Deliverable(s) and for all of the associated payment milestones and amounts.

2.2.2 Payment Deadlines

Undisputed invoices will be due and payable by the State, in accordance with the State's standard payment procedure as specified in 1984 PA 279, MCL 17.51 *et seq.*, within 45 days after receipt.

2.2.3 Invoicing and Payment – In General [Deleted, Not Applicable]

2.2.4 Pro-ration [Deleted, Not Applicable]

2.2.5 Final Payment and Waivers

The Contractor's acceptance of final payment by the State constitutes a waiver of all claims by the Contractor against the State for payment under this Contract, other than those claims previously filed in writing on a timely basis and still disputed. For other claims, final payment by the State will not constitute a waiver by either party of any rights as to the other party's continuing obligations, nor will it constitute a waiver of any claims under this Contract, including claims for Deliverable(s) not reasonably known to be defective or substandard.

2.2.6 Electronic Payment Requirement

As required by MCL 18.1283a, the Contractor must electronically register with the State at http://www.michigan.gov/cpexpress to receive electronic fund transfer (EFT) payments.

2.2.7 Employment Taxes

The Contractor must collect and pay all applicable federal, state, and local employment taxes.

2.2.8 Sales and Use Taxes

The Contractor must register and remit sales and use taxes on taxable sales of tangible personal property or services delivered into the State. If the Contractor lacks sufficient presence in Michigan to be required to register and pay taxes, it must do so on a voluntary basis. The requirement to register and remit sales and use taxes extends to (a) all members of a "controlled group of corporations" as defined in § 1563(a) of the Internal Revenue Code, 26 USC 1563(a), and applicable regulations; and (b) all organizations under common control that make sales at retail for delivery into the State. Any United States Department of Treasury regulation that references "two or more trades or businesses under common control" includes organizations such as sole proprietorships, partnerships (as defined in § 7701(a)(2) of the Internal Revenue Code, 26 USC 7701(a)(2)), trusts, estates, corporations, or limited liability companies.

2.3 Contract Administration

2.3.1 Issuing Office

This Contract is issued by DTMB-Procurement on behalf of Michigan Department of Transportation, Office of Operations, Fleet Administration. **DTMB-Procurement is the only entity authorized to modify the terms and conditions of this Contract, including the prices and specifications.** The Contract Administrator within DTMB-Procurement for this Contract is:

Jim Wilson
Procurement
Department of Technology, Management and Budget
Mason Bldg, 2nd Floor
PO Box 30026
Lansing, MI 48909
Phone: 517-241-1916
Email: wilsonj4@michigan.gov

2.3.2 Contract Compliance Inspector

The Contract Compliance Inspector, named below, will monitor and coordinate Contract activities on a day-to-day basis. However, monitoring of this Contract implies **no authority to modify the terms and conditions of this Contract, including the prices and specifications.**

Dan Smith
Michigan Department of Transportation
2522 West Main Street, Lansing Mi. 48917
Smithd4@michigan.gov
Office phone 517-334-7767
Office Fax 517-334-7840

2.3.3 Project Manager

The Project Manager, named below, will oversee the project. However, management of the project implies **no authority to modify the terms and conditions of this Contract, including the prices and specifications.**

Dan Smith
Michigan Department of Transportation
2522 West Main Street, Lansing Mi. 48917
Smithd4@michigan.gov
Office phone 517-334-7767
Office Fax 517-334-7840

2.3.4 Contract Changes

(a) If the State requests or directs the Contractor to provide any Deliverable(s) that the Contractor believes are outside the scope of the Contractor's responsibilities under the Contract, the Contractor must notify the State before performing the requested activities. If the Contractor fails to notify the State, any activities performed will be considered in-scope and not entitled to additional compensation or time. If the Contractor begins work outside the scope of the Contract and then ceases performing that work, the Contractor must, at the request of the State, retract any out-of-scope work that would adversely affect the Contract.

(b) The State or the Contractor may propose changes to the Contract. If the Contractor or the State requests a change to the Deliverable(s) or if the State requests additional Deliverable(s), the Contractor must provide a detailed outline of all work to be done, including tasks, timeframes, listing of key personnel assigned, estimated hours for each individual per Deliverable, and a complete and detailed cost justification. If the parties agree on the proposed change, DTMB-Procurement will prepare and issue a notice that describes the change, its effects on the Deliverable(s), and any affected components of the Contract (Contract Change Notice).

(c) No proposed change may be performed until DTMB-Procurement issues a duly executed Contract Change Notice for the proposed change.

2.3.5 Price Changes

If allowed by Section 1.5.3, Price Term, the State and the Contractor will complete a pricing review (Review) every 365 days following the Effective Date, to allow for changes based on actual costs incurred. Requested changes may include increases or decreases in price and must be accompanied by supporting information indicating market support of proposed modifications (such as the CPI and PPI, US City Average, as published by the US Department of Labor, Bureau of Labor Statistics).

(a) The State may request a Review upon 30 days written notice that specifies what Deliverable is being reviewed. At the Review, each party may present supporting information including information created by, presented, or received from third parties.

(b) Following the presentation of supporting information, both parties will have 30 days to review the supporting information and prepare any written response.

(c) In the event the Review reveals no need for modifications of any type, pricing will remain unchanged unless mutually agreed to by the parties. However, if the Review reveals that changes may be recommended, both parties will negotiate in good faith for 30 days unless extended by mutual agreement of the parties.

(d) If the supporting information reveals a reduction in prices is necessary and Contractor agrees to reduce rates accordingly, then the State may elect to exercise the next one year option, if available.

(e) If the supporting information reveals a reduction in prices is necessary and the parties are unable to reach agreement, then the State may eliminate all remaining Contract renewal options.

(f) Any changes based on the Review must be implemented through the issuance of a Contract Change Notice.

2.3.6 Notices

All notices and other communications required or permitted under this Contract must be in writing and will be considered given when delivered personally, by fax (if provided) or by e-mail (if provided), or by registered mail, return receipt requested, addressed as follows (or any other address that is specified in writing by either party):

If to State:

State of Michigan
DTMB-Procurement
Attention: Jim Wilson
PO Box 30026
530 West Allegan
Lansing, MI 48909
Wilsonj4@michigan.gov
Phone 517-241-1916

If to Contractor:
Cloverdale Equipment
13133 Cloverdale Ave
Oak Park, MI 48237
toddm@cloverdale-equip.com
888-891-1162

Delivery by a nationally recognized overnight express courier will be treated as personal delivery.

2.3.7 Covenant of Good Faith

Each party must act reasonably and in good faith. Unless otherwise provided in this Contract, the parties will not unreasonably delay, condition or withhold their consent, decision, or approval any time it is requested or reasonably required in order for the other party to perform its responsibilities under the Contract.

2.3.8 Assignments

(a) Neither party may assign this Contract, or assign or delegate any of its duties or obligations under the Contract, to another party (whether by operation of law or otherwise), without the prior approval of the other party. The State may, however, assign this Contract to any other State agency, department, or division without the prior approval of the Contractor.

(b) If the Contractor intends to assign this Contract or any of the Contractor's rights or duties under the Contract, the Contractor must notify the State and provide adequate information about the assignee at least 90 days before the proposed assignment or as otherwise provided by law or court order. The State may withhold approval from proposed assignments, subcontracts, or novations if the State determines, in its sole discretion, that the transfer of responsibility would decrease the State's likelihood of receiving performance on the Contract or the State's ability to recover damages.

(c) If the State permits an assignment of the Contractor's right to receive payments, the Contractor is not relieved of its responsibility to perform any of its contractual duties. All payments must continue to be made to one entity.

2.3.9 Equipment

The State will not provide equipment and resources unless specifically identified in the Statement(s) of Work or other Contract exhibits.

2.3.10 Facilities [Deleted, Not Applicable]

2.4 Contract Management

2.4.1 Contractor Personnel Qualifications

All persons assigned by the Contractor to perform work must be employees of the Contractor or its majority-owned subsidiaries, or a State-approved Subcontractor, and must be fully qualified to perform the work assigned to them. The Contractor must include this requirement in any subcontract.

2.4.2 Contractor Key Personnel- [Deleted, Not Applicable]

2.4.3 Removal or Reassignment of Personnel at the State's Request

The State may require the Contractor to remove or reassign personnel if the State has legitimate, good-faith reasons articulated in a notice to the Contractor. Replacement personnel must be fully qualified for the position. If the State exercises this right, and the Contractor cannot immediately replace the removed personnel, the State agrees to an equitable adjustment in schedule or other terms that may be affected.

2.4.4 Contractor Personnel Location – Deleted, Not Applicable

Subject to availability, the State may allow selected Contractor personnel to use State office space.

2.4.5 Contractor Identification

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

2.4.6 Cooperation with Third Parties

The Contractor and its Subcontractors must cooperate with the State and its agents and other contractors, including the State's quality assurance personnel. The Contractor must provide reasonable access to its personnel, systems, and facilities related to the Contract to the extent that access will not interfere with or jeopardize the safety or operation of the systems or facilities.

2.4.7 Relationship of the Parties

The relationship between the State and Contractor is that of client and independent contractor. No agent, employee, or servant of the Contractor, or any of its subcontractors, is an employee, agent or servant of the State. 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 the Contract.

2.4.8 Contractor Return of State Equipment/Resources

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

2.4.9 Background Checks

The State may investigate the Contractor's personnel before granting access to State facilities and systems. The scope of the background check is at the discretion of the State and the results will be used to determine eligibility for working within State facilities and systems. The investigations will include a Michigan State Police background check (ICHAT) and may include a Criminal Justice Information Services (CJIS) fingerprint check. Proposed Contractor personnel may be required to complete and submit an RI-8 Fingerprint Card for the CJIS fingerprint check.

2.4.10 Compliance With State Policies – Deleted, Not Applicable

2.5 Subcontracting by Contractor

2.5.1 Contractor Responsible

The Contractor is responsible for the completion of all Deliverable(s). The State will consider the Contractor to be the sole point of contact with regard to all contractual matters, including payment of any charges for Deliverable(s). The Contractor must make all payments to its Subcontractors or suppliers. Except as otherwise agreed in writing, the State is not obligated to make payments for the Deliverable(s) to any party other than the Contractor.

2.5.2 State Approval of Subcontractor

(a) The Contractor may not delegate any duties under this Contract to a Subcontractor unless DTMB-Procurement gives prior approval to the delegation. Attached as **Exhibit A** is a list of the Subcontractors, if any, approved by the State as of the Effective Date. The State is entitled to receive copies of and review all subcontracts. The Contractor may delete or redact any proprietary information before providing it to the State.

(b) The State may require the Contractor to terminate and replace any Subcontractor the State reasonably finds unacceptable. The required replacement of a Subcontractor must be written and contain reasonable detail outlining the State's reasons. If the State exercises this right, and the Contractor cannot immediately replace the Subcontractor, the State will agree to an equitable adjustment in the schedule or other terms that may be affected by the State's required replacement. If this requirement results in a delay, the delay will not be counted against any applicable Service Level Agreement (SLA).

2.5.3 Subcontract Requirements

Except where specifically approved by the State, Contractor must include the obligations in Sections 2.24.2, Media Releases, 2.4, Contract Management, 2.11, Confidentiality, 2.12, Records and Inspections, 2.13, Warranties, 2.14, Insurance, and 2.23, Laws, in all of its agreements with Subcontractors.

2.5.4 Competitive Selection

Contractor must select Subcontractors (including suppliers) on a competitive basis to the maximum practical extent consistent with the objectives and requirements of this Contract.

2.6 Administrative Fee and Reporting

2.6.1 Administrative Fee and Reporting

The Contractor must remit an administrative fee of 1% on all payments remitted to Contractor under the Contract including transactions with the State (including its departments, divisions, agencies, offices, and commissions), MiDEAL members, and other states (including governmental subdivisions and authorized entities). Contractor must submit an itemized purchasing activity report, which includes at a minimum, the name of the purchasing entity and the total dollar volume in sales.

Itemized purchasing activity reports should be mailed to DTMB-Procurement and the administrative fee payments shall be made by check payable to the State of Michigan and mailed to:

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

The administrative fee and purchasing activity report are due within 30 calendar days from the last day of each quarter.

2.7 Performance

2.7.1 Time of Performance

(a) The Contractor must immediately notify the State upon becoming aware of any circumstances that may reasonably be expected to jeopardize the completion of any Deliverable(s) by the scheduled due dates in the latest State-approved delivery schedule and must inform the State of the projected actual delivery date.

(b) If the Contractor believes that a delay in performance by the State has caused or will cause the Contractor to be unable to perform its obligations according to specified Contract time periods, the Contractor must immediately notify the State and, to the extent practicable, continue to perform its obligations according to the Contract time periods. The Contractor will not be in default for a delay in performance to the extent the delay is caused by the State.

2.7.2 Service Level Agreements [Deleted, Not Applicable]

2.7.3 Liquidated Damages

It is acknowledged that an Unauthorized Removal of Key Personnel will interfere with the timely and proper completion of the Contract, to the loss and damage of the State, and that it would be impracticable and extremely difficult to fix the actual damage sustained by the State as a result of any Unauthorized Removal. Therefore, Contractor and the State agree that in the case of any Unauthorized Removal in respect of which the State does not elect to exercise its rights under Section 2.152, the State may assess liquidated damages against Contractor as specified below.

For the Unauthorized Removal of any Key Personnel designated in the applicable Statement of Work, the liquidated damages amount is $25,000.00 per individual if the Contractor identifies a replacement approved by the State under Section 2.060 and assigns the replacement to the Project to shadow the Key Personnel who is leaving for a period of at least 30 days before the Key Personnel's removal.

If Contractor fails to assign a replacement to shadow the removed Key Personnel for at least 30 days, in addition to the $25,000.00 liquidated damages for an Unauthorized Removal, Contractor must pay the amount of $833.33 per day for each day of the 30 day shadow period that the replacement Key Personnel does not shadow the removed Key Personnel, up to $25,000.00 maximum per individual. The total liquidated damages that may be assessed per Unauthorized Removal and failure to provide 30 days of shadowing must not exceed $50,000.00 per individual.

2.7.4 Excusable Failure

Neither party will be liable for any default, damage or delay in the performance of its obligations that is caused by government regulations or requirements, power failure, electrical surges or current fluctuations, war, forces of nature or acts of God, delays or failures of transportation, equipment shortages, suppliers' failures, acts or omissions of common carriers, fire, riots, civil disorders, labor disputes, embargoes, injunctions (provided the injunction was not issued as a result of any fault or negligence of the party seeking to have its default or delay excused), or any other cause beyond the reasonable control of a party; provided the non-performing party and any Subcontractors are without fault in causing the default or delay, and the default or delay could not have been prevented by reasonable precautions and cannot reasonably

be circumvented by the non-performing party through the use of alternate sources, workaround plans, or other means, including disaster recovery plans.

If a party does not perform its contractual obligations for any of the reasons listed, the non-performing party will be excused from any further performance of its affected obligation(s) for as long as the circumstances prevail. The non-performing party must promptly notify the other party immediately after the excusable failure occurs, and when it abates or ends. Both parties must use commercially reasonable efforts to resume performance.

If any of the reasons listed substantially prevent, hinder, or delay the Contractor's performance of the Deliverable(s) for more than 10 Days, and the State reasonably determines that performance is not likely to be resumed within a period of time that is satisfactory to the State, the State may: (a) procure the affected Deliverable(s) from an alternate source without liability for payment so long as the delay in performance continues; or (b) terminate any portion of the Contract so affected and equitably adjust charges payable to the Contractor to reflect those Deliverable(s) that are terminated. The State must pay for all Deliverable(s) for which Final Acceptance has been granted before the termination date.

The Contractor will not have the right to any additional payments from the State as a result of any Excusable Failure or to payments for Deliverable(s) not provided as a result of the Excusable Failure. The Contractor will not be relieved of a default or delay caused by acts or omissions of its Subcontractors except to the extent that a Subcontractor experiences an Excusable Failure 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, including disaster recovery plans.

2.8 Acceptance of Deliverable(s)

2.8.1 Quality Assurance

By tendering any Deliverable to the State, the Contractor certifies to the State that (a) it has performed reasonable quality assurance activities; (b) it has performed any reasonable testing; and (c) it has corrected all material deficiencies discovered during the quality assurance activities and testing. To the extent that testing occurs at State Locations, the State is entitled to observe and otherwise participate in the testing.

2.8.2 Delivery Responsibilities

Unless otherwise specified by the State in Section 1.4.5, Delivery Term, the following are applicable to all deliveries:

(a) The Contractor is responsible for delivering the Deliverable(s) by the applicable delivery date to the location(s) specified in the SOW or individual Purchase Order.

(b) The Contractor must ship the Deliverable(s) "F.O.B. Destination, within Government Premises."

(c) The State will examine all packages at the time of delivery. The quantity of packages delivered must be recorded and any obvious visible or suspected damage must be noted at the time of delivery using the shipper's delivery document(s) and appropriate procedures to record the damage.

2.8.3 Process for Acceptance of Deliverable(s)

The State's review period for acceptance of the Deliverable(s) is governed by the applicable Statement of Work, and if the Statement of Work does not specify the State's review period, it is by default 30 Days for a Deliverable (State Review Period). The State will notify the Contractor by the end of the State Review Period that either:

(a) the Deliverable is accepted in the form delivered by the Contractor;

(b) the Deliverable is accepted, but noted deficiencies must be corrected; or

(c) the Deliverable is rejected along with notation of any deficiencies that must be corrected before acceptance of the Deliverable.

If the State delivers to the Contractor a notice of deficiencies, the Contractor will correct the described deficiencies and within 30 Days resubmit the Deliverable(s) with an explanation that demonstrates all corrections have been made to the original Deliverable(s). The Contractor's correction efforts will be made at no additional charge. Upon receipt of a corrected Deliverable from the Contractor, the State will have a reasonable additional period of time, not to exceed 30 Days, to accept the corrected Deliverable.

2.8.4 Acceptance of Deliverable(s)

(a) The State's obligation to comply with any State Review Period is conditioned on the timely delivery of the Deliverable(s). The State Review Period will begin on the first Business Day following the State's receipt of the Deliverable(s).

(b) The State may inspect the Deliverable to confirm that all components have been delivered without material deficiencies. If the State determines that the Deliverable or one of its components has material deficiencies, the State may reject the Deliverable without performing any further inspection or testing.

(c) The State will only approve a Deliverable after confirming that it conforms to and performs according to its specifications without material deficiency. The State may, in its discretion, conditionally approve a Deliverable that contains material deficiencies if the State elects to permit the Contractor to correct those deficiencies post-approval. The Contractor remains responsible for working diligently to correct, within a reasonable time at the Contractor's expense, all deficiencies in the Deliverable that remain outstanding at the time of State approval.

(d) If, after three opportunities the Contractor is unable to correct all deficiencies, the State may: (i) demand that the Contractor cure the failure and give the Contractor additional time to do so at the sole expense of the Contractor; (ii) keep the Contract in force and perform, either itself or through other parties, whatever the Contractor has failed to do, and recover the difference between the cost to cure the deficiency and the Contract price plus an additional amount equal to 10% of the State's cost to cure the deficiency; or (iii) fully or partially terminate the Contract for default by giving notice to the Contractor. Notwithstanding the foregoing, the State cannot use, as a basis for exercising its termination rights under this Section, deficiencies discovered in a repeat State Review Period that could reasonably have been discovered during a prior State Review Period.

(e) The State, at any time and in its reasonable discretion, may reject the Deliverable without notation of all deficiencies if the acceptance process reveals deficiencies in a sufficient quantity or of a sufficient severity that renders continuing the process unproductive or unworkable.

2.8.5 Process for Approval of Written Deliverable(s) Deleted, Not Applicable

2.8.6 Process for Approval of Services

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

2.8.7 Final Acceptance

Unless otherwise stated in the Statement of Work, "Final Acceptance" of a Deliverable occurs when that Deliverable has been accepted by the State following the applicable State Review Period.

2.9 Ownership [Deleted, Not Applicable]

2.10 State Standards

2.10.1 Electronic Receipt Processing Standard

All electronic commerce applications that allow for electronic receipt of credit/debit card and electronic check (ACH) transactions must be processed via the Centralized Electronic Payment Authorization System (CEPAS).

2.11 Confidentiality

2.11.1 Confidential Information

As used in this Section, "Confidential Information" means all information of the parties, except information that is:

(a) disclosable under the Michigan Freedom Of Information Act (FOIA);
(b) now available or becomes available to the public without breach of this Contract;
(c) released in writing by the disclosing party;
(d) obtained from a third party or parties having no obligation of confidentiality with respect to such information;
(e) publicly disclosed pursuant to federal or state law; or
(f) independently developed by the receiving party without reference to Confidential Information of the furnishing party.

2.11.2 Protection and Destruction of Confidential Information

(a) Each party must use the same care to prevent unauthorized disclosure of Confidential Information as it uses to prevent disclosure of its own information of a similar nature, but in no event less than a reasonable degree of care. Neither the Contractor nor the State will: (i) make any use of the Confidential Information of the other except as contemplated by this Contract; (ii) acquire any interest or license in or assert any lien against the Confidential Information of the other; or (iii) if requested to do so, refuse for any reason to promptly return the other party's Confidential Information.

(b) Each party will limit disclosure of the other party's Confidential Information to employees, agents, and Subcontractors who must have access to fulfill the purposes of this Contract. Disclosure to, and use by, a Subcontractor is permissible where: (i) use of a Subcontractor is authorized under this Contract; (ii) the disclosure is necessary or otherwise naturally occurs in connection with work that is within the Subcontractor's scope of responsibility; and (iii) Contractor obligates the Subcontractor in a written contract to maintain the State's Confidential Information in confidence. At the State's request, any employee of Contractor and of any Subcontractor having access to the State's Confidential Information may be required to execute a separate agreement to be bound by the confidentiality requirements of this Section.

(c) Upon termination of the Contract, Contractor must promptly return the State's Confidential Information or certify to the State that Contractor has destroyed all of the State's Confidential Information.

2.11.3 Exclusions

The provisions of Section 2.11, Confidentiality, will not apply where the receiving party is required by law to disclose the other party's Confidential Information, provided that the receiving party: (i) promptly provides the furnishing party with notice of the legal request; and (ii) assists the furnishing party in resisting or limiting the scope of the disclosure as reasonably requested by the furnishing party.

2.11.4 No Obligation to Disclose

Nothing contained in Section 2.11, Confidentiality, will be construed as obligating a party to disclose any particular Confidential Information to the other party.

2.11.5 Security Breach Notification

If Contractor breaches this Section, it must (i) promptly cure any deficiencies in Contractor's internal security controls; and (ii) comply with any applicable federal and state laws and regulations pertaining to unauthorized disclosures. Contractor and the State will cooperate to mitigate, to the extent practicable, the effects of any breach, intrusion, or unauthorized access, use, or disclosure. Contractor must notify the State of any unauthorized use or disclosure of Confidential Information, whether suspected or actual, within 10 days of becoming aware of the use or disclosure or a shorter time period as is reasonable under the circumstances. The State may require Contractor to purchase credit monitoring services for any individuals affected by the breach.

2.12 Records and Inspections

2.12.1 Inspection of Work Performed

The State's authorized representatives, at reasonable times and with 10 days prior notice, have the right to enter the Contractor's premises or any other places where work is being performed in relation to this Contract. The representatives may inspect, monitor, or evaluate the work being performed, to the extent the access will not reasonably interfere with or jeopardize the safety or operation of Contractor's systems or facilities. The Contractor must provide reasonable assistance for the State's representatives during inspections.

2.12.2 Retention of Records

(a) The Contractor must retain all financial and accounting records related to this Contract for a period of seven years after the Contractor performs any work under this Contract (Audit Period).

(b) If an audit, litigation, or other action involving the Contractor's records is initiated before the end of the Audit Period, the Contractor must retain the records until all issues arising out of the audit, litigation, or other action are resolved or until the end of the Audit Period, whichever is later.

2.12.3 Examination of Records

The State, upon 10 days notice to the Contractor, may examine and copy any of the Contractor's records that relate to this Contract. The State does not have the right to review any information deemed confidential by the Contractor if access would require the information to become publicly available. This requirement also applies to the records of any parent, affiliate, or subsidiary organization of the Contractor, or any Subcontractor that performs services in connection with this Contract.

2.12.4 Audit Resolution

If necessary, the Contractor and the State will meet to review any audit report promptly after its issuance. The Contractor must respond to each report in writing within 30 days after receiving the report, unless the report specifies a shorter response time. The Contractor and the State must develop, agree upon, and monitor an action plan to promptly address and resolve any deficiencies, concerns, or recommendations in the report.

2.12.5 Errors

(a) If an audit reveals any financial errors in the records provided to the State, the amount in error must be reflected as a credit or debit on the next invoice and subsequent invoices until the amount is paid or refunded in full. However, a credit or debit may not be carried forward for more than four invoices or beyond the termination of the Contract. If a balance remains after four invoices, the remaining amount will be due as a payment or refund within 45 days of the last invoice on which the balance appeared or upon termination of the Contract, whichever is earlier.

(b) In addition to other available remedies, if the difference between the State's actual payment and the correct invoice amount, as determined by an audit, is greater than 10%, the Contractor must pay all reasonable audit costs.

2.13 Warranties

2.13.1 Warranties and Representations

The Contractor represents and warrants:

(a) It is capable of fulfilling and will fulfill all of its obligations under this Contract. The performance of all obligations under this Contract must be provided in a timely, professional, and workmanlike manner and must meet the performance and operational standards required under this Contract.

(b) The Contract appendices, attachments, and exhibits identify the equipment, software, and services necessary for the Deliverable(s) to comply with the Contract's requirements.

(c) It is the lawful owner or licensee of any Deliverable licensed or sold to the State by Contractor or developed by the Contractor for this Contract, and Contractor has all of the rights necessary to convey to the State the ownership rights or licensed use, as applicable, of any Deliverable(s). None of the Deliverable(s) provided by Contractor to the State, nor their use by the State, will infringe the patent, trademark, copyright, trade secret, or other proprietary rights of any third party.

(d) If the Contractor procures any equipment, software, or other Deliverable(s) for the State (including equipment, software, and other Deliverable(s) manufactured, re-marketed or otherwise sold by the Contractor or under the Contractor's name), then the Contractor must assign or otherwise transfer to the State or its designees, or afford the State the benefits of, any manufacturer's warranty for the Deliverable(s).

(e) The Contract signatory has the authority to enter into this Contract on behalf of the Contractor.

(f) It is qualified and registered to transact business in all locations where required.

(g) Neither the Contractor nor any affiliates, nor any employee of either, has, will have, or will acquire, any interest that would conflict in any manner with the Contractor's performance of its duties and responsibilities to the State or otherwise create an appearance of impropriety with respect to the award or performance of this Contract. The Contractor must notify the State about the nature of any conflict or appearance of impropriety within two days of learning about it.

(h) Neither the Contractor nor any affiliates, nor any employee of either, has accepted or will accept anything of value based on an understanding that the actions of the Contractor, its affiliates, or its employees on behalf of the State would be influenced. The Contractor must not attempt to influence any State employee by the direct or indirect offer of anything of value.

(i) Neither the Contractor nor any affiliates, nor any employee of either, has paid or agreed to pay any person, other than bona fide employees and consultants working solely for the Contractor or the affiliate, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or making of this Contract.

(j) The Contractor arrived at its proposed prices independently, without communication or agreement with any other Bidder for the purpose of restricting competition. The Contractor did not knowingly disclose its quoted prices for this Contract to any other Bidder before the award of the Contract. The Contractor made no attempt to induce any other person or entity to submit or not submit a proposal for the purpose of restricting competition.

(k) All financial statements, reports, and other information furnished by the Contractor to the State in connection with the award of this Contract fairly and accurately represent the Contractor's business, properties, financial condition, and results of operations as of the respective dates covered by the financial statements, reports, or other information. There has been no material adverse change in the Contractor's business, properties, financial condition, or results of operation.

(l) All written information furnished to the State by or for the Contractor in connection with the award of this Contract is true, accurate, and complete, and contains no false statement of material fact nor omits any material fact that would make the submitted information misleading.

(m) It will immediately notify DTMB-Procurement if any of the certifications, representations, or disclosures made in the Contractor's original bid response change after the Contract is awarded.

2.13.2 Warranty of Merchantability

The Deliverable(s) provided by the Contractor must be merchantable.

2.13.3 Warranty of Fitness for a Particular Purpose

The Deliverable(s) provided by the Contractor must be fit for the purpose(s) identified in this Contract.

2.13.4 Warranty of Title

The Contractor must convey good title to any Deliverable(s) provided to the State. All Deliverable(s) provided by the Contractor must be delivered free from any security interest, lien, or encumbrance of which the State, at the time of contracting, has no knowledge. Deliverable(s) provided by the Contractor must be delivered free of any rightful claim of infringement by any third person.

2.13.5 Equipment Warranty

(a) The Contractor represents and warrants that the equipment/system(s) are in good operating condition and perform to the requirements contained in this Contract at the time of Final Acceptance, and for a period of one year following Final Acceptance.

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

(c) The Contractor must provide a toll-free telephone number for the State to report equipment failures and problems.

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

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

(f) The Contractor is the sole point of contact for warranty service.

(g) All warranty work must be performed at State locations.

2.13.6 New Deliverable(s)

The Contractor must provide new Deliverable(s) where the Contractor knows or has the ability to select between new or like-new Unless specified in Article 1, Statement of Work, equipment that is assembled from new or serviceable used parts that are like new in performance is acceptable only where the Contractor does not have knowledge or the ability to select one or the other.

2.13.7 Prohibited Products

Shipping of salvage, distressed, outdated, or discontinued goods to any State agency will be considered a material default by the Contractor. The brand and product number offered for all items will remain consistent for the term of the Contract, unless DTMB-Procurement has approved a change order under Section 2.3.4, Contract Changes.

2.13.8 Consequences For Breach

In addition to any remedies available in law, if the Contractor breaches any of the warranties contained in Section 2.13, Warranties, the breach may be considered a material default.

2.14 Insurance

2.14.1 Liability Insurance

For the purpose of this Section, "State" includes its departments, divisions, agencies, offices, commissions, officers, employees, and agents.

(a) The following apply to all insurance requirements:

(i) The State, in its sole discretion, may approve the use of a fully-funded self-insurance program in place of any specified insurance identified in this Section.

(ii) Where specific coverage limits are listed in this Section, they represent the minimum acceptable limits. If the Contractor's policy contains higher limits, the State is entitled to coverage to the extent of the higher limits. The minimum limits of coverage specified are not intended, and may not be construed to limit any liability or indemnity of the Contractor to any indemnified party or other persons.

(iii) If the Contractor fails to pay any premium for a required insurance policy, or if any insurer cancels or significantly reduces any required insurance without the State's approval, the State may, after giving the Contractor at least 30 days notice, pay the premium or procure similar insurance coverage from another company or companies. The State may deduct any part of the cost from any payment due the Contractor, or require the Contractor to pay that cost upon demand.

(iv) 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 Michigan Attorney General.

(b) The Contractor must:

(i) provide proof that it has obtained the minimum levels of insurance coverage indicated or required by law, whichever is greater. The insurance must protect the State from claims that are alleged or may arise or result from the Contractor's or a Subcontractor's performance, including any person directly or indirectly employed by the Contractor or a Subcontractor, or any person for whose acts the Contractor or a Subcontractor may be liable.
(ii) waive all rights against the State for the recovery of damages that are covered by the insurance policies the Contractor is required to maintain under this Section. The Contractor's failure to obtain and maintain the required insurance will not limit this waiver.
(iii) ensure that all insurance coverage provided relative to this Contract is primary and non-contributing to any comparable liability insurance (including self-insurance) carried by the State.
(iv) obtain insurance, unless the State approves otherwise, from any insurer that has an A.M. Best rating of "A" or better and a financial size of VII or better, or if those ratings are not available, a comparable rating from an insurance rating agency approved by the State. All policies of insurance must be issued by companies that have been approved to do business in the State.
(v) maintain all required insurance coverage throughout the term of this Contract and any extensions. However, in the case of claims-made Commercial General Liability policies, the Contractor must secure tail coverage for at least three years following the termination of this Contract.
(vi) pay all deductibles.
(vii) pay for and provide the type and amount of insurance checked ☑ below:

☑ **(A) Commercial General Liability Insurance**

Minimal Limits:

$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; and
$1,000,000 Each Occurrence Limit.

Deductible maximum:

$50,000 Each Occurrence

Additional Requirements:

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.

☑ **(B) Umbrella or Excess Liability Insurance**

Minimal Limits:

$14,000,000 General Aggregate

Additional Requirements:

Umbrella or Excess Liability limits must at least apply to the insurance required in (A), General Commercial Liability. The Contractor must list the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees, and agents as additional insureds on the certificate. The Contractor also agrees to provide evidence that insurance policies contain a waiver of subrogation by the insurance company.

☑ **(C) Motor Vehicle Insurance**

Minimal Limits:

If a motor vehicle is used in relation to the Contractor's performance, the Contractor must have vehicle liability insurance on the motor vehicle for bodily injury and property damage as required by law.

☐ **(D) Hired and Non-Owned Motor Vehicle Coverage**

Minimal Limits:

$1,000,000 Per Accident

Additional Requirements:

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 must also provide evidence that insurance policies contain a waiver of subrogation by the insurance company.

☑ **(E) Workers' Compensation Insurance**

Minimal Limits:

The Contractor must provide Workers' Compensation coverage according to applicable laws governing work activities in the state of the Contractor's domicile. If the applicable coverage is provided by a self-insurer, the Contractor must provide proof of an approved self-insured authority by the jurisdiction of domicile.

For employees working outside of the state of the Contractor's domicile, the Contractor must provide certificates of insurance proving mandated coverage levels for the jurisdictions where the employees' activities occur.

Additional Requirements:

The Contractor must provide the applicable certificates of insurance and a list of states where the coverage is applicable. Contractor must provide proof that the Workers' Compensation insurance policies contain a waiver of subrogation by the insurance company, except where such a provision is prohibited or limited by the laws of the jurisdiction in which the work is to be performed.

☑ **(F) Employers Liability Insurance**

Minimal Limits:

$100,000 Each Accident;
$100,000 Each Employee by Disease
$500,000 Aggregate Disease

Additional Requirements:

The Contractor must list the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees, and agents as additional insureds on the certificate.

2.14.2 Subcontractor Insurance Coverage

Except where the State has approved a subcontract with other insurance provisions, the Contractor must require any Subcontractor to purchase and maintain the insurance coverage required in Section 2.14.1, Liability Insurance. Alternatively, the Contractor may include a Subcontractor under the Contractor's insurance on the coverage required in that Section. The failure of a Subcontractor to comply with insurance requirements does not limit the Contractor's liability or responsibility.

2.14.3 Certificates of Insurance and Other Requirements

Before the Contract is signed, and not less than 20 days before the insurance expiration date every year thereafter, the Contractor must provide evidence that the State and its agents, officers, and employees are listed as additional insureds under each commercial general liability and commercial automobile liability policy. The Contractor must provide DTMB-Procurement with all applicable certificates of insurance verifying insurance coverage or providing satisfactory evidence of self-insurance as required in Section 2.14.1, Liability Insurance. Each certificate must be on the standard "accord" form or equivalent and MUST CONTAIN THE APPLICABLE CONTRACT OR PURCHASE ORDER NUMBER. Each certificate must be prepared and submitted by the insurer and must contain a provision indicating that the coverage afforded will not be cancelled, materially changed, or not renewed without 30 days prior notice, except for 10 days for nonpayment of premium, to the Director of DTMB-Procurement. The notice to the Director of DTMB-Procurement must include the applicable Contract or Purchase Order number.

2.15 Indemnification

2.15.1 General Indemnification

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

2.15.2 Code Indemnification [Deleted, Not Applicable]

2.15.3 Employee Indemnification

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

2.15.4 Patent/Copyright Infringement Indemnification

(a) The Contractor must indemnify and hold the State harmless from liability, including all claims and losses, and all related costs and expenses (including reasonable attorneys' fees and costs of investigation, litigation, settlement, judgments, interest, and penalties) resulting from any action threatened or brought against the State to the extent that the action is based on a claim that any piece of equipment, software, commodity, or service supplied by the Contractor or its subcontractors, or its operation, use, or reproduction, infringes any United States patent, copyright, trademark or trade secret of any person or entity.

(b) If, in the State's or the Contractor's opinion, any piece of equipment, software, commodity or service supplied by the Contractor or its subcontractors, or its operation, use, or reproduction, is likely to become the subject of an infringement claim, the Contractor must, at its expense: (i) procure for the State the right to continue using the equipment, software, commodity or service or, if this option is not reasonably available to the Contractor; (ii) replace or modify to the State's satisfaction the same with equipment, software, commodity or service of equivalent function and performance so that it becomes non-infringing, or, if this 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.

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

2.15.5 Continuing Obligation

The Contractor's duty to indemnify under Section 2.15, Indemnification, continues in full force and effect, notwithstanding the expiration or early cancellation of the Contract, with respect to any claims based on facts or conditions that occurred before expiration or cancellation.

2.15.6 Indemnification Procedures

These procedures apply to all indemnity obligations:

(a) After the State receives notice of an action or proceeding involving a claim for which it will seek indemnification, the State must promptly notify the Contractor of the claim and take, or assist the Contractor in taking, any reasonable action to avoid a default judgment against the Contractor. Failure to notify the Contractor does not relieve the Contractor of its indemnification obligations except to the extent that the Contractor can prove damages attributable to

the notification failure. Within 10 days following receipt of notice from the State relating to any claim, the Contractor must notify the State whether the Contractor agrees to assume control of the defense and settlement of that claim (a "Notice of Election"). After notifying the Contractor of a claim and before the State receives the Contractor's Notice of Election, the State is entitled to defend against the claim, at the Contractor's expense, and the Contractor will be responsible for any reasonable costs, including attorney fees, incurred by the State in defending against the claim during that period.

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

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

2.15.7 Limitation of Liability

Neither the Contractor nor the State is liable to each other, regardless of the form of action, for consequential, incidental, indirect, or special damages. This limitation of liability does not apply to claims for infringement of United States patent, copyright, trademark or trade secrets; to claims for personal injury or damage to property caused by the gross negligence or willful misconduct of the Contractor; to claims covered by other specific provisions of this Contract calling for liquidated damages; or to court costs or attorneys' fees awarded by a court in addition to damages after litigation based on this Contract.

2.16 Termination by the State

2.16.1 Notice and Right to Cure

If the Contractor breaches the Contract, and the State, in its sole discretion, determines that the breach is curable, the State will provide the Contractor notice of the breach and a period of at least 30 days to cure the breach. The State does not need to provide notice or an opportunity to cure for successive or repeated breaches or if the State determines, in its sole discretion, that a 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.

2.16.2 Termination for Cause

(a) The State may fully or partially terminate this Contract for cause by notifying the Contractor if the Contractor: (i) breaches any of its material duties or obligations (including a Chronic Failure to meet any SLA); or (ii) fails to cure a breach within the time period specified in a notice of breach provided by the State.

(b) The Contractor must pay all reasonable costs incurred by the State in terminating this Contract for cause, including administrative costs, attorneys' fees and court costs, and any additional costs the State incurs to procure the Deliverable(s) from other sources. Re-procurement costs are not consequential, indirect, or incidental damages, and cannot be excluded by any other terms otherwise included in this Contract, provided the costs are not in excess of 50% more than the prices for the Deliverable(s).

(c) If the State partially terminates this Contract for cause, any charges payable to the Contractor will be equitably adjusted to reflect those Deliverable(s) that are terminated. The State must pay for all Deliverable(s) for which Final Acceptance has been granted before the termination date. Any services or related provisions of this Contract that are terminated for cause must cease on the effective date of the termination.

(d) If the State terminates this Contract for cause and it is determined, for any reason, that the Contractor was not in breach of the Contract, the termination will be deemed to have been a termination under Section 2.16.3, Termination for Convenience, effective as of the same date, and the rights and obligations of the parties will be limited to those provided in that Section.

2.16.3 Termination for Convenience

The State may fully or partially terminate this Contract for its convenience if the State determines that a termination is in the State's best interest. Reasons for the termination are within the sole discretion of the State and may include: (a) the State no longer needs the Deliverable(s) specified in this Contract; (b) a relocation of office, program changes, or changes in laws, rules, or regulations make the Deliverable(s) no longer practical or feasible for the State; (c) unacceptable prices for Contract changes; or (d) falsification or misrepresentation, by inclusion or non-inclusion, of information material to a response to any RFP issued by the State. The State may terminate this Contract for its convenience by giving Contractor notice at least 30 days before the date of termination. If the State chooses to terminate this Contract in part, any charges payable to the Contractor must be equitably adjusted to reflect those Deliverable(s) that are terminated.

2.16.4 Termination for Non-Appropriation

(a) If this Contract extends for more than one fiscal year, continuation of this Contract is subject to the appropriation or availability of funds. If sufficient funds to enable the State to continue payment are not appropriated or otherwise made available, the State must fully or partially terminate this Contract at the end of the last period for which funds have been appropriated or otherwise made available The State must give the Contractor notice at least 30 days before the date of termination, unless the State receives notice of the non-appropriation or unavailability less than 30 days before the end of the last period for which funds have been appropriated or otherwise made available.

(b) If funding for this Contract is reduced by law, or funds to pay the Contractor for the Deliverable(s) are not appropriated or are otherwise unavailable, the State may, upon 30 days notice to the Contractor, change the Deliverable(s) in the manner and for the periods of time the State may elect. The charges payable under this Contract will be equitably adjusted to reflect any Deliverable(s) not provided because of the reduction.

(c) If the State fully or partially terminates this Contract for non-appropriation, the State must pay the Contractor for all work-in-progress performed through the effective date of the termination to the extent funds are available.

2.16.5 Termination for Criminal Conviction

The State may terminate this Contract immediately and without further liability or penalty if 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 related to a State, public, or private Contract or subcontract.

2.16.6 Termination for Approvals Rescinded

The State may terminate this Contract if any final administrative or judicial decision or adjudication disapproves a previously approved request for purchase of personal services under Constitution 1963, Article 11, § 5, and Civil Service Rule 7-1. In that case, the State will pay the Contractor for all work-in-progress performed through the effective date of the termination. The Contract may be fully or partially terminated and will be effective as of the date stated in the notice.

2.16.7 Rights and Obligations upon Termination

(a) If the State terminates this Contract for any reason, the Contractor must:

(i) stop all work as specified in the notice of termination;

(ii) take any action that may be necessary, or that the State may direct, to preserve and protect Deliverable(s) or other State property in the Contractor's possession;

(iii) return all materials and property provided directly or indirectly to the Contractor by any entity, agent, or employee of the State;

(iv) transfer title in and deliver to the State, unless otherwise directed, all Deliverable(s) intended to be transferred to the State at the termination of the Contract (which will be provided to the State on an "As-

Is" basis except to the extent the State compensated the Contractor for warranty services related to the materials);

(v) to the maximum practical extent, take any action to mitigate and limit potential damages, including terminating or limiting subcontracts and outstanding orders for materials and supplies; and

(vi) take all appropriate action to secure and maintain State information confidentially in accordance with Section 2.11, Confidentiality.

(b) If the State terminates this Contract under Section 2.16.3, Termination for Convenience, the State must pay the Contractor all charges due for Deliverable(s) provided before the date of termination and, if applicable, as a separate item of payment, for work-in-progress, based on a percentage of completion determined by the State. All completed or partially completed Deliverable(s) prepared by the Contractor, at the option of the State, become the State's property, and the Contractor is entitled to receive equitable compensation for those Deliverable(s). Regardless of the basis for the termination, the State is not obligated to pay or otherwise compensate the Contractor for any lost expected future profits, costs, or expenses incurred with respect to Deliverable(s) not actually completed.

(c) If the State terminates this Contract for any reason, the State may assume, at its option, any subcontracts and agreements for Deliverable(s), and may pursue completion of the Deliverable(s) by replacement contract or as the State deems expedient.

2.16.8 Reservation of Rights

In the event of any full or partial termination of this Contract, each party reserves all rights or remedies otherwise available to the party.

2.16.9 Contractor Transition Responsibilities

If this Contract terminates under Section 2.16, Termination by the State, the Contractor must make reasonable efforts to transition the performance of the work, including all applicable equipment, services, software, and leases, to the State or a third party designated by the State within a reasonable period of time that does not exceed 180 days from the date of termination. The Contractor must provide any required reports and documentation.

2.16.10 Transition Payments

If the transition responsibilities outlined in Section 2.16.9, Contractor Transition Responsibilities, arise based on a termination of this Contract, reimbursement will be governed by the provisions of Section 2.16, Termination by the State. If the transition results from expiration, the Contractor will be reimbursed for all reasonable transition costs (i.e., costs incurred after the expiration within the time period in Section 2.16.9 that result from transition operations) at the Contract rates. The Contractor must prepare an accurate accounting from which the State and the Contractor may reconcile all outstanding accounts.

2.17 Termination by the Contractor

2.17.1 Termination

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

The Contractor may terminate this Contract if the State: (a) materially breaches its obligation to pay the Contractor undisputed amounts due; (b) breaches its other obligations to an extent that makes it impossible or commercially impractical for the Contractor to complete the Deliverable(s); or (c) does not cure the breach within the time period specified in a notice of breach. The Contractor must discharge its obligations under Section 2.20, Dispute Resolution, before it terminates the Contract.

2.18 Stop Work

2.18.1 Stop Work Order

The State may, by issuing a Stop Work Order, require that the Contractor fully or partially stop work for a period of up to 90 calendar days, and for any further period to which the parties agree. Upon receipt of the Stop Work Order, the Contractor must immediately take all reasonable steps to minimize incurring costs. Within the period of the Stop Work Order, the State must either: (a) terminate the Stop Work Order; or (b) terminate the work covered by the Stop Work Order as provided in Section 2.16, Termination by the State.

2.18.2 Termination of Stop Work Order

The Contractor must resume work if the State terminates a Stop Work Order or if it expires. The parties will agree upon an equitable adjustment in the delivery schedule, the Contract price, or both, and the Contract must be modified, if: (a) the Stop Work Order results in an increase in the time required for, or the Contractor's costs properly allocated to, the performance of the Contract; and (b) the Contractor asserts its right to an equitable adjustment within 20 days after the end of the Stop Work Order by submission of a request for adjustment to the State; provided that, the State may receive and act upon the Contractor's request submitted at any time before final payment. Any adjustment will conform to the requirements of Section 2.3.4, Contract Changes.

2.18.3 Allowance of the Contractor's Costs

If the State fully or partially terminates the work covered by the Stop Work Order, for reasons other than material breach, the termination is a termination for convenience under Section 2.16, Termination by the State, and the State will pay reasonable costs resulting from the Stop Work Order in arriving at the termination settlement. The State is not liable to the Contractor for lost profits because of a Stop Work Order issued under Section 2.18, Stop Work.

2.19 Reserved

2.20 Dispute Resolution

2.20.1 General

(a) The Contractor must submit any claim related to this Contract to the State under Section 2.3.6, Notices, together with all supporting documentation for the claim.

(b) The representatives of the Contractor and the State must meet as often as the parties reasonably deem necessary to gather and furnish to each other all information related to the claim.

(c) During the course of negotiations, each party will honor all reasonable requests made by the other for non-privileged information reasonably related to the claim.

2.20.2 Informal Dispute Resolution

(a) If, after a reasonable time following submission of a claim under Section 2.20.1, General, the parties are unable to resolve the claim, the parties must meet with the Director of DTMB-Procurement, or his or her designee, for the purpose of attempting to resolve the dispute without the need for formal legal proceedings.

(b) Within 60 calendar days of the meeting with the Director of DTMB-Procurement, or such other time as agreed to by the parties, the Director of DTMB-Procurement will issue a written recommendation regarding settlement of the claim. The Contractor must notify DTMB-Procurement within 21 days after the recommendation is issued whether the Contractor accepts or rejects the recommendation. Acceptance by the Contractor constitutes the final resolution of the claim addressed in the recommendation, and the Contractor may not assert that claim in any future litigation or other proceeding between the parties.

(c) The recommendation of the Director of DTMB-Procurement is not admissible in any future litigation or other proceeding between the parties. The conduct and statements made during the course of negotiations or dispute resolution under Section 2.20, Dispute Resolution, are subject to Michigan Rule of Evidence 408 and are not admissible in any future litigation or other proceeding between the parties.

(d) This section will not be construed to prohibit either party from instituting formal proceedings to avoid the expiration of any applicable limitations period, to preserve a superior position with respect to other creditors, or under Section 2.20.3, Injunctive Relief.

(e) DTMB-Procurement will not mediate disputes between the Contractor and any other entity, except State agencies, concerning responsibility for performance of work.

2.20.3 Injunctive Relief

A claim between the State and the Contractor is not subject to the provisions of Section 2.20.2, Informal Dispute Resolution, where a party makes a good faith determination that a breach of the Contract by the other party will result in damages so immediate, so large or severe, and so incapable of adequate redress that a temporary restraining order or other injunctive relief is the only adequate remedy.

2.20.4 Continued Performance

Each party will continue performing its obligations under the Contract while a claim is being resolved, except to the extent the claim precludes performance and without limiting either party's right to terminate the Contract as provided in Section 2.16, Termination by the State or Section 2.17, Termination by the Contractor. A claim involving payment does not preclude performance.

2.21 Disclosure Responsibilities

2.21.1 Disclosure of Litigation

(a) Within 30 days after receiving notice of any litigation, investigation, arbitration, or other proceeding (collectively, "Proceeding") that arises during the term of this Contract, the Contractor must disclose the following to the Contract Administrator:

(i) A criminal Proceeding involving the Contractor (or any Subcontractor) or any of its officers or directors;

(ii) A parole or probation Proceeding;

(iii) A Proceeding involving the Contractor (or any Subcontractor) or any of its officers or directors under the Sarbanes-Oxley Act; and

(iv) A civil Proceeding to which the Contractor (or, if the Contractor is aware, any Subcontractor) is a party, and which involves (A) a claim that might reasonably be expected to adversely affect the viability or financial stability of the Contractor or any Subcontractor; or (B) a claim or written allegation of fraud against the Contractor (or, if the Contractor is aware, any Subcontractor) by a governmental or public entity arising out of the Contractor's business dealings with governmental or public entities.

(b) Information provided to the State from the Contractor's publicly filed documents will satisfy the requirements of this Section.

(c) If any Proceeding that is disclosed to the State or of which the State otherwise becomes aware, during the term of this Contract, would cause a reasonable party to be concerned about: (i) the ability of the Contractor (or a Subcontractor) to continue to perform this Contract; or (ii) whether the Contractor (or a Subcontractor) is engaged in conduct that is similar in nature to the conduct alleged in the Proceeding and would constitute a breach of this Contract or a violation of federal or state law, regulations, or public policy, then the Contractor must provide the State all requested reasonable assurances that the Contractor and its Subcontractors will be able to continue to perform this Contract.

2.21.2 Other Disclosures

The Contractor must notify DTMB-Procurement within 30 days of:

(a) becoming aware that a change in the Contractor's ownership or officers has occurred or is certain to occur; or

(b) any changes to company affiliations.

2.21.3 Call Center Disclosure

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

2.22 Extended Purchasing

2.22.1 Extended Purchasing Program

The Agreement will be extended to MiDEAL members. MiDEAL members include local units of government, school districts, universities, community colleges, and nonprofit hospitals. A current list of MiDEAL members is available at www.michigan.gov/mideal. Upon mutual written agreement between the State of Michigan and the Contractor, this Agreement may be extended to (a) State of Michigan employees, or (b) other states (including governmental subdivisions and authorized entities).

If extended, the Contractor must supply all goods and services at the established Agreement prices and terms. The State reserves the right to negotiate additional discounts based on any increased volume generated by such extensions.

The Contractor must submit invoices to, and receive payment from, extended purchasing program members on a direct and individual basis."

2.23 Laws

2.23.1 Governing Law

This Contract is governed by, and construed according to, the substantive laws of the State of Michigan without regard to any Michigan choice of law rules that would apply the substantive law of another jurisdiction to the extent not inconsistent with or preempted by federal law.

2.23.2 Compliance with Laws

The Contractor must comply with all applicable federal, state, and local laws and ordinances in providing the Deliverable(s).

2.23.3 Jurisdiction

Any dispute arising from the Contract must be resolved in the State of Michigan. With respect to any claim between the parties, the Contractor consents to venue in Ingham County, Michigan, and irrevocably waives any objections to this venue that it may have, such as lack of personal jurisdiction or *forum non conveniens*. The Contractor must appoint agents in the State of Michigan to receive service of process.

2.23.4 Nondiscrimination

In the performance of the Contract, the Contractor agrees not to discriminate against any employee or applicant for employment, with respect to his or her hire, tenure, terms, conditions or privileges of employment, or any matter directly or indirectly related to employment, because of race, color, religion, national origin, ancestry, age, sex, height, weight, marital status, or physical or mental disability. The Contractor further agrees that every subcontract entered into for the performance of this Contract will contain a provision requiring non-discrimination in employment, as specified here, binding upon each Subcontractor. This covenant is required under the Elliott-Larsen Civil Rights Act, 1976 PA 453, MCL 37.2101, *et seq*., and the Persons with Disabilities Civil Rights Act, 1976 PA 220, MCL 37.1101, *et seq*., and any breach of this provision may be regarded as a material breach of the Contract.

2.23.5 Unfair Labor Practices

Under 1980 PA 278, MCL 423.321, *et seq*., the State must not award a Contract or subcontract to an employer whose name appears in the current register of employers failing to correct an unfair labor practice compiled under MCL 423.322. This information is compiled by the United States National Labor Relations Board. A Contractor of the State, in relation to the Contract, must not enter into a contract with a Subcontractor, manufacturer, or supplier whose name appears in this register. Under MCL 423.324, the State may void any Contract if, after 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.

2.23.6 Environmental Provision

For the purposes of this section, "Hazardous Materials" include asbestos, ACBMs, PCBs, petroleum products, construction materials including paint thinners, solvents, gasoline, oil, and any other material the manufacture, use, treatment, storage, transportation or disposal of which is regulated by the federal, state, or local laws governing the protection of the public health, natural resources, or the environment:

(a) The Contractor must use, handle, store, dispose of, process, transport, and transfer any Hazardous Material according to all federal, State, and local laws. The State must immediately advise the Contractor of the presence of any known Hazardous Material at the work site. If the Contractor encounters material reasonably believed to be Hazardous Material that may present a substantial danger, the Contractor must: (i) immediately stop all affected work; (ii) notify the State in accordance with Section 2.3.6, Notices; (iii) notify any entities required by law; and (iv) take appropriate health and safety precautions.

(b) The State may issue a Stop Work Order if the material is a Hazardous Material that may present a substantial danger and the Hazardous Material was not brought to the site by the Contractor, or does not wholly or partially result from any violation by the Contractor of any laws covering the use, handling, storage, disposal of, processing, transport and transfer of Hazardous Materials. The State may remove the Hazardous Material, render it harmless, or terminate the affected work for the State's convenience.

(c) If the Hazardous Material was brought to the site by the Contractor, or wholly or partially results from any violation by the Contractor of any laws covering the use, handling, storage, disposal of, processing, transport and transfer of Hazardous Material, or from any other act or omission within the control of the Contractor, the Contractor must bear its proportionate share of the delay and costs involved in cleaning up the site and removing and rendering harmless the Hazardous Material according to applicable laws.

2.23.7 Freedom of Information

This Contract and all information submitted to the State by the Contractor is subject to the Michigan Freedom of Information Act (FOIA), 1976 PA 442, MCL 15.231, *et seq*.

2.23.8 Workplace Safety and Discriminatory Harassment

In performing Services for the State, the Contractor must comply with the Department of Civil Services Rule 2-20 regarding Workplace Safety and Rule 1-8.3 regarding Discriminatory Harassment. In addition, the Contractor must comply with Civil Service regulations and any applicable agency rules provided to the Contractor.

For Civil Service Rules, see http://www.mi.gov/mdcs/0,1607,7-147-6877---,00.html.

2.23.9 Prevailing Wage [Deleted, Not Applicable]

2.23.10 Abusive Labor Practices

The Contractor may not furnish any Deliverable(s) that were produced fully or partially by forced labor, convict labor, forced or indentured child labor, or indentured servitude.

"Forced or indentured child labor" means all work or service (1) exacted from any person under the age of 18 under the menace of any penalty for its nonperformance and for which the worker does not offer himself voluntarily; or (2) performed by any person under the age of 18 under a contract the enforcement of which can be accomplished by process or penalties.

2.24 General Provisions

2.24.1 Bankruptcy and Insolvency

The State may, without prejudice to any other right or remedy, fully or partially terminate this Contract and, at its option, take possession of the work-in-progress and finish the work-in-progress by whatever method the State deems appropriate if:

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

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

2.24.2 Media Releases

News releases (including promotional literature and commercial advertisements) pertaining to the RFP and this Contract or the project to which it relates will not be made without prior approval by the State, and only in accordance with the instructions from the State.

2.24.3 Contract Distribution

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

2.24.4 Permits

Contractor must obtain and pay any associated costs for all required governmental permits, licenses, and approvals for the delivery, installation, and performance of the Contract.

2.24.5 Website Incorporation

The State is not bound by any content on the Contractor's website unless incorporated directly into this Contract.

2.24.6 Future Bidding Preclusion

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

2.24.7 Antitrust Assignment

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

2.24.8 Disaster Recovery

Contractor and the State recognize that the State provides essential services in times of natural or man-made disasters. Therefore, except as mandated by federal disaster response requirements, Contractor personnel dedicated to providing Deliverable(s) under this Contract will provide the State with priority.

2.24.9 Legal Effect

The State is not liable for costs incurred by the Contractor or for payment(s) under this Contract until the Contractor is authorized to perform under Section 1.2.4, Ordering.

2.24.10 Entire Agreement

This Contract constitutes the entire agreement between the parties and supersedes all prior agreements, whether written or oral, with respect to the subject matter. All attachments referenced in this Contract are incorporated in their entirety and form part of this Contract.

2.24.11 Order of Precedence

Any inconsistency in the terms associated with this Contract will be resolved by giving precedence to the terms in the following descending order:

(a) Mandatory sections (2.1.1, Contract Term, 2.24.9, Legal Effect, 2.2.2, Payment Deadlines, 2.14, Insurance, 2.15, Indemnification, 2.16, Termination, 2.23, Governing Law, 2.15.7, Limitation of Liability);

(b) The most recent Statement of Work related to this Contract;

(c) All sections from Article 2 - Terms and Conditions, not listed in subsection (a);

(d) Any attachment or exhibit to the Contract documents;
(e) Any Purchase Order, Direct Voucher, or Procurement Card Order issued under the Contract; and
(f) Bidder Responses contained in any of the RFP documents.

2.24.12 Headings

The captions and section headings used in this Contract are for convenience only and may not be used to interpret the scope and intent of this Contract.

2.24.13 Form, Function and Utility

If this Contract is for statewide use, but the Deliverable(s) does not the meet the form, function, and utility required by a State agency, that agency may, subject to State purchasing policies, procure the Deliverable(s) from another source.

2.24.14 Reformation and Severability

Each provision of the Contract is severable from all other provisions of the Contract. If any provision of this Contract is held unenforceable, then the Contract will be modified to reflect the parties' original intent. All remaining provisions of the Contract remain in full force and effect.

2.24.15 Approval

Unless otherwise provided in this Contract, approval(s) must be in writing and must not be unreasonably withheld or delayed.

2.24.16 No Waiver of Default

Failure by a party to insist upon strict adherence to any term of the Contract does not waive that party's right to later insist upon strict adherence to that term, or any other term, of the Contract.

2.24.17 Survival

The provisions of this Contract that impose continuing obligations, including warranties, indemnification, and confidentiality, will survive the expiration or termination of this Contract.

ATTACHMENT A – SEE SPECS.

MICHIGAN DEPARTMENT OF TRANSPORTATION
Office of Operations Administrative Services
Fleet Administration and Operations

Spec. No. C19-0375-13
January, 2013
Page 1 of 7

SPECIFICATION: AIR COMPRESSOR, ROTARY, PORTABLE, 375cfm CAPACITY AT 150psi

1. HOUSING AND FRAME	YES	NO	DEVIATION
Housing should consist of a roof or head along with hinged side doors which shall lock in place	✓		
All hinges and housing panes should be reinforced and bolted or screwed together		✓	SCREWED, NOT BOLTED
Housing should have access panels for servicing	✓		
Frame should be of rigid construction of 5 inch steel channel, mounted on a single axle with multiple heavy duty leaf springs on all wheels	✓		
System should include an adjustable screw-type jack at the tongue which shall swivel 90° rearward and be lockable in transit	✓		
Axle should be heavy duty, with 5,200 pound minimum capacity	✓		
Axle should be positioned so the tongue weight is 10% of total trailer weight	✓		
Hitch should be a 4 inch steel "A" frame which must be designed for added strength and rigidity	✓		
Hitch should be 3 inch eye type capable of adjustment between 17 and 23 inches above ground level	✓		
Safety chains should have clip hooks and exceed trailer/compressor GVW	✓		
Top and inside of wheels should be enclosed by heavy duty fenders	✓		
Tire size should be ST225/75R15 D, 8 ply	✓		

MICHIGAN DEPARTMENT OF TRANSPORTATION
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SPECIFICATION: AIR COMPRESSOR, ROTARY, PORTABLE, 375cfm CAPACITY AT 150psi

1. HOUSING AND FRAME - continued	YES	NO	DEVIATION
Hose reels should be mounted at the rear and rigidly Attached to the frame	✓		
Stop, tail, turn signals, and illuminated license bracket lights should all be ICC approved	✓		
Stop, tail, turn signal, and marker lights should be LED type		✓	NOT LED
Trailer connector should be 7-way round pin Berg type, wired for turn signals independent of stop wired per MDOT Diagram	✓		
Brakes should be electric with breakaway switch	✓		
Paint should be manufacturer's standard	✓		

Deviations on Housing and Frame:

2. COMPRESSOR	YES	NO	DEVIATION
Compressor should be rotary screw type	✓		
Compressor should have a rated air delivery of 375cfm free air delivered at 150psig with an operating range down to 80psig	✓		425 CFM AT 150 PSIG AND 375 CFM AT 150 PSIG
Dual regulators with mechanical adjustment to change from 150psig to 80psig should be provided		✓	80-150 PSIG VIA MECHANICAL ADJUSTMENTS
Direct connection or gear drive from compressor section to diesel engine should be provided **(Belt drive is NOT acceptable)**	✓		

MICHIGAN DEPARTMENT OF TRANSPORTATION
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SPECIFICATION: AIR COMPRESSOR, ROTARY, PORTABLE, 375cfm CAPACITY AT 150psi

2. COMPRESSOR - continued	YES	NO	DEVIATION
Air filter should be manufacturer's largest model, two (2) stage dry type air filters, positioned to draw cool outside air with maintenance indicators and include a centrifugal pre-cleaner dust eliminator	✓		
Separate filters should be provided for the engine and the compressor	✓		
An adequate system should be provided to cool the air during compression, to seal rotors against leakage, and to lubricate moving parts at all operating speeds	✓		
An oil separator receiver of at least 2.3 cubic foot capacity capable of separating oil from water after compression and cooling the oil before reuse should be provided	✓		
System oil temperature should not exceed 180°F	✓		
Air valves should be "wide throat" ball type for unrestricted flow	✓		
100% stepless demand type regulation system for controlling engine speed and compressor air intake and matching air supply to the required air delivery should be provided	✓		
Outlet header from air receiver tank should be 1 1/4 inch diameter minimum	✓		
One (1) 2 inch line with 4-ear quick connector and safety surge valve should be on front	✓		
Four (4) ¾ inch lines with 2-ear quick connectors and safety surge valves should be on the rear	✓		
Two (2) hose reels with winding handles, each with 100 feet of ¾ inch hose should be mounted at the rear of the compressor cabinet	✓		

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SPECIFICATION: AIR COMPRESSOR, ROTARY, PORTABLE, 375cfm CAPACITY AT 150psi

2. COMPRESSOR - continued	**YES**	**NO**	**DEVIATION**
A compressed air after cooler should be installed on the unit and connected to the 1 1/4 inch discharge line from the air receiver	✓		
Both the inlet and outlet piping on the after cooler should be 1-½ inch diameter and the cooler shall be capable of cooling the discharge air to within 20°F of the ambient air temperature	✓		
After cooler should also be equipped with a ball valve type petcock water drain or a water separator	✓		
After cooler should **NOT** be mounted were it can be damaged		✓	
After coolet should be mounted were it **WILL** have proper cool air flow	✓		

Deviations on Compressor:

3. ENGINE	**YES**	**NO**	**DEVIATION**
Engine should be 125hp diesel minimum	✓		

Engine Make CUMMINS
Engine Model QSB4.5 TIER 4 INTERIM (T4i)

Cooling system should incorporate a pressurized water system having a maximum top tank temperature of 110°F above ambient temperature	✓		

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SPECIFICATION: AIR COMPRESSOR, ROTARY, PORTABLE, 375cfm CAPACITY AT 150psi

3. ENGINE - continued	YES	NO	DEVIATION
Air should be drawn in through the engine and exhausted through the radiator to provide sufficient engine and compressor cooling	✓		
Oil filter should be spin-on, full flow, renewable cartridge type	✓		
Maximum engine speed should be controlled by a governor	✓		
Muffler should have a vertical tailpipe extending 24 inches above cabinet with a rain cap		✓	

Electric start system should include batteries, starter and alternator, List battery voltage and CCA and Alternator output below

Batteries (2) 1000 CCA Alternator 45 AMP

A low unload starting valve, manually operated, should be furnished to allow engine and compressor to warm up under light load conditions	✓		
Fuel tank should have a 50 gallon minimum capacity, securely mounted with a drain plug and lockable filler cap or be lockable within cabinet		✓	58 GAL. TANK. SIDE DOORS ARE LOCKABLE (NOT TANK)
Cooling system should be protected to -30°F	✓		

Deviations on Engine:
TIER 4 FINAL ENGINE IS FEDERALLY MANDATED AS OF JANUARY 2015. THE PRICE QUOTED IS VALID ONLY AS LONG AS TIER 4 INTERIM CUMMINS ENGINE IS AVAILABLE. DOOSAN WILL NOT SUPPLY A TIER 4 FINAL AT SAME PRICE AS TIER 4 INTERIM, THUS WE CANNOT SUPPORT A CONTRACT THAN AUG 5, 2016.

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SPECIFICATION: AIR COMPRESSOR, ROTARY, PORTABLE, 375cfm CAPACITY AT 150psi

4. AUTOMATIC PROTECTION DEVICES	YES	NO	DEVIATION
An automatic engine shut down should be furnished to activate when discharge air temperature exceeds 248°F	✓		
A thermal oil bypass should protect equipment during cold starts	✓		
A thermal liquid bypass should control the compressor and engine cooling system to maintain proper operating temperatures	✓		
An automatic bleed-off system should bleed-off air pressure at engine shutdown	✓		
An engine shutdown system should shutdown the engine when cooling system temperature exceeds maximum allowed or oil pressure drops below minimum required	✓		
Pressure relief safety valve should automatically release at 175psig	✓		
Noise level should not exceed 76dba at 7 meters	✓		

Deviations on Auto Protection Devices:

5. INSTRUMENTS, GAUGES and CONTROLS	YES	NO	DEVIATION
The following instruments, gauges, and controls should be mounted on a panel on the front of the cabinet with a lockable cover or door:			
a. Engine water temperature indicator	✓		
b. Electric fuel gauge	✓		
c. Engine oil pressure indicator	✓		
d. Compressor discharge pressure gauge	✓		
e. Ignition switch	✓		

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f.	Startet button	✓		
g.	Hour meter	✓		
h.	tachometer	✓		
i.	Oil separator service indicator		✓	ON TANK, NOT INSTRUMENTS PANEL
j.	Air filter maintenance indicators on engine and compressor inlet		✓	DIAGNOSTIC DISPLAY
k.	Ammeter, voltage or charging indicator	✓		

Deviations on Instruments, gauges and controls:

End of Specification

Attachment B Price Proposal

Please Note: The specification attached to this RFP is considered to be a sample of the type of equipment needed; it is not all inclusive of an actual custom fabrications. Please be as specific as possible as to the specifications of your equipment offering. Make sure to include Make and Model and to list all deviations with sample specifications.

Complete specifications, pricing, make and model of equipment your company can offer must be submitted with your online bid on www.Bid4Michigan.com. This can be achieved by filling out the Price Proposal below and the specification sheets attached to this bid or providing your complete offering in an excel spreadsheet complete with pricing and listing of deviations from posted sample specifications.

Item	Unit of Measure	Unit Cost plus FOB Destination
Attachment A Specification#C19-0375-13	Each	$ 53,659 00
Make: DOOSAN INFRACORE		
Model: P425 / HP375WCU (T4i)		
Lead time for delivery after receipt of order (ARO): 120 days (Approx)		

Quick Payment Terms:

The bidder must check one box below:

[ ] The bidder will offer a quick payment discount of _____% off an invoice if paid within 15 Day from the State's receipt of the invoice or delivery of the Deliverable(s), whichever is later.

[✓] No quick payment discount will be offered.

Attachment C Bidder Item/Equipment Catalog

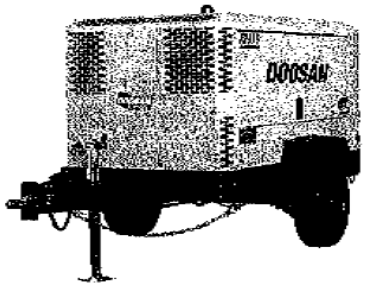
Instructions:
The Bidder should specify any tier discount pricing for each product item or category.

Below is a sample format

Bidder Name Equipment List				Multi-Unit Purchase Discount Program			
Make	**Model #**	**Purchase Discount**		**0-2 Units % Discount**	**3-4 Units % Discount**	**5-6 Units % discount**	**9 or More Units% Discount**
DOOSAN	P425/HP375WCU			0%	1%	0%	0%

WARRANTY POLICY

Air Compressors



CPN 22835953
(11/11) Rev H

DOOSAN and the Doosan logo are trademarks of Doosan Corporation.

Doosan Infracore
Portable Power

Warranty Procedure

Failures occurring within the warranty period must be reported to a Doosan Infracore Portable Power authorized warranty location. Consult your local phone book, visit website www.doosanportablepower.com, or call 800.633.5206 for the warranty location nearest you.

Make arrangements with warranty location to have the machine repaired per terms of the warranty policy. Warranty locations are authorized to travel to machines that were manufactured less running gear or machines with two or more axles. Single-axle machines must be presented at the warranty location for warranty repairs.

Engines manufactured by Cummins®, Caterpillar®, or Kubota® (except C185WKUB-T4i, serial code D95) require the engine manufacturer's representative to perform the warranty repairs.

Doosan Infracore Portable Power distributors can provide parts, service, and warranty repairs on Mitsubishi®, Yanmar®, and John Deere® engines in Doosan Infracore Portable Power equipment.

What the Warranty Covers

Failures which meet the criteria outlined below may be considered as warranty failures:

A. Must occur within the published warranty period for the particular product,

B. Must be the result of a defect in materials or workmanship by the factory, and

C. Must not be listed under "Non-Warrantable Items" or "Vendor Components".

Non-Warrantable Items

The following items are not considered as warrantable items:

A. Fuel, hydraulic and lubricating oil, grease, and anti-freeze. Air, fuel, hydraulic oil and lubricating oil filter elements and replacement parts as the result of normal use or wear.

B. Failure of attachments, accessories, or modifications not manufactured or supplied by Doosan Infracore Portable Power.

C. Failures and progressive damage resulting from the use of a part not approved by Doosan Infracore Portable Power.

D. Failures resulting from improper application, operation, and maintenance or repair practices.

E. Damage resulting from negligence or accidents.

F. Towing, hauling, loading, or unloading costs.

G. Loss or damage caused by carrier.

H. Repairs required as the result of improper handling, storage, or protection.

I. Down time or lost production costs.

J. Any cost of a replacement or backup unit.

K. Telephone or other communication expenses.

Vendor Components Not Warranted By Doosan Infracore Portable Power

Vendor components which are warranted directly to the user-purchaser by the manufacturer, including, but not limited to, the following items, are not warranted by Doosan Infracore Portable Power:

- Cummins, Caterpillar, and Kubota engines (except C185WKUB-T4i, serial code D95).
- Engine components for Cummins, Caterpillar, and Kubota engines such as starters, generators/alternators, and regulators.

Failures of these components are to be directed to the manufacturer's local service representative. Proof of purchase may be required for warranty.

CONTRACT #071B3200138

Compressor Warranty - Doosan Infracore Portable Power warrants to (i) its authorized distributors, who in turn warrant to the initial user, and (ii) its direct customers, that each portable air compressor manufactured by it will be free of defects in material and workmanship for a period until the earliest of (a) twelve (12) months following shipment to the initial user, (b) the accumulation of 2,000 hours of service by the initial user, or (c) eighteen (18) months following the date of delivery from the factory to the distributor.

Doosan Infracore Portable Power will provide a new part or repaired part, at its election, in place of any part which is found upon its inspection to be defective in material or workmanship during the warranty period.

Such part will be repaired or replaced without charge to the initial user during normal working hours at the place of business of a Doosan Infracore Portable Power distributor authorized to sell the type of equipment involved or other establishment authorized by Doosan Infracore Portable Power. User must present proof of purchase at the time of a warranty claim.

This warranty does not apply to failures occurring as a result of:
A. Abuse, misuse, negligent repairs, corrosion, erosion, normal wear and tear, alterations, or modifications made to the product without express written consent of Doosan Infracore Portable Power.
B. Failure to follow the recommended operating practices and maintenance procedures as provided in the product's operating and maintenance publications.

Accessories or equipment furnished by Doosan Infracore Portable Power, but manufactured by others, including, but not limited to, Cummins, Caterpillar, and Kubota engines, shall carry whatever warranty the manufacturers have conveyed to Doosan Infracore Portable Power and which can be passed on to the initial user.

Airends - Doosan Infracore Portable Power warrants that airends will be free of defects in material and workmanship for a period until the earliest of (a) twenty-four (24) months following shipment to the initial user, (b) the accumulation of 4,000 hours of service by the initial user, or (c) thirty (30) months following the date of delivery from the factory to the distributor. The warranty against defects will include replacement of the complete airend, provided the original airend is returned assembled and unopened.

Airend Optional Limited Warranty - When certain be extended until the earliest of (a) sixty (60) months following shipment to the initial user, (b) the accumulation of 10,000 hours of service by the initial user, or (c) sixty-six (66) months following date of delivery from the factory to the distributor. This optional warranty is limited to defects in rotors, housings, bearings, and gears and is automatically available when the initial user can demonstrate that it meets the following conditions during the optional warranty period:

1. The original airend is returned assembled and unopened.
2. Use of only genuine Doosan parts, fluids, oil, and filters.
3. Maintenance is performed at prescribed intervals.

It is the obligation of the user to provide verification that these conditions have been satisfied when submitting claims under this optional warranty.

Engine Warranty - Engines included in the models listed below will be free from defects in material and workmanship for a period until the earliest of (a) twenty-four (24) months following shipment to the initial user, (b) the accumulation of 4,000 hours of service by the initial user, or (c) thirty (30) months following the date of delivery from the factory to the distributor.

Model	Serial Code**	Model	Serial Code**
P185WJD-T4i	D75	XP375WJD-T3	C48
P185WYM-T4i	D76	HP375WJD-T3	D54
P250WJD-T3	D81	P600WJD-T3	C54
P260/HP220WYM-T3	D82	HP450WJD-T3	C55
C185WKUB-T4i	D95	VHP400WJD-T3	C56
P425WJD-T3	C46		

** Serial Code is the last three characters in a serial number – i.e. 414760UFUD75.

Platinum Drive Train Warranty (Optional) –
Doosan Infracore Portable Power warrants that each engine and airend combination listed below will be free from defects in material and workmanship for a period until the earliest of (a) sixty (60) months following shipment to the initial user, (b) the accumulation of 10,000 hours of service by the initial user, or (c) sixty-six (66) months following date of delivery from the factory to the distributor. The starter, alternator, fuel injection system, and all electrical components are excluded from the optional warranty. The airend seal and drive coupling are covered by the optional warranty (airend drive belts are not covered).

Model	Serial Code**
P185WJD-T4i	D75
P250WJD-T3	D81
P260/HP220WYM-T3	D82
C185WKUB-T4i	D95
P425WJD-T3	C46
XP375WJD-T3	C48
HP375WJD-T3	D54
P600 WJD-T3	C54
HP450WJD-T3	C55
VHP400WJD-T3	C56

** Serial Code is the last three characters in a serial number – i.e. 414760UFUD75.

The optional warranty is automatically available when the initial user can demonstrate that it meets the following conditions during the warranty period:

1. The original airend is returned assembled and unopened.
2. Use of only genuine Doosan parts, fluids, oil, and filters.
3. Maintenance is performed at prescribed intervals.

It is the obligation of the user to provide verification that these conditions have been satisfied when submitting warranty claims under this optional warranty.

Limited Corrosion Warranty – Doosan Infracore Portable Power offers a limited corrosion warranty for a period until the earliest of (a) sixty (60) months following shipment to the initial user, (b) the accumulation of 10,000 hours of service by the initial user, or (c) sixty-six (66) months following date of delivery from the factory to the distributor. This limited warranty is limited to corrosion of canopy, exterior sheet metal (sidewalls), and belly pans.

THIS WARRANTY IS EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED (EXCEPT THAT OF TITLE), AND THERE ARE NO IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. IN NO EVENT SHALL DOOSAN INFRACORE PORTABLE POWER OR ITS AUTHORIZED DISTRIBUTORS BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT, OR CONSEQUENTIAL DAMAGES WHATSOEVER, WHETHER BASED ON CONTRACT, WARRANTY, TORT, NEGLIGENCE, STRICT LIABILITY, STATUTE OR OTHERWISE, EVEN IF DOOSAN INFRACORE PORTABLE POWER OR ITS AUTHORIZED DISTRIBUTORS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE TOTAL LIABILITY OF DOOSAN INFRACORE PORTABLE POWER AND ITS AUTHORIZED DISTRIBUTORS WITH RESPECT TO THE PRODUCT FURNISHED HEREUNDER SHALL NOT EXCEED THE PURCHASE PRICE OF THE PRODUCT UPON WHICH

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