STATE OF MICHIGAN
DEPARTMENT OF COMMUNITY HEALTH
Grants and Purchasing Division
320 South Walnut Street
Lansing, Michigan 48913

CONTRACT NO. 391B2200023

between

THE STATE OF MICHIGAN

and

NAME & ADDRESS OF VENDOR **Life Technologies Corporation** **5791 Van Allen Way** **Carlsbad, CA 92008**	TELEPHONE (706) 603-6433 Mady Sarma VENDOR NUMBER/MAIL CODE AGENCY CONTACT: **(517) 335-5096**
Contract Compliance Inspector: **Gregory Rivet, MDCH Purchasing Section Manager**	
Description: **VIIA & 384-Well Instrument-PCR Testing**	
CONTRACT PERIOD: **From**: **August 1, 2012** **To**: **July 31, 2016** 4 years + 1 one-year options	
TERMS **Net 45 Days**	

MISCELLANEOUS INFORMATION:

The terms and conditions of this Contract are those of solicitation #391I2200017 dated 06/28/12, including any applicable information from the vendor's proposal. In the event of any conflicts between the specifications, terms and conditions indicated by the State and those indicated by the vendor, those of the State take precedence.

Est. Contract Value: $69,644.00

FOR THE VENDOR:	**FOR THE STATE:**
Life Technologies Corporation Firm Name	Signature
Authorized Agent Signature	**Kristi Broessel** Name
	Director, Grants and Purchasing Division Michigan Department of Community Health Title
Authorized Agent (Print or Type)	
Date	Date

Table of Contents

Definitions 6

Article 1 – Statement of Work *8*

1.1 Project Identification 8
- **1.1.1 Project Request** 8
- **1.1.2 Background** 8

1.2 Scope of Work and Deliverable(s) 8
- **1.2.1 In Scope-Deleted, Not Applicable** 8
- **1.2.2 Deliverable(s)** 8
- **1.2.3 Quantity** 9
- **1.2.4 Ordering** 9
- **1.2.5 Alternate Bids- Deleted, Not Applicable** 9

1.3 Management and Staffing 9
- **1.3.1 Project Management-Deleted, Not Applicable** 9
- **1.3.2 Reports-Deleted, Not Applicable** 9
- **1.3.3 Staff, Duties, and Responsibilities- Deleted, Not Applicable** 9
- **1.3.4 Meetings** 9
- **1.3.5 Place of Performance- (Best Value Evaluation)** 9
- **1.3.6 Reserved** 9
- **1.3.7 Binding Commitments- Deleted, Not Applicable** 9
- **1.3.8 Training- Deleted, Not Applicable** 9
- **1.3.9 Security- Deleted, Not Applicable** 9

1.4 Delivery and Acceptance 9
- **1.4.1 Time Frames** 10
- **1.4.2 Minimum Order** 10
- **1.4.3 Packaging** 10
- **1.4.4 Palletizing** 10
- **1.4.5 Delivery Term** 10
- **1.4.6 Acceptance Process** 10
- **1.4.7 Criteria** 10

1.5 Proposal Pricing 10
- **1.5.1 Pricing** 10
- **1.5.2 Quick Payment Terms** 10
- **1.5.3 Price Term** 10
- **1.5.4 Tax Excluded from Price** 11
- **1.5.5 Invoices** 11
- **1.6 Commodity Requirements** 11
- **1.6.1 Customer Service-** 14
- **1.6.2 Research and Development -** 14
- **1.6.3 Quality Assurance Program** 14
- **1.6.4 Warranty for Deliverable(s)** 14
- **1.6.5 Special Incentives** 14
- **1.6.6 Energy Efficiency** 14
- **1.6.7 Environmental Requirements** 14
- **1.6.8 Recycled Content and Recyclability** 14
- **1.6.9 Materials Identification and Tracking** 15
- **1.7 Extended Purchasing- Deleted, Not Applicable** 16
- **1.7.1 MiDEAL-Deleted, Not Applicable** 13
- **1.7.2 State Employee Purchases-Deleted, Not Applicable** 13

Article 2 – Terms and Conditions 17

2.1 Contract Term 17
2.1.1 Contract Term 17
2.1.2 Options to Renew 17
2.2 Payments and Taxes 17
2.2.1 Fixed Prices for Deliverable(s) 17
2.2.2 Payment Deadlines 17
2.2.3 Invoicing and Payment – In General -Deleted, Not Applicable 17
2.2.4 Pro-ration [Deleted, Not Applicable] 17
2.2.5 Final Payment and Waivers 17
2.2.6 Electronic Payment Requirement 17
2.2.7 Employment Taxes 17
2.2.8 Sales and Use Taxes 17
2.3 Contract Administration 18
2.3.1 Issuing Office 18
2.3.2 Contract Compliance Inspector 18
2.3.3 Project Manager 18
2.3.4 Contract Changes 19
2.3.5 Price Changes 19
2.3.6 Notices 19
2.3.7 Covenant of Good Faith 20
2.3.8 Assignments 20
2.3.9 Equipment-Deleted, Not Applicable 20
2.3.10 Facilities -Deleted, Not Applicable 20
2.4 Contract Management 20
2.4.1 Contractor Personnel Qualifications 20
2.4.2 Contractor Key Personnel-Deleted, Not Applicable 21
2.4.3 Removal or Reassignment of Personnel at the State's Request-Deleted, Not Applicable 21
2.4.4 Contractor Personnel Location-Deleted, Not Applicable 21
2.4.5 Contractor Identification 21
2.4.6 Cooperation with Third Parties 21
2.4.7 Relationship of the Parties 21
2.4.8 Contractor Return of State Equipment/Resources-Deleted, Not Applicable 21
2.4.9 Background Checks 21
2.4.10 Compliance With State Policies 21
2.5 Subcontracting by Contractor 21
2.5.1 Contractor Responsible 21
2.5.2 State Approval of Subcontractor 22
2.5.3 Subcontract Requirements 22
2.5.4 Competitive Selection 22
2.6 Reserved 22
2.7 Performance 22
2.7.1 Time of Performance 22
2.7.2 Service Level Agreements -Deleted, Not Applicable 22
2.7.3 Liquidated Damages-Deleted, Not Applicable 22
2.7.4 Excusable Failure 22
2.8 Acceptance of Deliverable(s)-Deleted Not Applicable 23
2.8.1 Quality Assurance 23
2.8.2 Delivery Responsibilities 23
2.8.3 Process for Acceptance of Deliverable(s) 24
2.8.4 Acceptance of Deliverable(s) 24
2.8.5 Process for Approval of Written Deliverable(s) -Deleted, Not Applicable 24
2.8.6 Process for Approval of Services -Deleted, Not Applicable 24
2.8.7 Final Acceptance 25
2.9 Ownership -Deleted, Not Applicable 25
2.10 State Standards -Deleted, Not Applicable 25

2.11 Confidentiality 25
2.11.1 Confidential Information 25
2.11.2 Protection and Destruction of Confidential Information 25
2.11.3 Exclusions 25
2.11.4 No Obligation to Disclose 26
2.11.5 Security Breach Notification 26

2.12 Records and Inspections 26
2.12.1 Inspection of Work Performed 26
2.12.2 Retention of Records 26
2.12.3 Examination of Records 26
2.12.4 Audit Resolution 26
2.12.5 Errors 27

2.13 Warranties 27
2.13.1 Warranties and Representations 27
2.13.2 Warranty of Merchantability 28
2.13.3 Warranty of Fitness for a Particular Purpose 28
2.13.4 Warranty of Title – 28
2.13.5 Equipment Warranty 28
2.13.6 New Deliverable(s) 29
2.13.7 Prohibited Products 29
2.13.8 Consequences For Breach 29

2.14 Insurance 29
2.14.1 Liability Insurance 29
2.14.2 Subcontractor Insurance Coverage 31
2.14.3 Certificates of Insurance and Other Requirements 32

2.15 Indemnification 32
2.15.1 General Indemnification 32
2.15.2 Code Indemnification [Deleted, Not Applicable] 32
2.15.3 Employee Indemnification 32
2.15.4 Patent/Copyright Infringement Indemnification 32
2.15.5 Continuing Obligation 33
2.15.6 Indemnification Procedures 33
2.15.7 Limitation of Liability 34

2.16 Termination by the State 34
2.16.1 Notice and Right to Cure 34
2.16.2 Termination for Cause 34
2.16.3 Termination for Convenience 35
2.16.4 Termination for Non-Appropriation 35
2.16.5 Termination for Criminal Conviction 35
2.16.6 Termination for Approvals Rescinded 35
2.16.7 Rights and Obligations upon Termination 36
2.16.8 Reservation of Rights 36
2.16.9 Contractor Transition Responsibilities 36
2.16.10 Transition Payments 36

2.17 Termination by the Contractor 37
2.17.1 Termination 37

2.18 Stop Work-Deleted, Not Applicable 37
2.18.1 Stop Work Order-Deleted, Not Applicable 37
2.18.2 Termination of Stop Work Order-Deleted, Not Applicable 37
2.18.3 Allowance of the Contractor's Costs-Deleted, Not Applicable 37

2.19 Reserved 37

2.20 Dispute Resolution 37
2.20.1 General 37
2.20.2 Informal Dispute Resolution 37
2.20.3 Injunctive Relief 38

2.20.4 Continued Performance 38

2.21 Disclosure Responsibilities 38
2.21.1 Disclosure of Litigation 38
2.21.2 Other Disclosures 39
2.21.3 Call Center Disclosure-Deleted, Not Applicable 39

2.22 Extended Purchasing - Deleted, Not Applicable 39

2.23 Laws 39
2.23.1 Governing Law 39
2.23.2 Compliance with Laws 39
2.23.3 Jurisdiction 39
2.23.4 Nondiscrimination 39
2.23.5 Unfair Labor Practices 40
2.23.6 Environmental Provision – Deleted, Not Applicable 40
2.23.7 Freedom of Information 40
2.23.8 Workplace Safety and Discriminatory Harassment [Deleted, Not Applicable] 40
2.23.9 Prevailing Wage [Deleted, Not Applicable] 40
2.23.10 Abusive Labor Practices 40

2.24 General Provisions 41
2.24.1 Bankruptcy and Insolvency 41
2.24.2 Media Releases 41
2.24.3 Contract Distribution 41
2.24.4 Permits 41
2.24.5 Website Incorporation 41
2.24.6 Future Bidding Preclusion -Deleted, Not Applicable 41
2.24.7 Antitrust Assignment 41
2.24.8 Disaster Recovery 42
2.24.9 Legal Effect 42
2.24.10 Entire Agreement 42
2.24.11 Order of Precedence 42
2.24.12 Headings 42
2.24.13 Form, Function and Utility 42
2.24.14 Reformation and Severability 42
2.24.15 Approval 42
2.24.16 No Waiver of Default 42
2.24.17 Survival 43

Attachment A, Pricing

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 MDCH-Grants and Purchasing Division employee identified on the cover page of this RFP.

Chronic Failure - as defined in applicable Service Level Agreements.

Contract – based on this RFP, an agreement that has been approved and executed by the awarded bidder, the MDCH-Grants and Purchasing Division, and the State Administrative Board if applicable.

Contractor – the awarded bidder after the Effective Date.

Days - Business Days unless otherwise specified.

Deleted, Not Applicable - the section is not applicable or included in this 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.

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

1.1.1 Project Request

This is an agreement for VIIA 7 384 Polymerase Chain Reaction (PCR)-Well Desktop Instrument for Newborn Screening Testing required by the Public Health Code Act 368 of 1978. Section 333.543 stipulates that testing of all newborn babies in Michigan be screened and reported under conditions prescribed by the Department of Community Health (DCH).

1.1.2 Background

The Newborn Screening Laboratory currently tests dried blood on filter paper for more than 40 inborn error of metabolism that can cause developmental delays or death if left untreated. Some of the better known disorders include Phenylketonuria (PKU), congenital hypothyroidism, congenital adrenal hyperplasia, sickle cell disease, galactosemia, and biotinidase deficiency.

Without this testing, it could result in babies not properly screened for T cell lymphopenias, most notably severe combined immunodeficiency syndrome (SCID). If not caught at screening, a baby could die from complications of the disorder. This testing is essential to detect newborns with disorders that can be treated before clinical presentation. The survival rate is significantly increased and the cost of treatment is significantly reduced if the baby is treated prior to clinical presentation.

1.2 Scope of Work and Deliverable(s)

1.2.1 In Scope-Deleted, Not Applicable

1.2.2 Deliverable(s)

Contractor must provide the following Deliverables:

1. The instrument must be capable of analyzing 384 samples simultaneously in a 384 well-plate format.
2. The instrument must have the ability to accommodate 96 well, Fast 96 well low volume, 384 well plates or TaqMan Array cards.
3. The instrument must be able to perform 40 cycle real time PCR reaction using the fluorogenic 5' nuclease assay in a standard 384 well plate in under 35 minutes.
4. The instrument must include an OptiFlex System which combines 6 excitation (500 to 700 nm) and 6 emission (500 to 720 nm) filter sets to enable the collection of up to 21 unique combinations of wavelengths during a single run for multiplexing.
5. The instrument must be able to incorporate an automated accessory capable of loading and unloading plates unattended.
6. The instrument must be able to utilize existing Applied Biosystems Instruments consumable such as optical plates, optical plate covers and support racks.
7. Approved brands or manufacturers' lines-The Contractor must bid only on the approved brands or manufacturers' lines as noted. Bids on alternate brands or manufactures' lines will not be considered.
8. Contractor must be manufacturer authorized distributor.
9. Extended Service Agreement for Preventative Maintenance after the warranty period is required.

1.2.3 Quantity

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

1.2.4 Ordering

The State will issue a Purchase Order, which must be approved by the Contract Compliance Inspector, to order any Deliverable(s). The Contractor is not authorized to begin performance until receipt of a Purchase Order.

1.2.5 Alternate Bids- Deleted, Not Applicable

1.3 Management and Staffing

1.3.1 Project Management-Deleted, Not Applicable

1.3.2 Reports-Deleted, Not Applicable

1.3.3 Staff, Duties, and Responsibilities- Deleted, Not Applicable

1.3.4 Meetings

The State may request 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:

Full address of place of performance	**Owner/operator of facility to be used**	**Percent (%) of Contract value to be performed at listed location**
5791 Van Allen Way Carlsbad, CA		100%

1.3.6 Reserved

1.3.7 Binding Commitments- Deleted, Not Applicable

1.3.8 Training- Deleted, Not Applicable

1.3.9 Security- Deleted, Not Applicable

1.4 Delivery and Acceptance

1.4.1 Time Frames

All Deliverable(s) must be delivered within 30 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 requests no minimum order.

1.4.3 Packaging

The Contractor must explain the details of its proposed packaging sizes for the Deliverable(s). Packaging and containers must meet the current requirements of state and federal law applicable to rail and motor carrier freight classifications, which will permit application of the lowest freight rate.

1.4.4 Palletizing

Shipments must be palletized whenever possible. Contractor's standard is 2-way entry pallet. If State requires a 4-way pallet, it will be arranged in advance.

1.4.5 Delivery Term

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

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.

Final acceptance shall be deemed to occur upon delivery of the undamaged products conforming to the manufacturer's published specifications.

1.4.7 Criteria

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

The criteria outlined in 1.2.2 Deliverables will be used to evaluate acceptability of the delivered services and deliverables.

1.5 Proposal Pricing

1.5.1 Pricing

Prices in **Attachment A** are firm with prospective renegotiation at an agreed upon time. The criteria for a re-determination of pricing are under Section2.3.5, Price Changes.

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.

No quick payment terms are offered.

1.5.3 Price Term

Prices in **Attachment A** 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. MDCH-Grants and Purchasing Division 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 Contractor's invoice should include the following:

(a) Date
(b) PO #
(c) Quantity
(d) Deliverable
(e) Unit Price: Price charged per claim submission; Price charged per invoice generated
(f) Shipping Cost (if any)
(g) Total Price

1.6 Commodity Requirements

INSTALLATION

All instruments ordered shall be delivered, installed (including all parts, supplies, etc., as outlined in the specifications and fully operational, in accordance with these terms, conditions, and specifications.

Installation will be performed by the Contractor.

SITE REQUIREMENTS

Site preparation specifications shall be furnished by the Contractor within two days upon request of the State. The specifications shall be detailed in order to ensure that the instruments to be installed will operate in accordance with all requirements outlined in this Contract and the specifications.

The State will have the sites prepared as specified by the Contractor. Subsequent alterations or modifications in site preparation required by the Contractor which are attributable to the Contractor's requirements and which would involve additional expense to the State shall be made at the expense of the contractor.

TESTING/EQUIPMENT VALIDATION

(a) Prior to delivering any of the above mentioned Deliverables, Contractor will first perform all required quality assurance activities to verify that the Physical Deliverable or Service is complete and in conformance with its specification listed in the applicable Statement of Work or Purchase Order. Before delivering a Physical Deliverable or Service to the State, contractor shall certify to the State that (i) it has performed such quality assurance activities (ii) it has performed any applicable testing, (iii) it has corrected all material deficiencies discovered during such quality assurance activities and testing (iv) the Deliverables or Services is in a suitable state of readiness for the

State's review and approval, and (v) the Deliverable/Service has all Critical patches/updates applied.

(b) If a Deliverable includes installation at a State Location, the Contractor shall (i) perform any applicable testing and installation, (ii) correct all material deficiencies discovered during such quality assurance activities and testing and installation, and (iii) inform the State that the Deliverable is in a suitable state of readiness for the State's review and approval and installation is completed. To the extent that testing occurs at a State location, the State shall be entitled to observe or otherwise participate in testing and installation.

(c) Acceptance shall be deemed to occur upon delivery of the undamaged products confirming the manufacturer's published specifications. All products supplied hereunder shall be under Life Technologies Warranty and warranty starts the moment installation is completed, or 90 days after delivery, whichever comes first.

CERTIFICATE OF OPERATIONS AND SERVICE PERSONNEL

All DCH operators of the instruments are to be trained exclusively by representatives of the contractor prior to operation of the instrument.

All Maintenance Program work, as well as certification of the instruments, must be performed by factory-trained and authorized personnel. DCH reserves the right to disapprove any service personnel if there is just cause to do so.

TECHNICAL SERVICE

Life Technologies receives orders in all methods(phone, fax, etc.) Holly Senter, the Sales Representative will be the primary contact for this account and can help with any questions or issues. Our customer service department can be reached Monday through Friday from 8:00 a.m. to 5:00 p.m. Technical information regarding Life Technologies products including troubleshooting can be found 24/7 online on their website at www.lifetech.com

MAINTENANCE PROGRAM

This Contract requires that a Maintenance Program be in effect to cover each instrument purchased throughout the Contract period. Service shall be performed by the Contractor as part of this Contract. All requests for repairs and/or service must be performed within 48 hours of request. A yearly price for the Maintenance Program to apply to each instrument is to be indicated on the attached Item Listing. All costs associated with the Maintenance Program, including parts, labor, etc., are included in the price. No additional charges will be accepted.

The Maintenance Program includes the following two components:

1. Warranty Period and Extended Service
   a. Perform a diagnostic check on the instrument
   b. Calibrate the instrument if needed
   c. Check for interfering substances
   d. Check internal standard
   e. Clean instrument and accessories as needed, including the fan.
   f. Perform routine maintenance in order to keep all equipment operational
   g. Certification of compliance with MDCH guidelines, procedures, policies, and official orders.

h. After the above tasks have been completed on a particular instrument as part of the Service, the Contractor shall guarantee the accuracy and precision of the instrument at the location where the instrument will be used.

2. General Service Work-requires that the Contractor perform whatever service is necessary in order to keep the instruments fully operational. If an instrument breaks down and is not operating properly, the Contractor has two calendar days, after notification by the user, to have the instrument operational or have an operational instrument at that location. This shall be accomplished by doing one of the following:

a. The service personnel must fix the instrument on-sit whenever possible.
b. If the service personnel arrives to make repairs and discovers that the instrument cannot be fixed on-site, the service personnel may leave a temporary replacement instrument (loaner) to sue while the other instrument is being repaired.
c. If the State determines that the original instrument "persistently fails", the Contractor will be required to replace the original instrument with a new instrument at no additional charge to the State. "Persistently fails" refers to an "unreliable instrument". If it is suspected that an instrument is unreliable, a review of the service reports will be done, and a decision will be made as to whether the instrument is actually unreliable and has seriously impaired the productivity of the program. If a component of an instrument is considered unacceptable, just the component may be replaced. However, if the same component "persistently fails" and is considered unreliable, the entire instrument shall be replaced with a new instrument.
d. After any General Service Work has been completed on a particular instrument, The Contractor shall guarantee the accuracy and precision of the instrument at the location where the instrument will be used.

The Contractor shall agree to have an adequate number of replacement units available to comply with the requirements described above.

The Contractor is responsible for maintaining the official maintenance record for each instrument. Upon completion of any Maintenance Program work, that work shall be recorded by the Contractor at the location and on the forms to be developed and provided by the DCH. Copies of all maintenance records shall be provided to the State when requested. The forms developed by the DCH will consist of the following information at a minimum:

Serial/Model number of the instrument being serviced;
Location of the instrument being serviced;
Date of service performed; and
Type of service performed, including explanation of the parts replaced.

The Contractor shall not utilize or employ any persons presently employed by State of Michigan to perform any Maintenance Program work on the instruments.

The Contractor shall agree to continue to provide the Maintenance Program for each instrument after this Contract expires.. Upon expiration of this Contract, a separate Contract will be developed to cover the Maintenance Program. The

most recent price, the escalation clause, and all terms and conditions and other requirements applying to the Maintenance Program from this Contract will be carried into the new Contract.

1.6.1 Customer Service

The Contractor is able to receive orders by any of the following methods: electronically, facsimile transmission, or by written order. The Contractor will work with MDCH-Grants and Purchasing Division to: (a) ensure that only authorized individuals place orders; and (b) verify any orders that appear to be abnormal.

1.6.2 Research and Development

Created from the merger between and Applied Biosystems in 2008, Life Technologies strives to be the trusted partner for scientists. We uphold our commitment to innovation by employing more than 1,500 scientists, spending several hundred million dollars annually on research and development, and sustaining our intellectual property estate of over 3,500 patents and exclusive licenses. With a presence in over 160 countries, life Technologies is dedicated to serving the world's brightest scientific minds and enabling the success of their research and endeavors.

1.6.3 Quality Assurance Program

Life Technologies manufactures products worldwide. We believe that more advantageous for you, would be to gain a basic understanding of the robustness of the QMS. Please reference http:///lifelink.corp.life/docs/DOC-121295 for more details.

1.6.4 Warranty for Deliverable(s)

The Warranty must be in accordance with the product warrant supplied hereunder shall be under the Life Technologies Warranty. The warranty shall commence the moment the installation is completed, or 90 days after delivery, whichever comes first.

1.6.5 Special Incentives

Special pricing was prepared for the items listed on the attached quote.
Return policy: We want you to receive our products in good condition. You can return products that are damaged or defective on delivery, or correct any shortages, if you contact customer services within 5 days from the day you receive the products. When you contact Customer Services, we will give you instructions on returning the products and on the replacements. If you do not contact us within this five-day period, the products will be deemed accepted, but you will not lose any warranty rights.

1.6.6 Energy Efficiency

The ViiA 7 Real Time PCR System uses significantly less energy than comparable instruments and has been certified by UL Environment. EPA Energy Star program does not certify laboratory instrumentation.

1.6.7 Environmental Requirements

The ViiA & Real Time PCR System was engineered to meet the European Union's Restriction of Hazardous Substance (RoHS) Directive (2002/95/EC)-eliminating lead, cadmium, mercury, hexavalent chromium, polybrominated biphenyls (PBBs), and polybrominated diphenyl ethers (PBDEs).

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. The Contractor must

indicate an estimate of the percentage of recycled materials, if any, contained in each Deliverable:

____% (total estimated percentage of recovered material)
____% (estimated percentage of post-consumer material)

____%- (estimated percentage of post-industrial waste)

(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.

Life technologies have not estimated recycled content of the Viia 7 Real Time PCR System. We have shown that this system requires 15% less materials than its predecessor. This has been certified by UL Environment.

The ViiA 7 Real Time PCR System is packaged of corrugate paper, Polyethylene foam, and plywood pallet. The packaging is not certified for recycled content, but the corrugate is thought to meet the 35% post-consumer content. Polystyrene is not used. The packaging material is easily recycled-Life Technologies encourages use of local recycling programs whenever possible.

1.6.9 Materials Identification and Tracking

(a) **Hazardous Chemical Identification**. The Contractor 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 eh 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 Contractor must offer mercury-free products whenever possible. The Contractor must explain if it intends to provide products containing mercury and whether cost competitive alternatives exist. If cost competitive alternatives do not exist, the Contractor 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.

The ViiA 7 Real Time PCR System was engineered to meet the European Union's Restriction of Hazardous Substances (RoHS) Directive (2002/95/EC)-eliminating lead, cadmium, mercury, hexavalent chromium, polybrominated biphenyls (PBBs), and polybrominated diphenyl ethers (PBDEs)

(c) **Brominated Flame Retardants**. The State prefers to purchase products that do not contain brominated flame retardants (BFRs) whenever possible. The Contractor must disclose whether the products contain BFRs. The Contractor indicated they have no brominated flame retardants.

The ViiA 7 Real Time PCR System was engineered to meet the European Union's Restriction of Hazardous Substances (RoHS) Directive (2002/95/EC)-eliminating lead, cadmium, mercury, hexavalent chromium, polybrominated biphenyls (PBBs), and polybrominated diphenyl ethers (PBDEs)

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

Life Technologies is committed to complying with or exceeding all applicable environments, health, and safety laws and regulations.

1.7 Extended Purchasing- Deleted, Not Applicable

1.7.1 MiDEAL-Deleted, Not Applicable

1.7.2 State Employee Purchases-Deleted, Not Applicable

Article 2 – Terms and Conditions

2.1 Contract Term

2.1.1 Contract Term

The Contract term begins August 1, 2012 and expires July 31, 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 the MDCH-Grants and Purchasing Division. 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 one 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.

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

All invoices should reflect actual work done. Specific details of invoices and payments will be agreed upon between the Project Manager and the Contractor.

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 MDCH – Grants and Purchasing Division (State). **MDCH-Grants and Purchasing Division is the only entity authorized to modify the terms and conditions of this Contract, including the prices and specifications.** The Contract Administrator within MDCH-Grants and Purchasing Division for this Contract is:

Lynn Strong
Purchasing Section
Grants and Purchasing Division
Michigan Department of Community Health
Lewis Cass Building, 4th Floor
320 S. Walnut Street
Lansing, MI 48913
Email: strong@michigan.gov
Phone: 517-241-0134

2.3.2 Contract Compliance Inspector

The Contract Compliance Inspector, named below, will monitor and coordinate Contract activities during its term. However, monitoring of this Contract implies **no authority to modify the terms and conditions of this Contract, including the prices and specifications.**

Gregory Rivet, Manager
Purchasing Section
Grants and Purchasing Division
Michigan Department of Community Health
Lewis Cass Building, 4th Floor
320 S. Walnut Street
Lansing, MI 48913
Email: rivetg@michigan.gov
Phone: 517-335-5096

2.3.3 Project Manager

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

Connie Good, Accounting Technician
Department of Community Health-Bureau of Laboratories
3350 N. Martin Luther King Jr. Blvd.
Lansing, MI 48906
Email: goodc@michigan.gov

Phone: (517) 335-8058
Fax: (517) 335-9776

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, MDCH-Grants and Purchasing Division 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 MDCH-Grants and Purchasing Division 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
MDCH-Grants and Purchasing Division
Attention: Lynn Strong
4th Floor, Lewis Cass Building
320 S. Walnut Street
Lansing, MI 48913
Email: strongl3@michigan.gov

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-Deleted, Not Applicable

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-Deleted, Not Applicable

2.4.4 Contractor Personnel Location-Deleted Not Applicable

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-Deleted Not Applicable

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

All Contractor personnel must comply with the State's security and acceptable use policies for State IT equipment and resources, available at http://www.michigan.gov/pcpolicy. Contractor personnel must agree to the State's security and acceptable use policies before the State grants access to its IT equipment and resources. The Contractor must provide these policies to prospective personnel before requesting access from the State. Contractor personnel must comply with all physical security procedures in State facilities.

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 MDCH-Grants and Purchasing Division 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 Reserved

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 –Deleted, Not Applicable

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 -Deleted, Not Applicable

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 -Deleted, Not Applicable

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 MDCH-Grants and Purchasing Division 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

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

2.13.3 Warranty of Fitness for a Particular Purpose

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

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 or 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 contain 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 30 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) tranined, 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 on 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 numbered offered for all items will remain consistent for the term of the Contract, unless MDCH Grants and Purchasing Division 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:

$10,000,000 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 MDCH-Grants and Purchasing Division 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 MDCH-Grants and Purchasing Division. The notice to the Director of MDCH-Grants and Purchasing Division must include the applicable Contract or Purchase Order number.

2.15 Indemnification

2.15.1 General Indemnification

To the extent permitted by law, 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) To the extent permitted by law, 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.

The Contractor's liability for damages to the State is limited to two times the value of the Contract or $500,000 which ever is higher. The foregoing limitation of liability does not apply to claims for infringement of United States patent, copyright, trademarks or trade secrets; to claims for personal injury or damage to property caused by the gross negligence or willful misconduct of the Contractor; to claims covered by other specific provisions of this Contract calling for liquidated damages; or to court costs or attorneys' fees awarded by a court in addition to damages after litigation based on this Contract.

The State's liability for damages to the Contractor is limited to the value of the 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 30 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-Deleted, Not Applicable

2.18.1 Stop Work Order-Deleted, Not Applicable

2.18.2 Termination of Stop Work Order-Deleted, Not Applicable

2.18.3 Allowance of the Contractor's Costs-Deleted, Not Applicable

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 MDCH-Grants and Purchasing Division, 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 MDCH-Grants and Purchasing Division, or such other time as agreed to by the parties, the Director of MDCH-Grants and Purchasing Division will issue a written recommendation regarding settlement of the claim. The Contractor must notify MDCH-Grants and Purchasing Division 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 MDCH-Grants and Purchasing Division 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) MDCH-Grants and Purchasing Division 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 MDCH-Grants and Purchasing Division 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 - Deleted, Not Applicable

2.22.1 MiDEAL Requirements-Deleted, Not Applicable

2.22.2 State Administrative Fee-Deleted, Not Applicable

2.22.3 State Employee Purchase Requirements-Deleted, Not Applicable

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 purpose 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 sue, handling, storage, disposal of 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 [Deleted, Not Applicable]

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

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

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 -Deleted, Not Applicable

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, Pricing

Item No.	Qty	Description	Total Price
1.	1	VIIA 7 384-Well Block instrument, desktop, interchangeable, fast-enabled	$49, 200.00
2.	1	Dell Desktop Tower with Microsoft Office Basic; Monitor, Dell 17 inch flat panel LCD, VIIA7 system software, primer express software, packing kit, user guide, installation kit, packing kit (cUL, UL, CE C-TICK, WEEE Compliant	Included
3.	1	384-Well Calibration Install	Included
4.	1	Real-Timer PCR Application On-Site Training	Included
5.	1	VIIA 7 Fast 96-Well Block Upgrade for Vii7 instrument; must include: VIIA 7 Fast 96-well (0.1 mL) Block, Fast 96-well (0.1 mL) Heated Cover, Fast 96-(0.1mL) Plate Adaptor, Fast 96-well (0.1 mL) Tube Adaptor and Storage case for heated cover and plate adaptor, Calibration Kit	$4,800.00
6.	1	Fast 96-Well Calibration Installation Kit	Included
7.	1	Shipping and Handling	$333.36
8.	1	First Year Extended Service Agreement after one-year manufacturer's warranty period for VIIA 7 384-Well Instrument	$5,103.55
9.	1	Second Year Extended Service Agreement after one-year manufacturer's warranty period for VIIA 7 384-Well Instrument	$5,103.55
10	1	Third Year Extended Service Agreement after one-year manufacturer's warranty period for VIIA 7 384-Well Instrument	$5,103.55
		Please see attached quote for detailed pricing	
		Total Bid Amount:	**$69,644.00**

Lead Time for Delivery: Immediately upon commercial availability, generally 1-2 weeks.

Quick Payment Terms:

The Contractor must check one box below:

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

(X) No quick payment discount will be offered.