

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

February 11, 2009

CHANGE NOTICE NO. 3
 TO
 CONTRACT NO. 071B7200194
 between
 THE STATE OF MICHIGAN
 and

NAME & ADDRESS OF VENDOR Spartan Distributors, Inc. P.O. Box 246 Sparta, MI 49345 Email: gabe.ross@spartandist.com	TELEPHONE: Gabe Ross (800) 822-2216
	VENDOR NUMBER/MAIL CODE
	BUYER/CA (517) 241-2619 Seleana L. Samuel
Contract Compliance Inspector: Laura Gyorkos (517) 373-1455 Toro Lawn Maintenance Equipment – Local Units of Government	
CONTRACT PERIOD: From: February 8, 2007 To: February 7, 2010	
TERMS <p style="text-align: center;">N/A</p>	SHIPMENT <p style="text-align: center;">N/A</p>
F.O.B. <p style="text-align: center;">N/A</p>	SHIPPED FROM <p style="text-align: center;">N/A</p>
MINIMUM DELIVERY REQUIREMENTS <p style="text-align: center;">N/A</p>	
MISCELLANEOUS INFORMATION:	

NATURE OF CHANGE(S):

Effective immediately this Contract is hereby EXTENDED one (1) year through February 7, 2010.

All other specifications, prices, terms, and conditions remain the same.

AUTHORITY/REASON:

Per DMB Purchasing Operations and vendor agreement by email dated February 6, 2009.

TOTAL ESTIMATED CONTRACT VALUE REMAINS: \$0.00

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

June 20, 2008

CHANGE NOTICE NO. 2
TO
CONTRACT NO. 071B7200194
between
THE STATE OF MICHIGAN
and

NAME & ADDRESS OF VENDOR Spartan Distributors, Inc. P.O. Box 246 Sparta, MI 49345 Email: gabe.ross@spartandist.com	TELEPHONE: Gabe Ross (800) 822-2216
	VENDOR NUMBER/MAIL CODE
	BUYER/CA (517) 241-2619 Seleana L. Samuel
Contract Compliance Inspector: Laura Gyorkos (517) 373-1455 Toro Lawn Maintenance Equipment – Local Units of Government	
CONTRACT PERIOD: From: February 8, 2007 To: February 7, 2009	
TERMS <p style="text-align: center;">N/A</p>	SHIPMENT <p style="text-align: center;">N/A</p>
F.O.B. <p style="text-align: center;">N/A</p>	SHIPPED FROM <p style="text-align: center;">N/A</p>
MINIMUM DELIVERY REQUIREMENTS <p style="text-align: center;">N/A</p>	
MISCELLANEOUS INFORMATION:	

NATURE OF CHANGE(S):

Please Note the following Changes:

- 1. State Administrative Fee address for checks and reports has been changed to the following:**

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

Make all checks payable to: State of Michigan

All other specifications, prices, terms, and conditions remain the same.

AUTHORITY/REASON:

Per DMB Purchasing Operations

TOTAL ESTIMATED CONTRACT VALUE REMAINS: \$0.00

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

June 20, 2008

CHANGE NOTICE NO. 2
TO
CONTRACT NO. 071B7200194
between
THE STATE OF MICHIGAN
and

NAME & ADDRESS OF VENDOR Spartan Distributors, Inc. P.O. Box 246 Sparta, MI 49345 Email: gabe.ross@spartandist.com	TELEPHONE: Gabe Ross (800) 822-2216
	VENDOR NUMBER/MAIL CODE
	BUYER/CA (517) 241-2619 Seleana L. Samuel
Contract Compliance Inspector: Laura Gyorkos (517) 373-1455 Toro Lawn Maintenance Equipment – Local Units of Government	
CONTRACT PERIOD: From: February 8, 2007 To: February 7, 2009	
TERMS <p style="text-align: center;">N/A</p>	SHIPMENT <p style="text-align: center;">N/A</p>
F.O.B. <p style="text-align: center;">N/A</p>	SHIPPED FROM <p style="text-align: center;">N/A</p>
MINIMUM DELIVERY REQUIREMENTS <p style="text-align: center;">N/A</p>	
MISCELLANEOUS INFORMATION:	

NATURE OF CHANGE(S):

Please Note the following Changes:

- 1. State Administrative Fee address for checks and reports has been changed to the following:**

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

Make all checks payable to: State of Michigan

All other specifications, prices, terms, and conditions remain the same.

AUTHORITY/REASON:

Per DMB Purchasing Operations

TOTAL ESTIMATED CONTRACT VALUE REMAINS: \$0.00

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

January 16, 2008

CHANGE NOTICE NO. 1
TO
CONTRACT NO. 071B7200194
between
THE STATE OF MICHIGAN
and

NAME & ADDRESS OF VENDOR Spartan Distributors, Inc. P.O. Box 246 Sparta, MI 49345 Email: gabe.ross@spartandist.com	TELEPHONE: Gabe Ross (800) 822-2216
	VENDOR NUMBER/MAIL CODE
	BUYER/CA (517) 241-2619 Seleana L. Samuel
Contract Compliance Inspector: Laura Gyorkos (517) 373-1455 Toro Lawn Maintenance Equipment – Local Units of Government	
CONTRACT PERIOD: From: February 8, 2007 To: February 7, 2009	
TERMS N/A	SHIPMENT N/A
F.O.B. N/A	SHIPPED FROM N/A
MINIMUM DELIVERY REQUIREMENTS N/A	
MISCELLANEOUS INFORMATION:	

NATURE OF CHANGE(S):

Effective immediately the contact person for this Contract has been
Changed to:

Gabe Ross
1-800-822-2216
gabe.ross@spartandist.com

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

AUTHORITY/REASON:

Per vendor email dated December 18, 2007 and DMB Purchasing Operations.

TOTAL ESTIMATED CONTRACT VALUE REMAINS: \$0.00

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

April 26, 2007

**NOTICE
 OF
 CONTRACT NO. 071B7200194
 between
 THE STATE OF MICHIGAN
 and**

NAME & ADDRESS OF VENDOR Spartan Distributors, Inc. P.O. Box 246 Sparta, MI 49345 Email: Jeff.Rogers@spartandist.com	TELEPHONE: John Read (616) 887-7301
	VENDOR NUMBER/MAIL CODE
	BUYER/CA (517) 241-2619 Seleana L. Samuel
Contract Compliance Inspector: Laura Gyorkos (517) 373-1455 Toro Lawn Maintenance Equipment – Local Units of Government	
CONTRACT PERIOD: From: February 8, 2007 To: February 7, 2009	
TERMS <p style="text-align: center;">N/A</p>	SHIPMENT <p style="text-align: center;">N/A</p>
F.O.B. <p style="text-align: center;">N/A</p>	SHIPPED FROM <p style="text-align: center;">N/A</p>
MINIMUM DELIVERY REQUIREMENTS <p style="text-align: center;">N/A</p>	
MISCELLANEOUS INFORMATION:	

The terms and conditions of this Contract are attached.

Estimated Contract Value: \$0.00

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

CONTRACT NO. 071B7200194
 between
THE STATE OF MICHIGAN
 and

NAME & ADDRESS OF VENDOR Spartan Distributors, Inc. P.O. Box 246 Sparta, MI 49345 Email: Jeff.Rogers@spartandist.com	TELEPHONE: John Read (616) 887-7301 VENDOR NUMBER/MAIL CODE BUYER/CA (517) 241-2619 Seleana L. Samuel
Contract Compliance Inspector: Laura Gyorkos (517) 373-1455 Toro Lawn Maintenance Equipment – Local Units of Government	
CONTRACT PERIOD: From: February 8, 2007 To: February 7, 2009	
TERMS <p style="text-align: center;">N/A</p>	SHIPMENT <p style="text-align: center;">N/A</p>
F.O.B. <p style="text-align: center;">N/A</p>	SHIPPED FROM <p style="text-align: center;">N/A</p>
MINIMUM DELIVERY REQUIREMENTS <p style="text-align: center;">N/A</p>	
MISCELLANEOUS INFORMATION: The terms and conditions of this Contract are attached. Estimated Contract Value: \$0.00	

THIS IS NOT AN ORDER: THIS CONTRACT AGREEMENT IS FOR USE BY LOCAL UNITS OF GOVERNMENT ONLY FOR THE PURCHASE OF TORO BRAND LAWN MAINTENANCE EQUIPMENT. ORDERS WILL BE PLACED BY LOCAL UNITS OF GOVERNMENT AS REQUIRED. LOCAL UNITS OF GOVERNMENT MUST NOTE THE ABOVE CONTRACT NUMBER ON ALL ORDERS PLACED WITH THE SPARTAN DISTRIBUTORS, INC.

FOR THE VENDOR:

Spartan Distributors, Inc.
 Firm Name

 Authorized Agent Signature

 Authorized Agent (Print or Type)

 Date

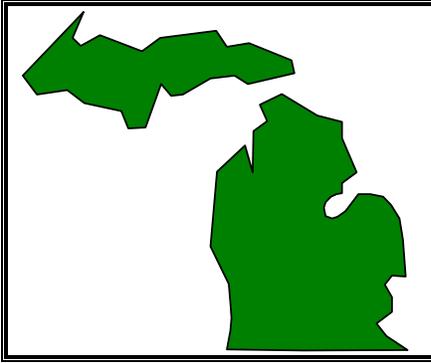
FOR THE STATE:

 Signature
Jeffrey A. White, Buyer Manager

 Name/Title
Commodities Division, Purchasing Operations

 Division

 Date



STATE OF MICHIGAN
Department of Management and Budget
Purchasing Operations

Spartan Distributors, Inc.

CONTRACT NO. 071B7200194

Buyer Name: [Seleana Samuel](#)
Telephone Number: [517-241-2619](#)
E-Mail Address: samuels1@michigan.gov

Spartan Distributors, Inc.

Article 1 – Statement of Work (SOW)	6
1.0 Introduction	6
1.001 DEFINING DOCUMENT	6
1.002 PROJECT TITLE AND DESCRIPTION	6
1.003 PROJECT CONTROL (Reserved)	6
1.004 COMMENCEMENT OF WORK	6
1.1 Product Quality	6
1.101 SPECIFICATIONS	6
1.102 RESEARCH AND DEVELOPMENT (Reserved)	6
1.103 QUALITY ASSURANCE PROGRAM (Reserved)	6
1.104 WARRANTY FOR PRODUCTS OR SERVICES	6
1.2 Service Capabilities	6
1.201 CUSTOMER SERVICE/ORDERING	6
1.202 TRAINING	6
1.203 REPORTING	6
1.204 SPECIAL PROGRAMS/ TRADE-INS	7
1.205 SECURITY (Reserved)	7
1.3 Delivery Capabilities	7
1.301 TIME FRAMES	7
1.302 MINIMUM ORDER	7
1.303 PACKAGING (Reserved)	7
1.304 PALLETIZING (Reserved)	7
1.305 DELIVERY TERM	7
1.306 RESERVED FOR ACCEPTANCE OF DELIVERABLES/PARE EXPLANATION	7
1.4 Project Price	7
1.401 PRICING	7
1.402 QUICK PAYMENT TERMS (Reserved)	8
1.403 PRICE TERM	8
1.5 Quantity term (Reserved)	8
1.6 Other Terms and Conditions Needed for this Contract	8
Article 2 – General Terms and Conditions	9
2.0 Introduction	9
2.001 GENERAL PURPOSE	9
2.002 ISSUING OFFICE AND CONTRACT ADMINISTRATOR	9
2.003 NOTICE	9
2.004 CONTRACT TERM	9
2.005 GOVERNING LAW	10
2.006 APPLICABLE STATUTES	10
2.007 RELATIONSHIP OF THE PARTIES	10
2.008 HEADINGS	10
2.009 MERGER	11
2.010 SEVERABILITY	11
2.011 SURVIVORSHIP	11
2.012 NO WAIVER OF DEFAULT	11
2.013 PURCHASE ORDERS (Reserved)	11
2.1 Vendor/Contractor Obligations	11
2.101 ACCOUNTING RECORDS	11
2.102 NOTIFICATION OF OWNERSHIP	11
2.103 SOFTWARE COMPLIANCE (Reserved)	12
2.104 RESERVED	12
2.105 PERFORMANCE AND RELIABILITY EVALUATION (PARE) (Reserved)	12
2.106 PREVAILING WAGE (Reserved)	12
2.107 PAYROLL AND BASIC RECORDS (Reserved)	12
2.108 COMPETITION IN SUB-CONTRACTING	12
2.109 CALL CENTER DISCLOSURE (Reserved)	12
2.2 Contract Performance	12

	2.201	TIME IS OF THE ESSENCE (Reserved).....	12
	2.202	CONTRACT PAYMENT SCHEDULE	12
	2.203	POSSIBLE PROGRESS PAYMENTS (Reserved)	12
	2.204	POSSIBLE PERFORMANCE-BASED PAYMENTS (Reserved).....	12
	2.205	ELECTRONIC PAYMENT AVAILABILITY (Reserved)	12
	2.206	MiDEAL Program	12
2.3		Contract Rights and Obligations	12
	2.301	INCURRING COSTS	12
	2.302	CONTRACTOR RESPONSIBILITIES.....	13
	2.303	ASSIGNMENT AND DELEGATION	13
	2.304	TAXES	13
	2.305	INDEMNIFICATION.....	13
	2.306	LIMITATION OF LIABILITY	15
	2.307	CONTRACT DISTRIBUTION	16
	2.308	FORM, FUNCTION, AND UTILITY (Reserved)	16
	2.309	ASSIGNMENT OF ANTITRUST CAUSE OF ACTION.....	16
	2.310	LIABILITY INSURANCE	16
	2.311	TRANSITION ASSISTANCE.....	18
	2.312	WORKPLACE SAFETY	19
	2.313	WORKPLACE DISCRIMINATION	19
	2.314	WEBSITE INCORPORATION.....	19
2.4		Contract Review and Evaluation.....	19
	2.401	CONTRACT COMPLIANCE INSPECTOR (Reserved).....	19
	2.402	PERFORMANCE REVIEWS	19
	2.403	AUDIT OF CONTRACT COMPLIANCE/ RECORDS AND INSPECTIONS.....	20
2.5		Quality and Warranties.....	20
	2.501	PROHIBITED PRODUCTS	20
	2.502	QUALITY ASSURANCE	20
	2.503	INSPECTION	20
	2.504	GENERAL WARRANTIES (goods).....	20
	2.505	CONTRACTOR WARRANTIES (Reserved)	21
	2.506	STAFF (Reserved).....	21
	2.507	RESERVED	21
	2.508	EQUIPMENT WARRANTY (Reserved).....	21
	2.509	RESERVED	21
2.6		Breach of Contract	21
	2.601	BREACH DEFINED.....	21
	2.602	NOTICE AND THE RIGHT TO CURE.....	21
	2.603	EXCUSABLE FAILURE	21
2.7		Remedies.....	22
	2.701	CANCELLATION.....	22
	2.702	RIGHTS UPON CANCELLATION	23
	2.703	LIQUIDATED DAMAGES (Reserved).....	23
	2.704	STOP WORK (Reserved)	23
	2.705	SUSPENSION OF WORK (Reserved)	23
2.8		Changes, Modifications, and Amendments	23
	2.801	APPROVALS.....	23
	2.802	TIME EXTENTIONS	23
	2.803	MODIFICATION.....	23
	2.804	AUDIT AND RECORDS UPON MODIFICATION	24
	2.805	CHANGES.....	24

Attachments:

Discount Structure



Article1 – Statement of Work (SOW)

1.0 Introduction

1.001 DEFINING DOCUMENT

This document contains or incorporates defined requirements, the specifications and scope of work, and all contractual terms and conditions.

1.002 PROJECT TITLE AND DESCRIPTION

This Contract is to provide Terms, Conditions and Pricing for Local Units of Government for the procurement of Toro Brand Lawn Maintenance Equipment.

1.003 PROJECT CONTROL (Reserved)

1.004 COMMENCEMENT OF WORK

Contractor shall show acceptance of this agreement by signing a copy of this Contract and returning it to the Contract Administrator. Contractor shall not proceed with performance of the work to be done under this agreement, including the purchase of necessary materials, until both parties have signed this agreement to show acceptance of its terms.

1.1 Product Quality

1.101 SPECIFICATIONS

Specifications for particular models may be obtained from the distributor.

1.102 RESEARCH AND DEVELOPMENT (Reserved)

1.103 QUALITY ASSURANCE PROGRAM (Reserved)

1.104 WARRANTY FOR PRODUCTS OR SERVICES

The warranty for products or services procured under this Contract shall be the standard warranty offered by the manufacturer.

1.2 Service Capabilities

1.201 CUSTOMER SERVICE/ORDERING

The dedicated customer service representative for this Contract is John Read. Orders can be placed by telephone, fax, e-mail or regular mail. Please use the below information when placing orders:

Phone: 800-822-2216 or 616-887-7301 Fascimile: 800-232-6288 or 616-887-6288

e-mail: turf@spartandist.com or Jeff.Rogers@spartandist.com

Mail to: 487 W. Division St, Sparta, MI 49345

For online product assistance, parts lookup capabilities and publication downloads, view the Customer Care section of The Toro Company website at:

www.toro.com/customer-care/commercial/index.html

1.202 TRAINING

Operator training and safety is provided by the Contractor upon delivery of product.

1.203 REPORTING

Contractor shall provide quarterly and yearly sales reports of all equipment procured under this Contract. Report shall provide the minimum information:



Dealer Name
Municipality Purchasing Equipment
Amount of sale
% off Sale

1.204 SPECIAL PROGRAMS/ TRADE-INS

If an agency had a trade-in machine(s), they should contact Spartan Distributors to determine value of unit for trade-in. The purchase order release should indicate total contract unit pricing with any trade-in credit listed within the body of the purchase order separately.

1.205 SECURITY (Reserved)

1.3 Delivery Capabilities

1.301 TIME FRAMES

Deliveries shall be between 15 – 45 calendar days after receipt of order.

1.302 MINIMUM ORDER

There is no minimum order for this Contract.

1.303 PACKAGING (Reserved)

1.304 PALLETIZING (Reserved)

1.305 DELIVERY TERM

Prices shall be quoted "F.O.B. Delivered".

1.306 RESERVED FOR ACCEPTANCE OF DELIVERABLES/PARE EXPLANATION

1.4 Project Price

1.401 PRICING

All prices are based on discounts off of Manufacturer's Current Suggested Retail Price. Refer to Discount Schedule on Page 24 of this document.

STATE ADMINISTRATIVE FEE

The Contractor must collect an Administrative Fee on the sales transacted under this Contract. The Contractor must remit the Administrative Fee in U.S. dollars within thirty (30) days after the end of the quarterly sales reporting period. The Administrative Fee equals 3% of the total quarterly sales reported.

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

The Contractor must pay the Administrative Fee collected by check. To ensure the payment is credited properly, the Contractor must identify the check as an "Administrative Fee" and include the following information with the payment:

Applicable State BPO Number, report amount(s), and reporting period covered.

Contractor must forward the check to the following address:

Purchasing Operations
530 West Allegan St.
Lansing, MI 48933

Please make check payable to: Treasurer, State of Michigan



1.402 QUICK PAYMENT TERMS (Reserved)

1.403 PRICE TERM

Prices quoted are the maximum for a period of 365 days from the date the Contract becomes effective.

Prices are subject to change at the end of each 365-day period. Such changes shall be based on changes in actual costs incurred. Documentation of such changes must be provided with the request for price change in order to substantiate any requested change. Purchasing Operations reserves the right to consider various pertinent information sources to evaluate price increase requests (such as the CPI and PPI, US City Average, as published by the US Department of Labor, Bureau of Labor Statistics). Purchasing Operations also reserves the right to consider other information related to special economic and/or industry circumstances, when evaluating a price change request. Changes may be either increases or decreases, and may be requested by either party. Approved changes shall be firm for the remainder of the contract period unless further revised at the end of the next 365-day period.

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

1.5 Quantity term (Reserved)

1.6 Other Terms and Conditions Needed for this Contract



Article 2 – General Terms and Conditions

2.0 Introduction

2.001 GENERAL PURPOSE

This Contract is for Toro Lawn Maintenance Equipment for Local Units of Government.

2.002 ISSUING OFFICE AND CONTRACT ADMINISTRATOR

This Contract is issued by Purchasing Operations, State of Michigan, Department of Management and Budget, hereinafter known as Purchasing Operations, for local units of Government.

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

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

All communications covering this procurement must be addressed to the Contract Administrator indicated below:

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

2.003 NOTICE

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

2.004 CONTRACT TERM

The term of this Contract will be for two (2) years and will commence with the issuance of this Contract. This will be approximately February 8, 2007 through February 7, 2009.

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

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



Written notice will be provided to the Contractor within thirty (30) days, provided that the State gives the Contractor a preliminary written notice of its intent to extend at least sixty (60) days before the contract expires. The preliminary notice does not commit the State to an extension. If the State exercises this option, the extended contract shall be considered to include this option clause.

2.005 GOVERNING LAW

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

2.006 APPLICABLE STATUTES

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

MI Uniform Commercial Code (MIUCC) MCL 440. (All sections unless otherwise altered by agreement)

MI OSHA MCL §§ 408.1001 – 408.1094

Freedom of Information Act (FIOA) MCL §§ 15.231, et seq.

Natural Resources and Environmental Protection Act MCL §§ 324.101, et seq.

MI Consumer Protection Act MCL §§ 445.901 – 445.922

Laws relating to wages, payments of wages, and fringe benefits on state projects MCL §§ 408.551 – 408.558, 408.471 – 408.490, 1965 PA 390.

Department of Civil Service Rules and regulations

Elliot Larsen Civil Rights Act MCL §§ 37.2201, et seq.

Persons with disabilities Civil Rights Act MCL §§ 37.1101, et seq.

MCL §§ 423.321, et seq.

MCL § 18.1264 (law regarding debarment)

Davis-Bacon Act (DBA) 40 USCU §§ 276(a), et seq.

Contract Work Hours and Safety Standards Act (CWHSSA) 40 USCS § 327, et seq.

Business Opportunity Act for Persons with Disabilities MCL §§ 450.791 – 450.795

Rules and regulations of the Environmental Protection Agency

Internal Revenue Code

Rules and regulations of the Equal Employment Opportunity Commission (EEOC)

The Civil Rights Act of 1964, USCS Chapter 42

Title VII, 42 USCS §§ 2000e et seq.

The Americans with Disabilities Act (ADA), 42 USCS §§ 12101 et seq.

The Age Discrimination in Employment Act of 1967 (ADEA), 29 USCS §§ 621, 623 et seq.

The Old Workers Benefit and Protection Act of 1990 (OWBPA), 29 USCS §§ 626, et seq.

The Family Medical Leave Act of 1993 (FMLA), 29 USC §§ 651 et seq.

The Fair Labor Standards Act (FLSA), 29 USC §§ 201 et seq.

Pollution Prevention Act of 1990 (PPA) 42 U.S.C. §13106

Sherman Act, 15 U.S.C.S. § 1 et seq.

Robinson-Patman Act, 15 U.S.C.S. § 13 et. seq.

Clayton Act, 15 U.S.C.S. § 14 et seq.

2.007 RELATIONSHIP OF THE PARTIES

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

2.008 HEADINGS

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

**2.009 MERGER**

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

2.010 SEVERABILITY

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

2.011 SURVIVORSHIP

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

2.012 NO WAIVER OF DEFAULT

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

2.013 PURCHASE ORDERS (Reserved)**2.1 Vendor/Contractor Obligations****2.101 ACCOUNTING RECORDS**

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

2.102 NOTIFICATION OF OWNERSHIP

The Contractor shall make the following notifications in writing:

1. When the Contractor becomes aware that a change in its ownership or officers has occurred, or is certain to occur, that could result in changes in the valuation of its capitalized assets in the accounting records, the Contractor shall notify Purchasing Operations within 30 days.
2. The Contractor shall also notify the Purchasing Operations within 30 days whenever changes to asset valuations or any other cost changes have occurred or are certain to occur as a result of a change in ownership or officers.

The Contractor shall:

1. Maintain current, accurate, and complete inventory records of assets and their costs;
2. Provide Purchasing Operations or designated representative ready access to the records upon request;
3. Ensure that all individual and grouped assets, their capitalized values, accumulated depreciation or amortization, and remaining useful lives are identified accurately before and after each of the Contractor's ownership or officer changes; and
4. Retain and continue to maintain depreciation and amortization schedules based on the asset records maintained before each Contractor ownership or officer change.



- 2.103 SOFTWARE COMPLIANCE (Reserved)
- 2.104 RESERVED
- 2.105 PERFORMANCE AND RELIABILITY EVALUATION (PARE) (Reserved)
- 2.106 PREVAILING WAGE (Reserved)
- 2.107 PAYROLL AND BASIC RECORDS (Reserved)
- 2.108 COMPETITION IN SUB-CONTRACTING

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

- 2.109 CALL CENTER DISCLOSURE (Reserved)

2.2 Contract Performance

- 2.201 TIME IS OF THE ESSENCE (Reserved)

- 2.202 CONTRACT PAYMENT SCHEDULE

Payments shall be made by Local Units of Government. The State of Michigan shall not be liable for any purchases made under this Contract.

- 2.203 POSSIBLE PROGRESS PAYMENTS (Reserved)
- 2.204 POSSIBLE PERFORMANCE-BASED PAYMENTS (Reserved)
- 2.205 ELECTRONIC PAYMENT AVAILABILITY (Reserved)
- 2.206 MiDEAL Program

Act Number 431 of the Public Acts of 1984 permits the State of Michigan, Department of Management and Budget, to provide purchasing services to any city, village, county, township, school district, intermediate school district, nonprofit hospital, institution of higher learning, or community or junior colleges. As a result of the enactment of this legislation, the MiDEAL Program has been developed. This program extends the use of State contracts to program members. The State agency must enter into an agreement with the State of Michigan to become authorized to participate, thus ensuring that local units of State secure a greater return for the expenditure of public funds.

In such cases, Contract vendors supply merchandise at the established State of Michigan Contract prices and terms. Inasmuch as these are non-State agencies, all purchase orders will be submitted by, invoices will be billed to, and the authorized MiDEAL member on a direct and individual basis in accordance with Contract terms will remit payment.

Commodities and/or services on this Contract will be supplied to authorized Extended Purchasing Program members in accordance with the terms and prices quoted. Upon request, a complete listing of eligible participants in the Extended Purchasing Program will be provided.

2.3 Contract Rights and Obligations

- 2.301 INCURRING COSTS

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



2.302 CONTRACTOR RESPONSIBILITIES

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

2.303 ASSIGNMENT AND DELEGATION

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

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

2.304 TAXES

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

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

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

2.305 INDEMNIFICATION

General Indemnification

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

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



3. Any claim, demand, action, citation or legal proceeding against the State, its employees and agents arising out of or related to occurrences that the Contractor is required to insure against as provided for in this Contract;
4. Any claim, demand, action, citation or legal proceeding against the State, its employees and agents arising out of or resulting from the death or bodily injury of any person, or the damage, loss or destruction of any real or tangible personal property, in connection with the performance of services by the Contractor, by any of its subcontractors, by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable; provided, however, that this indemnification obligation shall not apply to the extent, if any, that such death, bodily injury or property damage is caused solely by the negligence or reckless or intentional wrongful conduct of the State;
5. Any claim, demand, action, citation or legal proceeding against the State, its employees and agents which results from an act or omission of the Contractor or any of its subcontractors in its or their capacity as an employer of a person.

Patent/Copyright Infringement Indemnification

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

Code Indemnification

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

Indemnification Obligation Not Limited

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



Continuation of Indemnification Obligation

The duty to indemnify will continue in full force and affect notwithstanding the expiration or early termination of the Contract with respect to any claims based on facts or conditions, which occurred prior to termination.

Indemnification Procedures

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

- (a) After receipt by the State of notice of the action or proceeding involving a claim in respect of which it will seek indemnification, the State shall promptly notify Contractor of such claim in writing and take or assist Contractor in taking, as the case may be, any reasonable action to avoid the imposition of a default judgment against Contractor. No failure to so notify Contractor shall relieve Contractor of its indemnification obligations except to the extent that Contractor can demonstrate damages attributable to such failure. Within ten (10) days following receipt of written notice from the State relating to any claim, Contractor shall notify the State in writing whether Contractor agrees to assume control of the defense and settlement of that claim (a "Notice of Election"). After notifying Contractor of a claim and prior to the State receiving Contractor's Notice of Election, the State shall be entitled to defend against the claim, at Contractor's expense, and Contractor will be responsible for any reasonable costs incurred by the State in defending against the claim during such period.
- (b) If Contractor delivers a Notice of Election relating to any claim: (i) the State shall be entitled to participate in the defense of such claim and to employ counsel at its own expense to assist in the handling of such claim and to monitor and advise the State about the status and progress of the Defense; (ii) Contractor shall, at the request of the State, demonstrate to the reasonable satisfaction of the State, Contractor's financial ability to carry out its defense and indemnity obligations under this Contract; (iii) Contractor shall periodically advise the State about the status and progress of the defense and shall obtain the prior written approval of the State before entering into any settlement of such claim or ceasing to defend against such claim and (iv) to the extent that any principles of Michigan governmental or public law may be involved or challenged, the State shall have the right, at its own expense, to control the defense of that portion of such claim involving the principles of Michigan governmental or public law. Notwithstanding the foregoing, the State may retain control of the defense and settlement of a claim by written notice to Contractor given within ten (10) days after the State's receipt of Contractor's information requested by the State pursuant to clause (ii) of this paragraph if the State determines that Contractor has failed to demonstrate to the reasonable satisfaction of the State Contractor's financial ability to carry out its defense and indemnity obligations under this Section. Any litigation activity on behalf of the State of Michigan, or any of its subdivisions pursuant to this Section, must be coordinated with the Department of Attorney General. In the event the insurer's attorney represents the State pursuant to this Section, the insurer's attorney may be required to be designated as a Special Assistant Attorney General by the Attorney General of the State of Michigan.
- (c) If Contractor does not deliver a Notice of Election relating to any claim of which it is notified by the State as provided above, the State shall have the right to defend the claim in such manner as it may deem appropriate, at the cost and expense of Contractor. If it is determined that the claim was one against which Contractor was required to indemnify the State, upon request of the State, Contractor shall promptly reimburse the State for all such reasonable costs and expenses.

2.306 LIMITATION OF LIABILITY

Except as set forth herein, neither the Contractor nor the State nor any MiDeal member shall be liable to the other party for indirect or consequential damages, even if such party has been advised of the possibility of such damages. Such limitation as to indirect or consequential damages shall not apply to claims for infringement of United States patent, copyright, trademarks or trade secrets; to claims for personal injury or damage to property caused by the gross negligence or willful misconduct of the Contractor; to claims covered by other specific provisions of this Contract calling for liquidated damages; to Contractor's



indemnification obligations (2.305); or to court costs or attorney's fees awarded by a court in addition to damages after litigation based on this Contract.

The State's liability for damages to the Contractor shall be limited to the value of the Contract.

2.307 CONTRACT DISTRIBUTION

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

2.308 FORM, FUNCTION, AND UTILITY (Reserved)

2.309 ASSIGNMENT OF ANTITRUST CAUSE OF ACTION

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

2.310 LIABILITY INSURANCE

A. Insurance

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

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

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

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

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

See www.michigan.gov/cis

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

Before both parties sign this Contract or before the purchase order is issued by the State, the Contractor must furnish to the Director of Purchasing, certificate(s) of insurance verifying insurance coverage ("Certificates"). The Certificate must be on the standard "accord" form or equivalent. **THE CONTRACT OR PURCHASE ORDER NO. MUST BE SHOWN ON THE CERTIFICATE OF INSURANCE TO ASSURE CORRECT FILING.** All Certificate(s) are to be prepared and submitted by the Insurance Provider. All Certificate(s) shall contain a provision indicating that coverage afforded under the policies WILL NOT BE CANCELLED, MATERIALLY CHANGED, OR NOT RENEWED without THIRTY (30) days prior written notice, except for ten (10) days for non-payment



of premium, having been given to the Director of Purchasing, Department of Management and Budget. The notice must include the Contract or Purchase Order number affected and be mailed to: Director, Purchasing, Department of Management and Budget, P.O. Box 30026, Lansing, Michigan 48909. Failure to provide evidence of coverage, may, at the State's sole option, result in this Contract's termination.

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

1. Commercial General Liability with the following minimum coverage:

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

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

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

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

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

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

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

4. Employers liability insurance with the following minimum limits:

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

5. Employee Fidelity, including Computer Crimes, insurance naming the State as a loss payee, providing coverage for direct loss to the State and any legal liability of the State arising out of or related to fraudulent or dishonest acts committed by the employees of Contractor or its Subcontractors, acting alone or in collusion with others, in a minimum amount of one million dollars (\$1,000,000.00) with a maximum deductible of fifty thousand dollars (\$50,000.00).
6. Umbrella or Excess Liability Insurance in a minimum amount of ten million dollars (\$10,000,000.00), which shall apply, at a minimum, to the insurance required in Subsection 1 (Commercial General Liability) above.



7. Professional Liability (Errors and Omissions) Insurance with the following minimum coverage: three million dollars (\$3,000,000.00) each occurrence and three million dollars (\$3,000,000.00) annual aggregate.
8. Fire and Personal Property Insurance covering against any loss or damage to the office space used by Contractor for any reason under this Contract, and the equipment, software and other contents of such office space, including without limitation, those contents used by Contractor to provide the Services to the State, up to the replacement value thereof, where such office space and its contents are under the care, custody and control of Contractor. Such policy shall cover all risks of direct physical loss or damage, including without limitation, flood and earthquake coverage and coverage for computer hardware and software. The State shall be endorsed on the policy as a loss payee as its interests appear.

B. Subcontractors

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

C. Certificates of Insurance and Other Requirements

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

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

2.311 TRANSITION ASSISTANCE

If this Contract is not renewed at the end of this term, or is canceled prior to its expiration, for any reason, the Contractor must provide for up to 120 calendar days after the expiration or cancellation of this Contract, all reasonable transition assistance requested by the State, to allow for the expired or canceled portion of the Services to continue without interruption or adverse effect, and to facilitate the orderly transfer of such services to the State or its designees. Such transition assistance will be deemed by the parties to be governed by the terms and conditions of this Contract, (notwithstanding this expiration or cancellation) except for those Contract terms or conditions that do not reasonably apply to such transition assistance.



The State shall pay the Contractor for any resources utilized in performing such transition assistance at the most current rates provided by the Contract for Contract performance.

2.312 WORKPLACE SAFETY

1. In performing work under this Contract on State premises, the Contractor shall conform to any specific safety requirements contained in the Contract or as required by law or regulation. The Contractor shall take any additional precautions as the State may reasonably require for safety and accident prevention purposes. Any violation by the Contractor of such safety requirements, rules, laws or regulations shall be a material breach of the Contract subject to the cancellation provisions contained herein.
2. In performing services for the State pursuant to this Contract, the Contractor shall comply with Department of Civil Service Rules 2-20 regarding Workplace Safety and 1-8.3 regarding Discriminatory Harassment. In addition, the Contractor shall comply with Civil Service Regulations governing workplace safety and discriminatory harassment and any applicable state agency rules on these matters that the agency provides to the Contractor. Department of Civil Service Rules and Regulations can be found on the Department of Civil Service website at www.michigan.gov/mdcs.

2.313 WORKPLACE DISCRIMINATION

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

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

2.314 WEBSITE INCORPORATION

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

2.4 Contract Review and Evaluation

2.401 CONTRACT COMPLIANCE INSPECTOR (Reserved)

2.402 PERFORMANCE REVIEWS

Purchasing Operations in conjunction with State agencies may review with the Contractor their performance under this Contract. Performance reviews shall be conducted quarterly, semi-annually or annually depending on Contractor's past performance with the State. Performance reviews shall include, but not limited to, quality of products/services being delivered and provided, timeliness of delivery, percentage of completion of orders, the amount of back orders, status of such orders, accuracy of billings, customer



service, completion and submission of required paperwork, the number of substitutions and the reasons for substitutions, and other requirements of this Contract.

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

2.403 AUDIT OF CONTRACT COMPLIANCE/ RECORDS AND INSPECTIONS

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

2.5 Quality and Warranties

2.501 PROHIBITED PRODUCTS

The State (and members of the MiDeal Program) will not accept salvage, distressed, outdated or discontinued merchandise. Shipping of such merchandise to any State agency, as a result of an order placed against the Contract, shall be considered default by the Contractor of the terms and conditions of the Contract and may result in cancellation of the Contract by the State. The brand and product number offered for all items shall remain consistent for the term of the Contract, unless Purchasing Operations has approved a change.

2.502 QUALITY ASSURANCE

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

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

2.503 INSPECTION

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

2.504 GENERAL WARRANTIES (goods)

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

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



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

2.505 CONTRACTOR WARRANTIES (Reserved)

2.506 STAFF (Reserved)

2.507 RESERVED

2.508 EQUIPMENT WARRANTY (Reserved)

2.509 RESERVED

2.6 Breach of Contract

2.601 BREACH DEFINED

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

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

2.602 NOTICE AND THE RIGHT TO CURE

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

2.603 EXCUSABLE FAILURE

1. Neither party shall be liable for any default or delay in the performance of its obligations under the Contract if and to the extent such default or delay is caused, directly or indirectly, by: fire, flood, earthquake, elements of nature or acts of God; riots, civil disorders, rebellions or revolutions in any country; the failure of the other party to perform its material responsibilities under the Contract (either itself or through another contractor); injunctions (provided the injunction was not issued as a result of any fault or negligence of the party seeking to have its default or delay excused); or any other cause beyond the reasonable control of such party; provided the non-performing party and its subcontractors are without fault in causing such default or delay, and such default or delay could not have been prevented by reasonable precautions and cannot reasonably be circumvented by the non-performing party through the use of alternate sources, workaround plans or other means, including disaster recovery plans. In such event, the non-performing party will be excused from any further performance or observance of the obligation(s) so affected for as long as such circumstances prevail and such party continues to use its best efforts to recommence performance or observance whenever and to whatever extent possible without delay provided such party promptly notifies the other party in writing of the inception of the excusable failure occurrence, and also of its abatement or cessation.
2. If any of the above enumerated circumstances substantially prevent, hinder, or delay performance of the services necessary for the performance of the State's functions for more than 14 consecutive days, and the State determines that performance is not likely to be resumed within a period of time that is satisfactory to the State in its reasonable discretion, then at the State's option: (a) the State may procure the affected services from an alternate source, and the State shall not be liable for payments for the unperformed services under the Contract for so long as the delay in performance



shall continue; (b) the State may cancel any portions of the Contract so affected and the charges payable hereunder shall be equitably adjusted to reflect those services canceled; or (c) the Contract will be canceled without liability of the State to the Contractor as of the date specified by the State in a written notice of cancellation to the Contractor. The Contractor will not have the right to any additional payments from the State as a result of any excusable failure occurrence or to payments for services not rendered as a result of the excusable failure condition. Defaults or delays in performance by the Contractor which are caused by acts or omissions of its subcontractors will not relieve the Contractor of its obligations under the Contract except to the extent that a subcontractor is itself subject to any excusable failure condition described above and the Contractor cannot reasonably circumvent the effect of the subcontractor's default or delay in performance through the use of alternate sources, workaroud plans or other means.

2.7 Remedies

2.701 CANCELLATION

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

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

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

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

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

2. Cancellation For Convenience By the State. The State may cancel this Contract for its convenience, in whole or part, if the State determines that such a cancellation is in the State's best interest. Reasons for such cancellation shall be left to the sole discretion of the State and may include, but not limited to (a) the State no longer needs the services or products specified in the Contract, (b) relocation of office, program changes, changes in laws, rules, or regulations make implementation of the Contract services no longer practical or feasible, and (c) unacceptable prices for additional services requested by the State. The State may cancel the Contract for its convenience, in whole or in part, by giving the Contractor written notice 30 days prior to the date of cancellation. If the State chooses to cancel this Contract in part, the charges payable under this Contract shall be equitably adjusted to reflect those services that are cancelled.
3. Non-Appropriation. In the event that funds to enable the State to effect continued payment under this Contract are not appropriated or otherwise made available. The Contractor acknowledges that, if this Contract extends for several fiscal years, continuation of this Contract is subject to appropriation or availability of funds for this project. If funds are not appropriated or otherwise made available, the State shall have the right to cancel this Contract at the end of the last period for which funds have been appropriated or otherwise made available by giving written notice of cancellation to the



Contractor. The State shall give the Contractor written notice of such non-appropriation or unavailability within 30 days after it receives notice of such non-appropriation or unavailability.

4. Criminal Conviction. In the event the Contractor, an officer of the Contractor, or an owner of a 25% or greater share of the Contractor, is convicted of a criminal offense incident to the application for or performance of a State, public or private Contract or subcontract; or convicted of a criminal offense including but not limited to any of the following: embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, attempting to influence a public employee to breach the ethical conduct standards for State of Michigan employees; convicted under State or federal antitrust statutes; or convicted of any other criminal offense which in the sole discretion of the State, reflects upon the Contractor's business integrity.
5. Approvals Rescinded. The State may terminate this Contract without further liability or penalty in the event any final administrative or judicial decision or adjudication disapproves a previously approved request for purchase of personal services pursuant to Constitution 1963, Article 11, section 5, and Civil Service Rule 7. Termination may be in whole or in part and may be immediate as of the date of the written notice to Contractor or may be effective as of the date stated in such written notice.

2.702 RIGHTS UPON CANCELLATION

Termination Assistance. If this Contract (or any Statement of Work issued under it) is terminated for any reason prior to completion, Contractor agrees to provide for up to six (6) months after the termination all reasonable termination assistance requested by the State to facilitate the orderly transfer of such Services to the State or its designees in a manner designed to minimize interruption and adverse effect. Such termination assistance will be deemed by the parties to be governed by the terms and conditions of this Contract (notwithstanding its termination) other than any terms or conditions that do not reasonably apply to such termination assistance. Such termination assistance shall be at no additional charge to the State if the termination is for Contractor's Default pursuant to Section 2.602; otherwise the State shall compensate Contractor for such termination assistance on a time and materials basis in accordance with the Amendment Labor Rates identified within this Contract agreement.

2.703 LIQUIDATED DAMAGES (Reserved)

2.704 STOP WORK (Reserved)

2.705 SUSPENSION OF WORK (Reserved)

2.8 Changes, Modifications, and Amendments

2.801 APPROVALS

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

2.802 TIME EXTENTIONS

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

2.803 MODIFICATION

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



ACCEPTABLE TO THE STATE, THE CONTRACT SHALL BE SUBJECT TO COMPETITIVE BIDDING BASED UPON THE NEW SPECIFICATION.

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

2.804 AUDIT AND RECORDS UPON MODIFICATION

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

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

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

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

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

2.805 CHANGES

- (a) The Contract Administrator may, at any time, without notice to the sureties, if any, by written order designated or indicated to be a change order, make changes in the work within the general scope of the contract, including changes:
 - (1) In the specifications (including drawings and designs);
 - (2) In the method or manner of performance of the work;
 - (3) In the Government-furnished facilities, equipment, materials, services, or site; or
 - (4) Directing acceleration in the performance of the work.
- (a) Any other written or oral order (which, as used in this paragraph (b), includes direction, instruction, interpretation, or determination) from the Contract Administrator that causes a change shall be treated as a change order under this clause; Provided, that the Contractor gives the Contract Administrator written notice stating:
 - (1) The date, circumstances, and source of the order; and
 - (2) That the Contractor regards the order as a change order.
- (b) Except as provided in this clause, no order, statement, or conduct of the Contract Administrator shall be treated as a change under this clause or entitle the Contractor to an equitable adjustment.



DISCOUNT SCHEDULE

All prices are based on discounts from Manufacturer's Suggested Retail Prices (MSRP). Discounts will vary based on the following product groups:

TORO COMMERCIAL MOWERS (complete unit only):

Heavy Duty 21" Walkbehnd Mower	28%
<i>ProLine</i> Mid-Size Walk Mowers (<i>fixed & floating deck</i>)	28%
<i>Z-Master</i> Zero Turn Riding Mower (<i>400/500 Series</i>)	28%
<i>GroundsMaster 7200</i>	25%
<i>GroundsMaster 300 / 3280 / 3320 Series</i>	30%
<i>GroundsMaster 4000-D / 4100-D</i>	24%
<i>GroundsMaster 3500-D / 4500-D / 4700-D</i>	21.2%
<i>GroundsMaster 580-D</i>	25%
<i>Greensmaster</i> (greens mower – walk & riding)	25%
<i>Reelmaster</i> (fairway mower)	25%

TORO UTILITY VEHICLES (complete unit only):

<i>Workman / Mid-Duty</i>	28%
<i>Workman / Heavy-Duty</i>	25%

TORO (general):

All other TORO commercial equipment	21.2%
All TORO & Irritrol commercial/residential irrigation products	40%



IMPORTANT NOTES

1. All discounts are a percentage discount from current Manufacturer's Suggested Retail Price, in effect on date of purchase order (purchase order required).
2. All Toro whole goods, attachments or accessories will receive the same discount. Parts are not included in this discount.
3. Manufacturer's new product offerings will be included in the appropriate Price Book section, or a new discount will be determined / advised by the vendor at the time a new product / category of product is announced.
4. Multi-unit Purchase Discount (must consist of multi-unit purchase of same model):

3-5 units	Additional 1%
6+ units	Additional 2%
5. All prices are FOB DESTINATION within vendor servicing area. Equipment will be delivered from one of Spartan Distributors' two (2) locations:

487 W. Division St. Sparta, MI	1050 Opdyke Rd. Auburn Hills, MI
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6. Genuine Toro replacement and service parts are available with this Contract via the Toro *Performance Parts Program*, at an average discount of 30% from Manufacturer's Suggested Retail Price. Enrollment and pricing in this program is automatic for state contract customers.



CONTACT INFORMATION

CONTACT PERSONNEL:

Commercial Equipment:

Kris Early Jeff Rogers
Gabe Ross

Residential / Commercial Irrigation Products:

Mark Gunderson

CONTACT INFORMATION:

PHONE: Toll-free statewide: 800-822-2216

FAX Toll-free statewide: 800-232-6288

EMAIL: turf@spartandist.com