

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

NOTICE OF CONTRACT NO. 071B6600048
 between
THE STATE OF MICHIGAN
 and

NAME & ADDRESS OF CONTRACTOR:	PRIMARY CONTACT	EMAIL
VWR International Inc. 100 Matsonford Road, Suite 200 Radnor, PA 19087	Lewis McMillan	Lewis.McMillan@VWR.com
	TELEPHONE	CONTRACTOR #, MAIL CODE
	770-335-7925	-9190

STATE CONTACTS	AGENCY	NAME	PHONE	EMAIL
CONTRACT COMPLIANCE INSPECTOR:	Various			
BUYER:	DTMB	Melissa Sambiago	517-284-7016	sambiagiom@michigan.gov

CONTRACT SUMMARY:			
DESCRIPTION: Laboratory Equipment & Consumables			
Multi State Lab Supply			
INITIAL TERM	EFFECTIVE DATE	INITIAL EXPIRATION DATE	AVAILABLE OPTIONS
3 years	April 1, 2016	March 31, 2019	2, one year
PAYMENT TERMS	F.O.B	SHIPPED	SHIPPED FROM
45 days	Destination	See Section 9.4	Various Locations
ALTERNATE PAYMENT OPTIONS:			AVAILABLE TO MIDEAL PARTICIPANTS
<input checked="" type="checkbox"/> P-card <input checked="" type="checkbox"/> Direct Voucher (DV) <input type="checkbox"/> Other			<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO
MINIMUM DELIVERY REQUIREMENTS:			
N/A			
MISCELLANEOUS INFORMATION:			
N/A			
ESTIMATED CONTRACT VALUE AT TIME OF EXECUTION:		\$15,000,000.00	

Notice of Contract #: 071B6600048

FOR THE CONTRACTOR:	FOR THE STATE:
VNK International Film Name	<i>Rebecca Cook</i> Signature
<i>Mary Diamond</i> Authorized Agent Signature	Rebecca Cook Name/Title
Mary Diamond Authorized Agent (Print or Type)	Commodities Division Director Enter Name of Agency
3/21/2016 Date	3/22/16 Date

PARTICIPATING ADDENDUM

NASPO VALUEPOINT COOPERATIVE PURCHASING PROGRAM
Laboratory Equipment and Supplies
Administered by the State of Idaho (hereinafter "Lead State")

VWR International, LLC
Master Agreement No: MA16000234-2
(hereinafter "Contractor")

And

State of Michigan
(hereinafter "Participating State")

1. Scope: This Participating Addendum (PADD) covers the Laboratory Equipment and Supplies contract led by the State of Idaho (Master Agreement No. MA16000234-2) for use by state agencies and other entities located in the Participating State, as provided below.
2. Participation: Use of NASPO ValuePoint cooperative contracts by agencies, political subdivisions and other entities authorized by an individual state's statutes to use state contracts are subject to the prior approval of the respective State Chief Procurement Official. Issues of interpretation and eligibility for participation are solely within the authority of the State Chief Procurement Official.
3. Participating State Modifications or Additions to Master Agreement:
Notwithstanding any provisions in the Master Agreement to the contrary, the following shall apply to this PADD: State of Michigan Standard Contract Terms
4. Primary Contacts: The primary contact individuals for this Participating Addendum are as follows (or their named successors):

Contractor

Name	Lewis McMillan	Radnor
Address	100 Matsonford Road, Suite 200, Radnor PA 19087-8660	
Telephone	770-335-7925	
Fax	484-881-5697	
E-mail	Lewis_mcmillan@vwr.com	
	With copy to: government@vwr.com	

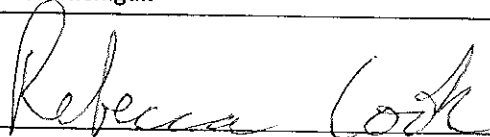

Participating State

Name	Rebecca Cook
Address	525 W. Allegan, 1N Constitution Hall, Lansing MI 48913
Telephone	517-284-7008
Fax	517-335-0046
E-mail	CookR6@michigan.gov

5. Orders: Any Order placed by a Participating Entity or Purchasing Entity for a Product and/or Service available from this Master Agreement shall be deemed to be a sale under (and governed by the prices and other terms and conditions) the Master Agreement unless the parties to the Order agree in writing that another contract or agreement applies to such Order. All orders issued by purchasing entities within the State must include the Participating State contract number: 071B6600048 as well as the Lead State Master Agreement No. MA16000234-2.

6. Entire Agreement: This PADD and the Master Agreement No. MA16000234-2, together with its exhibits, set forth the entire agreement between the parties with respect to the subject matter of all previous communications, representations or agreements, whether oral or written. The terms and conditions of this PADD shall prevail and govern in the case of any inconsistency or conflict with the terms and conditions of the Master Agreement, as to the Participating State, and shall otherwise have no impact on the Master Agreement and its exhibits.

The parties have executed this PADD as of the date of the last signature below.

Participating State: State of Michigan	Contractor: VWR International, LLC
By: 	By: 
Name: Rebecca Cook	Name: Mary Diamond
Title: Commodities Division Director	Title: VP, Pricing, Contracts, Sales Support
Date: 3/22/16	Date: 3/21/2016

For questions on executing a participating addendum, please contact:

WSCA-NASPO

Cooperative Development Coordinator	Tim Hay
Telephone	503-428-5705
E-mail	thay@wsca-naspo.org

[Please email fully executed PDF copy of this document to PA@wsca-naspo.org to support documentation of participation and posting in appropriate data bases]



STATE OF MICHIGAN

STANDARD CONTRACT TERMS

This STANDARD CONTRACT (“**Contract**”) is agreed to between the State of Michigan (the “**Participating State**”) and VWR International, LLC (“**Contractor**”), a Pennsylvania limited liability company. This Contract is effective on April 1, 2016 (“**Effective Date**”), and unless terminated, expires on March 31, 2019.

This Contract may be renewed for up to 2 additional 1 year period(s). Renewal must be by written agreement of the parties and will automatically extend the Term of this Contract.

The parties agree as follows:

- 1. Duties of Contractor.** Contractor must perform the services and provide the deliverables described in **The Master Agreement – Statement of Work** (the “**Contract Activities**”). An obligation to provide delivery of any commodity is considered a service and is a Contract Activity.

Contractor must furnish all labor, equipment, materials, and supplies necessary for the performance of the Contract Activities, and meet operational standards, unless otherwise specified in The Master Agreement.

Contractor must: (a) perform the Contract Activities in a timely, professional, safe, and workmanlike manner consistent with standards in the trade, profession, or industry; (b) meet or exceed the performance and operational standards, and specifications of the Contract; (c) provide all Contract Activities in good quality, with no material defects; (d) not interfere with the Participating State’s operations; (e) obtain and maintain all necessary licenses, permits or other authorizations necessary for the performance of the Contract; (f) cooperate with the Participating State, including the Participating State’s quality assurance personnel, and any third party to achieve the objectives of the Contract; (g) return to the Participating State any Participating State-furnished equipment or other resources in the same condition as when provided when no longer required for the Contract; (h) not make any media releases without prior written authorization from the Participating State; (i) assign to the Participating State any claims 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; (j) comply with all Participating State physical and IT security policies and standards which will be made available upon request; and (k) provide the Participating State priority in performance of the Contract except as mandated by federal disaster response requirements. Any breach under this paragraph is considered a material breach.

Contractor must also be clearly identifiable while on Participating State property by wearing identification issued by the Participating State, and clearly identify themselves whenever making contact with the Participating State.

- 2. Notices.** All notices and other communications required or permitted under this Contract must be in writing and will be considered given and received: (a) when verified by written receipt if sent by courier; (b) when actually received if sent by mail without verification of receipt; or (c) when verified by automated receipt or electronic logs if sent by facsimile or email.

If to Participating State:	If to Contractor:
Rebecca Cook 525 W. Allegan, 1 st Floor Lansing MI 48913 CookR6@michigan.gov 517-284-7008	Lewis McMillan 1050 Satellite Blvd, NW Suwanee, GA 30026 Lewis_McMillan@VWR.com 770-335-7925



3. **Contract Administrator.** The Contract Administrator for each party is the only person authorized to modify any terms of this Contract, and approve and execute any change under this Contract (each a “**Contract Administrator**”):

Participating State: Rebecca Cook 525 W. Allegan, 1 st Floor Lansing MI 48913 CookR6@michigan.gov 517-284-7008	Contractor: Lewis McMillan 1050 Satellite Blvd, NW Suwanee, GA 30026 Lewis_McMillan@VWR.com 770-335-7925
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4. **Program Manager.** The Program Manager for each party will monitor and coordinate the day-to-day activities of the Contract (each a “**Program Manager**”):

Participating State: Department of Agriculture: Carla McCarrick, Procurement 525 W. Allegan Lansing, MI 48909 mccarrickc@michigan.gov (517) 284-5746 Department of Environmental Quality: Tara Premoe, Procurement 525 W. Allegan 6 th Floor, South Tower Lansing, MI 48933 premoet@michigan.gov (517) 284-5012 Department of Health and Human Services: Wanda Rademacher, Procurement 235 South Grand Avenue, Suite 1201 Lansing, MI 48933 RademacherW@michigan.gov (517) 241-0134 Mahad Adawe, Laboratory 3350 N. Martin Luther King Jr. Blvd, Building 44 Lansing, MI 48906 AdaweM@michigan.gov (517) 335-8058 Department of Natural Resources: Laurie Gyorkos, Procurement 525 W. Allegan Lansing, MI 48913 GyorkosL@michigan.gov 517-284-5976 Michigan State Police: Victoria Olivarez, Procurement 333 S. Grand Ave. P. O. Box 30634 Lansing, MI 48913 OlivarezV1@michigan.gov (517) 241-1064	Contractor: Nina Cole Sales Representative Education and Medical Research VWR International, LLC nina_cole@vwr.com Cell (858) 210-1543 Fax (610) 728-2517 Marc Trudell Sales Representative Healthcare VWR International, LLC marc_trudell@vwr.com cell: (248) 727-7176 fax: (248) 957-8585 Lewis McMillan Director, Business Development - State & Local Government Markets 1050 Satellite Blvd, NW Suwanee, GA 30026 Lewis_McMillan@VWR.com 770-335-7925
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- 5. Performance Guarantee.** Contractor must at all times have financial resources sufficient, in the opinion of the Participating State, to ensure performance of the Contract and must provide proof upon request. The Participating State may require a performance bond The Master Agreement if, in the opinion of the Participating State, it will ensure performance of the Contract.
- 6. Insurance Requirements.** Contractor must maintain the insurances identified below and is responsible for all deductibles. All required insurance must: (a) protect the Participating State from claims that may arise out of, are alleged to arise out of, or result from Contractor's or a subcontractor's performance; (b) be primary and non-contributing to any comparable liability insurance (including self-insurance) carried by the Participating State; and (c) be provided by a company with an A.M. Best rating of "A" or better, and a financial size of VII or better.

Required Limits	Additional Requirements
Commercial General Liability Insurance	
<u>Minimal Limits:</u> \$1,000,000 Each Occurrence Limit \$1,000,000 Personal & Advertising Injury Limit \$2,000,000 General Aggregate Limit \$2,000,000 Products/Completed Operations <u>Deductible Maximum:</u> \$50,000 Each Occurrence	Contractor must have their policy endorsed to add "the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees, and agents" as additional insureds using endorsement CG 20 10 11 85, or both CG 2010 07 04 and CG 2037 07 0.
Automobile Liability Insurance	
<u>Minimal Limits:</u> \$1,000,000 Per Occurrence	Contractor must have their policy: (1) endorsed to add "the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees, and agents" as additional insureds; and (2) include Hired and Non-Owned Automobile coverage.
Workers' Compensation Insurance	
<u>Minimal Limits:</u> Coverage according to applicable laws governing work activities.	Waiver of subrogation, except where waiver is prohibited by law.
Employers Liability Insurance	
<u>Minimal Limits:</u> \$500,000 Each Accident \$500,000 Each Employee by Disease \$500,000 Aggregate Disease.	

If any of the required policies provide **claims-made** coverage, the Contractor must: (a) provide coverage with a retroactive date before the effective date of the contract or the beginning of Contract Activities; (b) maintain coverage and provide evidence of coverage for at least three (3) years after completion of the Contract Activities; and (c) if coverage is canceled or not renewed, and not replaced with another claims-made policy form with a retroactive date prior to the contract effective date, Contractor must purchase extended reporting coverage for a minimum of three (3) years after completion of work.

Contractor must: (a) provide insurance certificates to the Contract Administrator, containing the agreement or purchase order number, at Contract formation and within 20 calendar days of the expiration date of the applicable policies; (b) require that subcontractors maintain the required insurances contained in this Section; (c) notify the Contract Administrator within 5 business days if any insurance is cancelled; and (d) waive all rights against the Participating State for damages covered by insurance. Failure to maintain the required insurance does not limit this waiver.

This Section is not intended to and is not be construed in any manner as waiving, restricting or limiting the liability of either party for any obligations under this Contract (including any provisions hereof requiring Contractor to indemnify, defend and hold harmless the Participating State).



7. **Administrative Fee and Reporting.** Contractor must pay an administrative fee of 1.25% on all payments made to Contractor under the Contract including transactions with the Participating State (including its departments, divisions, agencies, offices, and commissions), MiDEAL members, and other states (including governmental subdivisions and authorized entities). Administrative fee payments must be made by check payable to the State of Michigan and mailed to:

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

Contractor must submit an itemized purchasing activity report, which includes at a minimum, the name of the purchasing entity and the total dollar volume in sales. Reports should be mailed to DTMB-Procurement.

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

8. **Extended Purchasing Program.** This contract is extended to MiDEAL members. MiDEAL members include local units of government, school districts, universities, community colleges, and nonprofit hospitals. A current list of MiDEAL members is available at www.michigan.gov/mideal. Upon written agreement between the Participating State and Contractor, this contract may also be extended to: (a) State of Michigan employees and (b) other states (including governmental subdivisions and authorized entities).

If extended, Contractor must supply all Contract Activities at the established Contract prices and terms. The Participating State reserves the right to impose an administrative fee and negotiate additional discounts based on any increased volume generated by such extensions.

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

9. **Independent Contractor.** Contractor is an independent contractor and assumes all rights, obligations and liabilities set forth in this Contract. Contractor, its employees, and agents will not be considered employees of the Participating State. No partnership or joint venture relationship is created by virtue of this Contract. Contractor, and not the Participating State, is responsible for the payment of wages, benefits and taxes of Contractor's employees and any subcontractors. Prior performance does not modify Contractor's status as an independent contractor.
10. **Subcontracting.** Contractor may not delegate any of its obligations under the Contract without the prior written approval of the State. Contractor must notify the Participating State at least 90 calendar days before the proposed delegation, and provide the Participating State any information it requests to determine whether the delegation is in its best interest. If approved, Contractor must: (a) be the sole point of contact regarding all contractual matters, including payment and charges for all Contract Activities; (b) make all payments to the subcontractor; and (c) incorporate the terms and conditions contained in this Contract in any subcontract with a subcontractor. Contractor remains responsible for the completion of the Contract Activities, compliance with the terms of this Contract, and the acts and omissions of the subcontractor. The Participating State, in its sole discretion, may require the replacement of any subcontractor.
11. **Staffing.** The Participating State's Contract Administrator may require Contractor to remove or reassign personnel by providing a notice to Contractor.
12. **Background Checks.** Upon request, Contractor must perform background checks on all employees and subcontractors and its employees prior to their assignment. The scope is at the discretion of the Participating State and documentation must be provided as requested. Contractor is responsible for all costs associated with the requested background checks. The Participating State, in its sole discretion, may also perform background checks.
13. **Assignment.** Contractor may not assign this Contract to any other party without the prior approval of the Participating State. Upon notice to Contractor, the Participating State, in its sole discretion, may assign in whole or in part, its rights or responsibilities under this Contract to any other party. If the Participating State determines that a novation of the



Contract to a third party is necessary, Contractor will agree to the novation and provide all necessary documentation and signatures.

- 14. Change of Control.** Contractor will notify, at least 90 calendar days before the effective date, the Participating State of a change in Contractor's organizational structure or ownership. For purposes of this Contract, a change in control means any of the following: (a) a sale of more than 50% of Contractor's stock; (b) a sale of substantially all of Contractor's assets; (c) a change in a majority of Contractor's board members; (d) consummation of a merger or consolidation of Contractor with any other entity; (e) a change in ownership through a transaction or series of transactions; (f) or the board (or the stockholders) approves a plan of complete liquidation. A change of control does not include any consolidation or merger effected exclusively to change the domicile of Contractor, or any transaction or series of transactions principally for bona fide equity financing purposes.

In the event of a change of control, Contractor must require the successor to assume this Contract and all of its obligations under this Contract.

- 15. Ordering.** Contractor is not authorized to begin performance until receipt of authorization. Authorization may be in the form of a Purchase Order, On-Line, Phone or Verbal Order.

- 16. Acceptance.** Contract Activities are subject to inspection and testing by the Participating State within 30 calendar days of the Participating State's receipt of them ("**State Review Period**"), unless otherwise provided in The Master Agreement. If the Contract Activities are not fully accepted by the Participating State, the Participating State will notify Contractor by the end of the State Review Period that either: (a) the Contract Activities are accepted, but noted deficiencies must be corrected; or (b) the Contract Activities are rejected. If the Participating State finds material deficiencies, it may: (i) reject the Contract Activities without performing any further inspections; (ii) demand performance at no additional cost; or (iii) terminate this Contract in accordance with Section 23, Termination for Cause.

Within 10 business days from the date of Contractor's receipt of notification of acceptance with deficiencies or rejection of any Contract Activities, Contractor must cure, at no additional cost, the deficiency and deliver unequivocally acceptable Contract Activities to the Participating State. If acceptance with deficiencies or rejection of the Contract Activities impacts the content or delivery of other non-completed Contract Activities, the parties' respective Program Managers must determine an agreed to number of days for re-submission that minimizes the overall impact to the Contract. However, nothing herein affects, alters, or relieves Contractor of its obligations to correct deficiencies in accordance with the time response standards set forth in this Contract.

If Contractor is unable or refuses to correct the deficiency within the time response standards set forth in this Contract, the Participating State may cancel the order in whole or in part. The Participating State, or a third party identified by the Participating State, may perform the Contract Activities and recover the difference between the cost to cure and the Contract price plus an additional 10% administrative fee.

- 17. Delivery.** Contractor must deliver all Contract Activities F.O.B. destination, within the Participating State premises with transportation and handling charges paid by Contractor, unless otherwise specified in The Master Agreement. All containers and packaging becomes the Participating State's exclusive property upon acceptance.

- 18. Risk of Loss and Title.** Until final acceptance, title and risk of loss or damage to Contract Activities remains with Contractor. Contractor is responsible for filing, processing, and collecting all damage claims. The Participating State will record and report to Contractor any evidence of visible damage. If the Participating State rejects the Contract Activities, Contractor must remove them from the premises within 10 calendar days after notification of rejection. The risk of loss of rejected or non-conforming Contract Activities remains with Contractor. Rejected Contract Activities not removed by Contractor within 10 calendar days will be deemed abandoned by Contractor, and the Participating State will have the right to dispose of it as its own property. Contractor must reimburse the Participating State for costs and expenses incurred in storing or effecting removal or disposition of rejected Contract Activities.

- 19. Warranty Period.** The warranty period, if applicable, for Contract Activities is a fixed period commencing on the date specified in The Master Agreement. If the Contract Activities do not function as warranted during the warranty period the Participating State may return such non-conforming Contract Activities to the Contractor for a full refund.

- 20. Terms of Payment.** Invoices must also include the Participating State's Contract Number, Agency Purchase Order number, and conform to the requirements communicated from time-to-time by the Participating State. All undisputed amounts are payable within 45 days of the Participating State's receipt. Contractor may only charge for Contract Activities performed as specified in The Master Agreement. Invoices must include an itemized statement of all charges.



The Participating State is exempt from Participating State sales tax for direct purchases and may be exempt from federal excise tax, if Services purchased under this Agreement are for the Participating State's exclusive use. Notwithstanding the foregoing, all prices are inclusive of taxes, and Contractor is responsible for all sales, use and excise taxes, and any other similar taxes, duties and charges of any kind imposed by any federal, state, or local governmental entity on any amounts payable by the Participating State under this Contract.

The Participating State has the right to withhold payment of any disputed amounts until the parties agree as to the validity of the disputed amount. The Participating State will notify Contractor of any dispute within a reasonable time. Payment by the Participating State will not constitute a waiver of any rights as to Contractor's continuing obligations, including claims for deficiencies or substandard Contract Activities. Contractor's acceptance of final payment by the Participating State constitutes a waiver of all claims by Contractor against the Participating State for payment under this Contract, other than those claims previously filed in writing on a timely basis and still disputed.

The Participating State will only disburse payments under this Contract through Electronic Funds Transfer (EFT). Contractor must register with the Participating State at <http://www.michigan.gov/cpexpress> to receive electronic fund transfer payments. If Contractor does not register, the Participating State is not liable for failure to provide payment.

Without prejudice to any other right or remedy it may have, the Participating State reserves the right to set off at any time any amount then due and owing to it by Contractor against any amount payable by the Participating State to Contractor under this Contract.

- 21. Liquidated Damages.** Liquidated damages, if applicable, will be assessed as described in The Master Agreement.
- 22. Stop Work Order.** The Participating State may suspend any or all activities under the Contract at any time. The Participating State will provide Contractor a written stop work order detailing the suspension. Contractor must comply with the stop work order upon receipt. Within 90 calendar days, or any longer period agreed to by Contractor, the Participating State will either: (a) issue a notice authorizing Contractor to resume work, or (b) terminate the Contract or purchase order. The Participating State will not pay for Contract Activities, Contractor's lost profits, or any additional compensation during a stop work period.
- 23. Termination for Cause.** The Participating State may terminate this Contract for cause, in whole or in part, if Contractor, as determined by the Participating State: (a) endangers the value, integrity, or security of any location, data, or personnel; (b) becomes insolvent, petitions for bankruptcy court proceedings, or has an involuntary bankruptcy proceeding filed against it by any creditor; (c) engages in any conduct that may expose the Participating State to liability; (d) breaches any of its material duties or obligations; or (e) fails to cure a breach within the time stated in a notice of breach. Any reference to specific breaches being material breaches within this Contract will not be construed to mean that other breaches are not material.

If the Participating State terminates this Contract under this Section, the Participating State will issue a termination notice specifying whether Contractor must: (a) cease performance immediately, or (b) continue to perform for a specified period. If it is later determined that Contractor was not in breach of the Contract, the termination will be deemed to have been a Termination for Convenience, effective as of the same date, and the rights and obligations of the parties will be limited to those provided in Section 24, Termination for Convenience.

The Participating State will only pay for amounts due to Contractor for Contract Activities accepted by the Participating State on or before the date of termination, subject to the Participating State's right to set off any amounts owed by the Contractor for the Participating State's reasonable costs in terminating this Contract. The Contractor must pay all reasonable costs incurred by the Participating State in terminating this Contract for cause, including administrative costs, attorneys' fees, court costs, transition costs, and any costs the Participating State incurs to procure the Contract Activities from other sources.

- 24. Termination for Convenience.** The Participating State may immediately terminate this Contract in whole or in part without penalty and for any reason, including but not limited to, appropriation or budget shortfalls. The termination notice will specify whether Contractor must: (a) cease performance of the Contract Activities immediately, or (b) continue to perform the Contract Activities in accordance with Section 25, Transition Responsibilities. If the Participating State terminates this Contract for convenience, the Participating State will pay all reasonable costs, as determined by the Participating State, for Participating State approved Transition Responsibilities.



25. Transition Responsibilities. Upon termination or expiration of this Contract for any reason, Contractor must, for a period of time specified by the Participating State (not to exceed 90 calendar days), provide all reasonable transition assistance requested by the Participating State, to allow for the expired or terminated portion of the Contract Activities to continue without interruption or adverse effect, and to facilitate the orderly transfer of such Contract Activities to the Participating State or its designees. Such transition assistance may include, but is not limited to: (a) continuing to perform the Contract Activities at the established Contract rates; (b) taking all reasonable and necessary measures to transition performance of the work, including all applicable Contract Activities, training, equipment, software, leases, reports and other documentation, to the Participating State or the Participating State's designee; (c) taking all necessary and appropriate steps, or such other action as the Participating State may direct, to preserve, maintain, protect, or return to the Participating State all materials, data, property, and confidential information provided directly or indirectly to Contractor by any entity, agent, vendor, or employee of the Participating State; (d) transferring title in and delivering to the Participating State, at the Participating State's discretion, all completed or partially completed deliverables prepared under this Contract as of the Contract termination date; and (e) preparing an accurate accounting from which the Participating State and Contractor may reconcile all outstanding accounts (collectively, "**Transition Responsibilities**"). This Contract will automatically be extended through the end of the transition period.

26. General Indemnification. Contractor must defend, indemnify and hold the State, its departments, divisions, agencies, offices, commissions, officers, and employees harmless, without limitation, from and against any and all actions, claims, losses, liabilities, damages, costs, attorney fees, and expenses (including those required to establish the right to indemnification), arising out of or relating to: (a) any breach by Contractor (or any of Contractor's employees, agents, subcontractors, or by anyone else for whose acts any of them may be liable) of any of the promises, agreements, representations, warranties, or insurance requirements contained in this Contract; (b) any infringement, misappropriation, or other violation of any intellectual property right or other right of any third party; (c) any bodily injury, death, or damage to real or tangible personal property occurring wholly or in part due to action or inaction by Contractor (or any of Contractor's employees, agents, subcontractors, or by anyone else for whose acts any of them may be liable); and (d) any acts or omissions of Contractor (or any of Contractor's employees, agents, subcontractors, or by anyone else for whose acts any of them may be liable).

The Participating State will notify Contractor in writing if indemnification is sought; however, failure to do so will not relieve Contractor, except to the extent that Contractor is materially prejudiced. Contractor must, to the satisfaction of the Participating State, demonstrate its financial ability to carry out these obligations.

The Participating State is entitled to: (i) regular updates on proceeding status; (ii) participate in the defense of the proceeding; (iii) employ its own counsel; and to (iv) retain control of the defense if the Participating State deems necessary. Contractor will not, without the Participating State's written consent (not to be unreasonably withheld), settle, compromise, or consent to the entry of any judgment in or otherwise seek to terminate any claim, action, or proceeding. To the extent that any Participating State employee, official, or law may be involved or challenged, the Participating State may, at its own expense, control the defense of that portion of the claim.

Any litigation activity on behalf of the Participating State, or any of its subdivisions under this Section, must be coordinated with the Department of Attorney General. An attorney designated to represent the Participating State may not do so until approved by the Michigan Attorney General and appointed as a Special Assistant Attorney General.

27. Infringement Remedies. If, in either party's opinion, any piece of equipment, software, commodity, or service supplied by Contractor or its subcontractors, or its operation, use or reproduction, is likely to become the subject of a copyright, patent, trademark, or trade secret infringement claim, Contractor must, at its expense: (a) procure for the Participating State the right to continue using the equipment, software, commodity, or service, or if this option is not reasonably available to Contractor, (b) replace or modify the same so that it becomes non-infringing; or (c) accept its return by the Participating State with appropriate credits to the Participating State against Contractor's charges and reimburse the Participating State for any losses or costs incurred as a consequence of the Participating State ceasing its use and returning it.

28. Limitation of Liability. The Participating State is not liable for consequential, incidental, indirect, or special damages, regardless of the nature of the action.

29. Disclosure of Litigation, or Other Proceeding. Contractor must notify the Participating State within 14 calendar days of receiving notice of any litigation, investigation, arbitration, or other proceeding (collectively, "**Proceeding**") involving Contractor, a subcontractor, or an officer or director of Contractor or subcontractor, that arises during the term of the



Contract, including: (a) a criminal Proceeding; (b) a parole or probation Proceeding; (c) a Proceeding under the Sarbanes-Oxley Act; (d) a civil Proceeding involving: (1) a claim that might reasonably be expected to adversely affect Contractor's viability or financial stability; or (2) a governmental or public entity's claim or written allegation of fraud; or (e) a Proceeding involving any license that Contractor is required to possess in order to perform under this Contract.

30. State Data. All data and information provided to Contractor by or on behalf of the Participating State, and all data and information derived therefrom, is the exclusive property of the Participating State ("**State Data**"); this definition is to be construed as broadly as possible. Upon request, Contractor must provide to the Participating State, or a third party designated by the Participating State, all State Data within 10 calendar days of the request and in the format requested by the Participating State. Contractor will assume all costs incurred in compiling and supplying State Data. No State Data may be used for any marketing purposes.

31. Reserved.

32. Non-Disclosure of Confidential Information. The parties acknowledge that each party may be exposed to or acquire communication or data of the other party that is confidential, privileged communication not intended to be disclosed to third parties. The provisions of this Section survive the termination of this Contract.

- a. Meaning of Confidential Information. For the purposes of this Contract, the term "**Confidential Information**" means all information and documentation of a party that: (a) has been marked "confidential" or with words of similar meaning, at the time of disclosure by such party; (b) if disclosed orally or not marked "confidential" or with words of similar meaning, was subsequently summarized in writing by the disclosing party and marked "confidential" or with words of similar meaning; and, (c) should reasonably be recognized as confidential information of the disclosing party. The term "Confidential Information" does not include any information or documentation that was: (a) subject to disclosure under the Michigan Freedom of Information Act (FOIA); (b) already in the possession of the receiving party without an obligation of confidentiality; (c) developed independently by the receiving party, as demonstrated by the receiving party, without violating the disclosing party's proprietary rights; (d) obtained from a source other than the disclosing party without an obligation of confidentiality; or, (e) publicly available when received, or thereafter became publicly available (other than through any unauthorized disclosure by, through, or on behalf of, the receiving party). For purposes of this Contract, in all cases and for all matters, State Data is deemed to be Confidential Information.
- b. Obligation of Confidentiality. The parties agree to hold all Confidential Information in strict confidence and not to copy, reproduce, sell, transfer, or otherwise dispose of, give or disclose such Confidential Information to third parties other than employees, agents, or subcontractors of a party who have a need to know in connection with this Contract or to use such Confidential Information for any purposes whatsoever other than the performance of this Contract. The parties agree to advise and require their respective employees, agents, and subcontractors of their obligations to keep all Confidential Information confidential. Disclosure to a subcontractor is permissible where: (a) use of a subcontractor is authorized under this Contract; (b) the disclosure is necessary or otherwise naturally occurs in connection with work that is within the subcontractor's responsibilities; and (c) Contractor obligates the subcontractor in a written contract to maintain the Participating State's Confidential Information in confidence. At the Participating State's request, any employee of Contractor or any subcontractor may be required to execute a separate agreement to be bound by the provisions of this Section.
- c. Cooperation to Prevent Disclosure of Confidential Information. Each party must use its best efforts to assist the other party in identifying and preventing any unauthorized use or disclosure of any Confidential Information. Without limiting the foregoing, each party must advise the other party immediately in the event either party learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this Contract and each party will cooperate with the other party in seeking injunctive or other equitable relief against any such person.
- d. Remedies for Breach of Obligation of Confidentiality. Each party acknowledges that breach of its obligation of confidentiality may give rise to irreparable injury to the other party, which damage may be inadequately compensable in the form of monetary damages. Accordingly, a party may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies which may be available, to include, in the case of the Participating State, at the sole election of the Participating State, the immediate termination, without liability to the Participating State, of this Contract or any Statement of Work corresponding to the breach or threatened breach.



e. Surrender of Confidential Information upon Termination. Upon termination of this Contract or a Statement of Work, in whole or in part, each party must, within 5 calendar days from the date of termination, return to the other party any and all Confidential Information received from the other party, or created or received by a party on behalf of the other party, which are in such party's possession, custody, or control; provided, however, that Contractor must return State Data to the Participating State following the timeframe and procedure described further in this Contract. Should Contractor or the Participating State determine that the return of any Confidential Information is not feasible, such party must destroy the Confidential Information and must certify the same in writing within 5 calendar days from the date of termination to the other party.

33. Reserved.

34. Reserved.

35. Reserved.

36. Records Maintenance, Inspection, Examination, and Audit. The Participating State or its designee may audit Contractor to verify compliance with this Contract. Contractor must retain, and provide to the Participating State or its designee and the auditor general upon request, all financial and accounting records related to the Contract through the term of the Contract and for 4 years after the latter of termination, expiration, or final payment under this Contract or any extension ("**Audit Period**"). If an audit, litigation, or other action involving the records is initiated before the end of the Audit Period, Contractor must retain the records until all issues are resolved.

Within 10 calendar days of providing notice, the Participating State and its authorized representatives or designees have the right to enter and inspect Contractor's premises or any other places where Contract Activities are being performed, and examine, copy, and audit all records related to this Contract. Contractor must cooperate and provide reasonable assistance. If any financial errors are revealed, the amount in error must be reflected as a credit or debit on subsequent invoices until the amount is paid or refunded. Any remaining balance at the end of the Contract must be paid or refunded within 45 calendar days.

This Section applies to Contractor, any parent, affiliate, or subsidiary organization of Contractor, and any subcontractor that performs Contract Activities in connection with this Contract.

37. Warranties and Representations. Contractor represents and warrants: (a) Contractor is the owner or licensee of any Contract Activities that it licenses, sells, or develops and Contractor has the rights necessary to convey title, ownership rights, or licensed use; (b) all Contract Activities are delivered free from any security interest, lien, or encumbrance and will continue in that respect; (c) the Contract Activities will not infringe the patent, trademark, copyright, trade secret, or other proprietary rights of any third party; (d) Contractor must assign or otherwise transfer to the Participating State or its designee any manufacturer's warranty for the Contract Activities; (e) the Contract Activities are merchantable and fit for the specific purposes identified in the Contract; (f) the Contract signatory has the authority to enter into this Contract; (g) all information furnished by Contractor in connection with the Contract fairly and accurately represents Contractor's business, properties, finances, and operations as of the dates covered by the information, and Contractor will inform the Participating State of any material adverse changes; and (h) all information furnished and representations made in connection with the award of this Contract is true, accurate, and complete, and contains no false statements or omits any fact that would make the information misleading. A breach of this Section is considered a material breach of this Contract, which entitles the Participating State to terminate this Contract under Section 23, Termination for Cause.

38. Conflicts and Ethics. Contractor will uphold high ethical standards and is prohibited from: (a) holding or acquiring an interest that would conflict with this Contract; (b) doing anything that creates an appearance of impropriety with respect to the award or performance of the Contract; (c) attempting to influence or appearing to influence any Participating State employee by the direct or indirect offer of anything of value; or (d) paying or agreeing to pay any person, other than employees and consultants working for Contractor, any consideration contingent upon the award of the Contract. Contractor must immediately notify the Participating State of any violation or potential violation of these standards. This Section applies to Contractor, any parent, affiliate, or subsidiary organization of Contractor, and any subcontractor that performs Contract Activities in connection with this Contract.

39. Compliance with Laws. Contractor must comply with all federal, state and local laws, rules and regulations.

40. Reserved.



41. Reserved.

42. Nondiscrimination. 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.*, Contractor and its subcontractors agree not to discriminate against an employee or applicant for employment with respect to hire, tenure, terms, conditions, or privileges of employment, or a matter directly or indirectly related to employment, because of race, color, religion, national origin, age, sex, height, weight, marital status, or mental or physical disability. Breach of this covenant is a material breach of this Contract.

43. Unfair Labor Practice. Under MCL 423.324, the Participating State may void any Contract with a Contractor or subcontractor who appears on the Unfair Labor Practice register compiled under MCL 423.322.

44. Governing Law. This Contract is governed, construed, and enforced in accordance with Michigan law, excluding choice-of-law principles, and all claims relating to or arising out of this Contract are governed by Michigan law, excluding choice-of-law principles. Any dispute arising from this Contract must be resolved in Michigan Court of Claims. Contractor consents to venue in Ingham County, and waives any objections, such as lack of personal jurisdiction or *forum non conveniens*. Contractor must appoint agents in Michigan to receive service of process.

45. Non-Exclusivity. Nothing contained in this Contract is intended nor will be construed as creating any requirements contract with Contractor. This Contract does not restrict the Participating State or its agencies from acquiring similar, equal, or like Contract Activities from other sources.

46. Force Majeure. Neither party will be in breach of this Contract because of any failure arising from any disaster or acts of god that are beyond their control and without their fault or negligence. Each party will use commercially reasonable efforts to resume performance. Contractor will not be relieved of a breach or delay caused by its subcontractors. If immediate performance is necessary to ensure public health and safety, the Participating State may immediately contract with a third party.

47. Dispute Resolution. The parties will endeavor to resolve any Contract dispute in accordance with this provision. The dispute will be referred to the parties' respective Contract Administrators or Program Managers. Such referral must include a description of the issues and all supporting documentation. The parties must submit the dispute to a senior executive if unable to resolve the dispute within 15 business days. The parties will continue performing while a dispute is being resolved, unless the dispute precludes performance. A dispute involving payment does not preclude performance.

Litigation to resolve the dispute will not be instituted until after the dispute has been elevated to the parties' senior executive and either concludes that resolution is unlikely, or fails to respond within 15 business days. The parties are not prohibited from instituting formal proceedings: (a) to avoid the expiration of statute of limitations period; (b) to preserve a superior position with respect to creditors; or (c) where a party makes a determination that a temporary restraining order or other injunctive relief is the only adequate remedy. This Section does not limit the Participating State's right to terminate the Contract.

48. Media Releases. News releases (including promotional literature and commercial advertisements) pertaining to the Contract or project to which it relates must not be made without prior written Participating State approval, and then only in accordance with the explicit written instructions of the Participating State.

49. Website Incorporation. The Participating State is not bound by any content on Contractor's website unless expressly incorporated directly into this Contract.

50. Order of Precedence. In the event of a conflict between the terms and conditions of the Contract, the exhibits, a purchase order, or an amendment, the order of precedence is: (a) an amendment; (b) the Participating Addendum (PADD); and (c) The Master Agreement.

51. Severability. If any part of this Contract is held invalid or unenforceable, by any court of competent jurisdiction, that part will be deemed deleted from this Contract and the severed part will be replaced by agreed upon language that achieves the same or similar objectives. The remaining Contract will continue in full force and effect.

52. Waiver. Failure to enforce any provision of this Contract will not constitute a waiver.



53. Survival. The provisions of this Contract that impose continuing obligations, including warranties and representations, termination, transition, insurance coverage, indemnification, and confidentiality, will survive the expiration or termination of this Contract.

54. Entire Contract and Modification. This Contract is the entire agreement and replaces all previous agreements between the parties for the Contract Activities. This Contract may not be amended except by signed agreement between the parties (a “**Contract Change Notice**”).

55. Hazardous Chemical Identification. In accordance with the federal Emergency Planning and Community Right-to-Know Act, 42 USC 11001, *et seq.*, as amended, the Contractor must provide a Material Safety Data Sheet listing any hazardous chemicals, 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.

The Contractor must identify any hazardous chemicals that will be provided under any resulting contract.

56. Mercury Content. Pursuant to MCL 18.1261d, mercury-free products must be procured when possible. The Contractor must explain if it intends to provide products containing mercury, the amount or concentration of mercury, and whether cost competitive alternatives exist. If a cost competitive alternative does exist, the Contractor must provide justification as to why the particular product is essential. All products containing mercury must be labeled as containing mercury.

57. 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.

58. Environmental and Energy Efficient Products. The Contractor must identify any energy efficient, bio-based, or otherwise environmental friendly products used in the products. Contractor must include any relevant third-party certification, including the verification of a United States department of agriculture certified bio based product label.

59. Recycled Content and Recyclability. Without compromising performance or quality, the State prefers Deliverable(s) containing higher percentages of recycled materials. Annually, the Bidder must indicate an estimate of the percentage of recycled materials, if any, contained in each Deliverable:

- a. Total estimated percentage of recovered material
- b. Estimated percentage of post-consumer material
- c. Estimated percentage of post-industrial waste

60. Online Catalog/Ordering System

- a. Contractor’s online catalog/ordering system shall be available 24 hours a day, 7 days a week, with the exception of scheduled maintenance. Payments for online orders can be made with a procurement card and order acknowledgements are provided electronically to customers. Contractor’s online catalog/ordering system identifies State of Michigan contract items. Online customers are able to view product availability before placing orders and will automatically notify online customers when less expensive alternate is available.
- b. Website allows designated customer administrators to set up, add, and delete end users, with permissions and restrictions, approval paths, varying levels of authorization of purchases, etc. independently, without having to contact customer service or Contractor’s sales representative.
- c. The Contractor shall be willing and have the capacity to work with third-party providers of Electronic Data Interchange (EDI) services which have been chosen by the State. The Contractor shall be willing, at no additional charge to the State or to the EDI provider, to transmit text and image catalog information to the State’s provider of EDI services.



d. The State does not currently have an E-Procurement system, however, the State is in the process of implementing a new financial system with an E-Procurement module. When the State implements the system (SIGMA) in 2017, the Contractor will be able to migrate all electronic catalog and online ordering functions to the State's E-Procurement system within 60 days of notice. At such time the following insurance will be required in addition to the standard insurance requirements:

Privacy and Security Liability (Cyber Liability) Insurance	
<u>Minimal Limits:</u> \$1,000,000 Each Occurrence \$1,000,000 Annual Aggregate	Contractor must have their policy: (1) endorsed to add "the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees, and agents" as additional insureds; and (2) cover information security and privacy liability, privacy notification costs, regulatory defense and penalties, and website media content liability.