



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

CONTRACT CHANGE NOTICE

Change Notice Number **8**
 to
 Contract Number **071B1300148**

CONTRACTOR	Health Management Associates
	120 North Washington Square Suite 705
	Lansing, Mi 48933
	Jeffrey Devries
	(517) 482-9236
	jdevries@healthmanagement.com

STATE	Program Manager	Kevin Dunn	MDHHS
		(517) 284-5096	
		DunnK3@michigan.gov	
	Contract Administrator	Dan Stevens	DTMB
		(517) 284-7049	
		stevensd6@michigan.gov	

CONTRACT SUMMARY

REVENUE MAXIMIZATION SERVICES			
INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW
January 1, 2011	December 31, 2014	1 - 1 Year	December 31, 2016
PAYMENT TERMS		DELIVERY TIMEFRAME	
NET 45		N/A	
ALTERNATE PAYMENT OPTIONS			EXTENDED PURCHASING
<input type="checkbox"/> P-Card	<input type="checkbox"/> Direct Voucher (DV)	<input type="checkbox"/> Other	<input type="checkbox"/> Yes <input type="checkbox"/> No

MINIMUM DELIVERY REQUIREMENTS
N/A

DESCRIPTION OF CHANGE NOTICE				
OPTION	LENGTH OF OPTION	EXTENSION	LENGTH OF EXTENSION	REVISED EXP. DATE
<input type="checkbox"/>		<input checked="" type="checkbox"/>	3 month	March 31, 2017
CURRENT VALUE	VALUE OF CHANGE NOTICE	ESTIMATED AGGREGATE CONTRACT VALUE		
\$9,105,771.42	\$0.00	\$9,105,771.42		

DESCRIPTION
Effective December 31, 2016 this Contract is hereby extended 3 months through March 31, 2017. Please note the Contract Administrator has been changed to Dan Stevens. All other terms, conditions, specifications, and pricing remain the same. Per agency and contractor agreement and DTMB procurement approval.

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

CHANGE NOTICE NO. 7
 to
CONTRACT NO. 071B1300148
 between
THE STATE OF MICHIGAN
 and

NAME & ADDRESS OF CONTRACTOR	PRIMARY CONTACT	EMAIL
Health Management Associates 120 N. Washington Square, Suite 705 Lansing Michigan, 48933	Jeffrey DeVries	jdevries@healthmanagement.com
	PHONE	CONTRACTOR'S TAX ID NO. (LAST FOUR DIGITS ONLY)
	517-482-9236	9727

STATE CONTACTS	AGENCY	NAME	PHONE	EMAIL
PROGRAM MANAGER / CCI	DCH	Kevin Dunn	517-284-5096	Dunnk3@michigan.gov
CONTRACT ADMINISTRATOR	DTMB	Jillian Yeates	517-284-7019	yeatesj@michigan.gov

CONTRACT SUMMARY			
DESCRIPTION: Revenue Maximization Services DHS/DCH			
INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW
January 1, 2011	December 31, 2014	1 - 1 Year	December 31, 2015
PAYMENT TERMS		DELIVERY TIMEFRAME	
N/A		N/A	
ALTERNATE PAYMENT OPTIONS			EXTENDED PURCHASING
<input type="checkbox"/> P-card <input type="checkbox"/> Direct Voucher (DV) <input type="checkbox"/> Other			<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
MINIMUM DELIVERY REQUIREMENTS			
N/A			

DESCRIPTION OF CHANGE NOTICE				
EXERCISE OPTION?	LENGTH OF OPTION	EXERCISE EXTENSION?	LENGTH OF EXTENSION	REVISED EXP. DATE
<input type="checkbox"/>		<input checked="" type="checkbox"/>	1 Year	December 31, 2016
CURRENT VALUE		VALUE OF CHANGE NOTICE	ESTIMATED AGGREGATE CONTRACT VALUE	
\$9,105,771.42		\$ 0.00	\$9,105,771.42	

DESCRIPTION:
 Effective September 30, 2015 this contract is hereby extended through December 31, 2016.

Please note the Contract Administrator has been changed to Jillian Yeates.

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

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

CHANGE NOTICE NO. 6
to
CONTRACT NO. 071B1300148
between
THE STATE OF MICHIGAN
and

NAME & ADDRESS OF CONTRACTOR	PRIMARY CONTACT	EMAIL
Health Management Associates 120 N. Washington Square, Suite 705 Lansing MI 48933	Jeffrey DeVries	jdevries@healthmanagement.com
	PHONE	VENDOR TAX ID # (LAST FOUR DIGITS ONLY)
	(517) 482-9236	9727

STATE CONTACTS	AGENCY	NAME	PHONE	EMAIL
PROGRAM MANAGER / CCI	DCH	Kevin Dunn	(517) 335-5096	dunnk3@michigan.gov
CONTRACT ADMINISTRATOR	DTMB	Chelsea Edgett	(517) 284-7031	edgett@c@michigan.gov

CONTRACT SUMMARY				
DESCRIPTION: Revenue Maximization SRVC – MDHHS				
INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW	
January 1, 2011	December 31, 2014	(1) 1-Year Option	December 31, 2015	
PAYMENT TERMS	F.O.B.	SHIPPED TO		
N/A	N/A	N/A		
ALTERNATE PAYMENT OPTIONS			EXTENDED PURCHASING	
<input type="checkbox"/> P-card <input type="checkbox"/> Direct Voucher (DV) <input type="checkbox"/> Other			<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
MINIMUM DELIVERY REQUIREMENTS				
N/A				

DESCRIPTION OF CHANGE NOTICE				
EXTEND CONTRACT EXPIRATION DATE	EXERCISE CONTRACT OPTION YEAR(S)	EXTENSION BEYOND CONTRACT OPTION YEARS	LENGTH OF EXTENSION/OPTION	EXPIRATION DATE AFTER CHANGE
<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	<input type="checkbox"/>	<input type="checkbox"/>	N/A	December 31, 2015
CURRENT VALUE	VALUE/COST OF CHANGE NOTICE	ESTIMATED REVISED AGGREGATE CONTRACT VALUE		
\$9,105,771.42	\$0.00	\$9,105,771.42		

DESCRIPTION:

Effective June 15, 2015, the attached HIPAA Business Associate Agreement is hereby incorporated into this Contract. Please note, the Contract Administrator has been changed to Chelsea Edgett. Also note, the Program Manager has been changed to Kevin Dunn. All other terms, conditions, specifications, and pricing remain the same, per Contractor and Agency agreement, and DTMB Procurement approval.

HIPAA BUSINESS ASSOCIATE AGREEMENT ADDENDUM

This Business Associate Agreement Addendum ("Addendum") is made a part of the contract ("Contract") between the Michigan Department of Community Health ("Covered Entity"), and Health Management Associates, ("Business Associate").

The Business Associate performs certain services for the Covered Entity under the Contract that requires the exchange of information including protected health information under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), as amended by the American Recovery and Reinvestment Act of 2009 (Pub.L. No. 111-5). The Michigan Department of Community Health is a hybrid covered entity under HIPAA and the parties to the Contract are entering into this Addendum to establish the responsibilities of both parties regarding HIPAA-covered information and have the underlying Contract comply with HIPAA.

RECITALS

- A. Under the terms of the Contract, the Covered Entity wishes to disclose certain information to the Business Associate, some of which may constitute Protected Health Information ("PHI"). In consideration of the receipt of PHI, the Business Associate agrees to protect the privacy and security of the information as set forth in this Addendum.
- B. The Covered Entity and the Business Associate intend to protect the privacy and provide for the security of PHI disclosed to the Business Associate under the Contract in compliance with HIPAA and the HIPAA Rules.
- C. The HIPAA Rules require the Covered Entity to enter into a contract containing specific requirements with the Business Associate before the Covered Entity may disclose PHI to the Business Associate.

1. Definitions.

a. The following terms used in this Agreement have the same meaning as those terms in the HIPAA Rules: Breach; Data Aggregation; Designated Record Set; Disclosure; Health Care Obligations; Individual; Minimum Necessary; Notice of Privacy Practices; Protected Health Information; Required by Law; Secretary; Security Incident; Security Measures, Subcontractor; Unsecured Protected Health Information, and Use.

b. "Business Associate" has the same meaning as the term "business associate" at 45 CFR 160.103 and regarding this Addendum means [Insert Name of Business Associate]

c. "Covered Entity" has the same meaning as the term "covered entity" at 45 CFR 160.103 and regarding this Addendum means the Michigan Department of Community Health.

d. "HIPAA Rules" means the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Part 160 and Part 164.

e. "Agreement" means both the Contract and this Addendum.

f. "Contract" means the underlying written agreement or purchase order between the parties for the goods or services to which this Addendum is added.

2. Obligations of Business Associate.

The Business Associate agrees to

a. use and disclose PHI only as permitted or required by this Addendum or as required by law.

b. implement and use appropriate safeguards, and comply with Subpart C of 45 CFR 164 regarding electronic protected health information, to prevent use or disclosure of PHI other than as provided in this Addendum. Business Associate must maintain, and provide a copy to the Covered Entity within 10 days of a request from the Covered Entity, a comprehensive written information privacy and security program that includes security measures that reasonably and appropriately protect the confidentiality, integrity, and availability of PHI relative to the size and complexity of the Business Associate's operations and the nature and the scope of its activities.

c. report to the Covered Entity within 24 hours of any use or disclosure of PHI not provided for by this Addendum of which it becomes aware, including breaches of Unsecured Protected Health Information as required by 45 CFR 164.410, and any Security Incident of which it becomes aware. If the Business Associate is responsible for any unauthorized use or disclosure of PHI, it must promptly act as required by applicable federal and State laws and regulations. Covered Entity and the Business Associate will cooperate in investigating whether a breach has occurred, to decide how to provide breach notifications to individuals, the federal Health and Human Services' Office for Civil Rights, and potentially the media.

d. ensure, according to 45 CFR 164.502(e)(1)(ii) and 164.308(b)(2), if applicable, that any subcontractors that create, receive, maintain, or transmit PHI on behalf of the Business Associate agree to the same restrictions, conditions, and requirements that apply to the Business Associate regarding such information. Each subcontractor must sign an agreement with the Business Associate containing substantially the same provisions as this Addendum and further identifying the Covered Entity as a third party beneficiary of the agreement with the subcontractor. Business Associate must implement and maintain sanctions against subcontractors that violate such restrictions and conditions and must mitigate the effects of any such violation.

e. make available PHI in a Designated Record Set to the Covered Entity within 10 days of a request from the Covered Entity to satisfy the Covered Entity's obligations under 45 CFR 164.524.

f. within ten days of a request from the Covered Entity, amend PHI in a Designated Record Set under 45 CFR § 164.526. If any individual requests an amendment of PHI directly from the Business Associate or its agents or subcontractors, the Business Associate must notify the Covered Entity in writing within ten days of the request, and then, in that case, only the Covered Entity may either grant or deny the request.

g. maintain, and within ten days of a request from the Covered Entity make available the information required to enable the Covered Entity to fulfill its obligations under 45 CFR § 164.528. Business Associate is not required to provide an accounting to the Covered Entity of disclosures : (i) to carry out treatment, payment or health care operations, as set forth in 45 CFR § 164.506; (ii) to individuals of PHI about them as set forth in 45 CFR § 164.502; (iii) under an authorization as provided in 45 CFR § 164.508; (iv) to persons involved in the individual's care or other notification purposes as set forth in 45 CFR § 164.510; (v) for national security or intelligence purposes as set forth in 45 CFR § 164.512(k)(2); or (vi) to correctional institutions or law enforcement officials as set forth in 45 CFR § 164.512(k)(5); (vii) as part of a limited data set according to 45 CFR 164.514(e); or (viii) that occurred before the compliance date for the Covered Entity. Business Associate agrees to implement a process that allows for an accounting to be collected and maintained by the Business Associate and its agents or subcontractors for at least six years before the request, but not before the compliance date of the Privacy Rule. At a minimum, such information must include: (i) the date of disclosure; (ii) the name of the entity or person who received PHI and, if known, the address of the entity or person; (iii) a brief description of PHI disclosed; and (iv) a brief statement of purpose of the disclosure that reasonably informs the individual of the basis for the disclosure, or a copy of the individual's authorization, or a copy of the written request for disclosure. If the request for an accounting is delivered directly to the Business Associate or its agents or subcontractors, the Business Associate must forward it within ten days of the receipt of the request to the Covered Entity in writing.

h. to the extent the Business Associate is to carry out one or more of the Covered Entity's obligations under Subpart E of 45 CFR Part 164, comply with the requirements of Subpart E that apply to the Covered Entity when performing those obligations.

i. make its internal practices, books, and records relating to the Business Associate's use and disclosure of PHI available to the Secretary for purposes of determining compliance with the HIPAA Rules. Business Associate must concurrently provide to the Covered Entity a copy of any PHI that the Business Associate provides to the Secretary.

j. retain all PHI throughout the term of the Agreement and for a period of six years from the date of creation or the date when it last was in effect, whichever is later, or as required by law. This obligation survives the termination of the Agreement.

k. implement policies and procedures for the final disposition of electronic PHI and the hardware and equipment on which it is stored, including but not limited to, the removal of PHI before re-use.

l. within ten days after a written request by the Covered Entity, the Business Associate and its agents or subcontractors must allow the Covered Entity to conduct a reasonable

inspection of the facilities, systems, books, records, agreements, policies and procedures relating to the use or disclosure of PHI under this Addendum for the purpose of determining whether the Business Associate has complied with this Addendum; provided, however, that: (i) the Business Associate and the Covered Entity must mutually agree in advance upon the scope, timing and location of such an inspection; (ii) the Covered Entity must protect the confidentiality of all confidential and proprietary information of the Business Associate to which the Covered Entity has access during the course of such inspection; and (iii) the Covered Entity or the Business Associate must execute a nondisclosure agreement, if requested by the other party. The fact that the Covered Entity inspects, or fails to inspect, or has the right to inspect, the Business Associate's facilities, systems, books, records, agreements, policies and procedures does not relieve the Business Associate of its responsibility to comply with this Addendum. The Covered Entity's (i) failure to detect or (ii) detection, but failure to notify the Business Associate or require the Business Associate's remediation of any unsatisfactory practices, does not constitute acceptance of such practice or a waiver of the Covered Entity's enforcement rights under this Addendum.

3. Permitted Uses and Disclosures by the Business Associate.

a. Business Associate may use or disclose PHI:

(i) for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate; provided, however, either (A) the disclosures are required by law, or (B) the Business Associate obtains reasonable assurances from the person to whom the information is disclosed that the information will remain confidential and used or further disclosed only as required by law or for the purposes for which it was disclosed to the person, and the person notifies the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached;

(ii) as required by law;

(iii) for Data Aggregation services relating to the health care operations of the Covered Entity;

(iv) to de-identify, consistent with 45 CFR 164.514(a) – (c), PHI it receives from the Covered Entity. If the Business Associates de-identifies the PHI it receives from the Covered Entity, the Business Associate may use the de-identified information for any purpose not prohibited by the HIPAA Rules; and

(v) for any other purpose listed here: carrying out the Business Associate's duties under the Contract.

b. Business Associate agrees to make uses and disclosures and requests for PHI consistent with the Covered Entity's minimum necessary policies and procedures.

c. Business Associate may not use or disclose PHI in a manner that would violate Subpart E of 45 CFR Part 164 if done by the Covered Entity except for the specific uses and disclosures described above in 3(a)(i) and (iii).

4. Covered Entity's Obligations

Covered entity agrees to

a. use its Security Measures to reasonably and appropriately maintain and ensure the confidentiality, integrity, and availability of PHI transmitted to the Business Associate under the Agreement until the PHI is received by the Business Associate.

b. provide the Business Associate with a copy of its Notice of Privacy Practices and must notify the Business Associate of any limitations in the Notice of Privacy Practices of the Covered Entity under 45 CFR 164.520 to the extent that such limitation may affect the Business Associate's use or disclosure of PHI.

c. notify the Business Associate of any changes in, or revocation of, the permission by an individual to use or disclose the individual's PHI to the extent that such changes may affect the Business Associate's use or disclosure of PHI.

d. notify the Business Associate of any restriction on the use or disclosure of PHI that the Covered Entity has agreed to or is required to abide by under 45 CFR 164.522 to the extent that such restriction may affect the Business Associate's use or disclosure of PHI.

5. Term. This Addendum must continue in effect as to each Contract to which it applies until such Contract is terminated or is replaced with a new contract between the parties containing provisions meeting the requirements of the HIPAA Rules, whichever first occurs.

6. Termination.

a. Material Breach. In addition to any other provisions in the Contract regarding breach, a breach by the Business Associate of any provision of this Addendum, as determined by the Covered Entity, constitutes a material breach of the Addendum and is grounds for termination of the Contract by the Covered Entity under the provisions of the Contract covering termination for cause. If the Contract contains no express provisions regarding termination for cause, the following apply to termination for breach of this Addendum, subject to 6.b.:

(i) Default. If the Business Associate refuses or fails to timely perform any of the provisions of this Addendum, the Covered Entity may notify the Business Associate in writing of the non-performance, and if not corrected within thirty days, the Covered Entity may immediately terminate the Contract. Business Associate must continue performance of the Contract to the extent it is not terminated.

(ii) Associate's Duties. Notwithstanding termination of the Contract, and subject to any directions from the Covered Entity, the Business Associate must timely, reasonably and necessarily act to protect and preserve property in the possession of the Business Associate in which the Covered Entity has an interest.

(iii) Compensation. Payment for completed performance delivered and accepted by the Covered Entity must be at the Contract price.

(iv) Erroneous Termination for Default. If the Covered Entity terminates the Contract under Section 6(a) and after such termination it is determined, for any reason, that the Business Associate was not in default, or that the Business Associate's action/inaction was excusable, such termination will be treated as a termination for convenience, and the rights and obligations of the parties will be the same as if the Contract had been terminated for convenience.

b. Reasonable Steps to Cure Breach. If the Covered Entity knows of a pattern of activity or practice of the Business Associate that constitutes a material breach or violation of the Business Associate's obligations under the provisions of this Addendum or another arrangement and does not terminate this Contract under Section 6(a), then the Covered Entity must notify the Business Associate of the pattern of activity or practice. The Business Associate must then take reasonable steps to cure such breach or end such violation, as applicable. If the Business Associate's efforts to cure such breach or end such violation are unsuccessful, the Covered Entity must either (i) terminate this Agreement, if feasible or (ii) if termination of this Agreement is not feasible, the Covered Entity must report the Business Associate's breach or violation to the Secretary of the Department of Health and Human Services.

c. Effect of Termination. After termination of this Agreement for any reason, the Business Associate, with respect to PHI it received from the Covered Entity, or created, maintained, or received by the Business Associate on behalf of the Covered Entity, must:

(i) retain only that PHI which is necessary for the Business Associate to continue its proper management and administration or to carry out its legal responsibilities;

(ii) return to the Covered Entity (or, if agreed to by the Covered Entity in writing, destroy) the remaining PHI that the Business Associate still maintains in any form;

(iii) continue to use appropriate safeguards and comply with Subpart C of 45 CFR Part 164 with respect to electronic protected health information to prevent use or disclosure of the PHI, other than as provided for in this Section, for as long as the Business Associate retains the PHI;

(iv) not use or disclose the PHI retained by the Business Associate other than for the purposes for which such PHI was retained and subject to the same conditions set out at Section 3(a)(1) which applied before termination; and

(v) return to the Covered Entity (or, if agreed to by the Covered Entity in writing, destroy) the PHI retained by the Business Associate when it is no longer needed by the Business Associate for its proper management and administration or to carry out its legal responsibilities.

7. No Waiver of Immunity. The parties do not intend to waive any of the immunities, rights, benefits, protection, or other provisions of the Michigan Governmental Immunity Act, MCL 691.1401, *et seq.*, the Federal Tort Claims Act, 28 U.S.C. 2671 *et seq.*, or the common law.

8. Data Ownership. The Business Associate has no ownership rights in the PHI. The covered entity retains all ownership rights of the PHI.

9. Disclaimer. The Covered Entity makes no warranty or representation that compliance by the Business Associate with this Addendum, HIPAA or the HIPAA Rules will be adequate or satisfactory for the Business Associate's own purposes. Business Associate is solely responsible for all decisions made by the Business Associate regarding the safeguarding of PHI.

10. Certification. If the Covered Entity determines an examination is necessary to comply with the Covered Entity's legal obligations under HIPAA relating to certification of its security practices, the Covered Entity or its authorized agents or contractors, may, at the Covered Entity's expense, examine the Business Associate's facilities, systems, procedures and records as may be necessary for such agents or contractors to certify to the Covered Entity the extent to which the

Business Associate's security safeguards comply with HIPAA, the HIPAA Rules or this Addendum.

11. Amendment.

a. The parties acknowledge that state and federal laws relating to data security and privacy are rapidly evolving and that amendment of this Addendum may be required to provide for procedures to ensure compliance with such developments. The parties specifically agree to take such action as is necessary to implement the standards and requirements of HIPAA and the HIPAA Rules. Upon the request of either party, the other party agrees to promptly enter into negotiations concerning the terms of an amendment to this Addendum embodying written assurances consistent with the standards and requirements of HIPAA and the HIPAA Rules. Either party may terminate the Agreement upon thirty days written notice if (i) the Business Associate does not promptly enter into negotiations to amend this Agreement when requested by the Covered Entity under this Section or (ii) the Business Associate does not enter into an amendment to this Agreement providing assurances regarding the safeguarding of PHI that the Covered Entity, in its sole discretion, deems sufficient to satisfy the standards and requirements of HIPAA and the HIPAA Rules.

12. Assistance in Litigation or Administrative Proceedings. Business Associate must make itself, and any subcontractors, employees or agents assisting Business Associate in the performance of its obligations under this Agreement, available to Covered Entity, at no cost to Covered Entity, to testify as witnesses, or otherwise, if someone commences litigation or administrative proceedings against the Covered Entity, its directors, officers or employees, departments, agencies, or divisions based upon a claimed violation of HIPAA or the HIPAA Rules relating to the Business Associate's or its subcontractors use or disclosure of PHI under this Agreement, except where the Business Associate or its subcontractor, employee or agent is a named adverse party.

13. No Third Party Beneficiaries. Nothing express or implied in this Addendum is intended to confer any rights, remedies, obligations or liabilities upon any person other than the Covered Entity, the Business Associate and their respective successors or assigns.

14. Effect on Contract. Except as specifically required to implement the purposes of this Addendum, or to the extent inconsistent with this Addendum, all other terms of the Contract must remain in force and effect. The parties expressly acknowledge and agree that sufficient mutual consideration exists to make this Addendum legally binding in accordance with its terms. Business Associate and the Covered Entity expressly waive any claim or defense that this Addendum is not part of the Contract.

15. Interpretation and Order of Precedence. This Addendum is incorporated into and becomes part of the Contract. Together, this Addendum and each separate Contract constitute the "Agreement" of the parties with respect to their Business Associate relationship under HIPAA and the HIPAA Rules. The provisions of this Addendum must prevail over any provisions in the Contract that may conflict or appear inconsistent with any provision in this Addendum. This Addendum and the Contract must be interpreted as broadly as necessary to implement and comply with HIPAA and the HIPAA Rules. The parties agree that any ambiguity

in this Addendum must be resolved in favor of a meaning that complies and is consistent with HIPAA and the HIPAA Rules. This Addendum supersedes and replaces any previous separately executed HIPAA addendum between the parties. If this Addendum conflicts with the mandatory provisions of the HIPAA Rules, then the HIPAA Rules control. Where the provisions of this Addendum differ from those mandated by the HIPAA Rules, but are nonetheless permitted by the HIPAA Rules, the provisions of this Addendum control.

16. Effective Date. This Addendum is effective upon receipt of the last approval necessary and the affixing of the last signature required.

17. Survival of Certain Contract Terms. Notwithstanding anything in this Addendum to the contrary, the Business Associate's obligations under Section 6(d) and record retention laws ("Effect of Termination") and Section 13 ("No Third Party Beneficiaries") survive termination of this Addendum and are enforceable by the Covered Entity if the Business Associate fails to perform or comply with this Addendum.

18. Representatives and Notice.

a. Representatives. For the purpose of this Addendum, the individuals identified in the Contract must be the representatives of the respective parties. If no representatives are identified in the Contract, the individuals listed below are designated as the parties' respective representatives for purposes of this Addendum. Either party may from time to time designate in writing new or substitute representatives.

b. Notices. All required notices must be in writing and must be hand delivered or given by certified or registered mail to the representatives at the addresses set forth below.

Covered Entity Representative:

Name: Kim Stephen
Title: Director
Department and Division: Bureau of Budget and Purchasing
Address: 320 South Walnut
Lansing, MI, 48913

Business Associate Representative:

Name: Jeff DeVries
Title: Contracts Manager
Department and Division: N/A
Address: Health Management Associates
120 N. Washington Square, Suite 705
Lansing, MI 48933

Any notice given to a party under this Addendum must be deemed effective, if addressed to such party, upon: (i) delivery, if hand delivered; or (ii) the third (3rd) Business Day after being sent by certified or registered mail.

Business Associate

Health Management Associates, Inc.

By: 

Date: 4/20/2015

Print Name: KELLY JOHNSON

Title: VICE PRESIDENT

Covered Entity

Michigan Department of Community Health

By: 

Date: 4/21/15

Print Name: Kim Stephen, Director
Bureau of Budget and Purchasing

Title: _____

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

CHANGE NOTICE NO. 5
to
CONTRACT NO. 071B1300148
between
THE STATE OF MICHIGAN
and

NAME & ADDRESS OF CONTRACTOR:	PRIMARY CONTACT	EMAIL
Health Management Associates 120 N. Washington Square, Suite 705 Lansing, MI 48933	Jeffrey DeVries	jdevries@healthmanagement.com
	TELEPHONE	CONTRACTOR #, MAIL CODE
	(517) 482-9236	

STATE CONTACTS	AGENCY	NAME	PHONE	EMAIL
CONTRACT COMPLIANCE INSPECTOR	DHS	Rita Hotchkin	(517) 335-4005	hotchkinr@michigan.gov
BUYER	DTMB	Brandon Samuel	(517) 284-7025	samuelb@michigan.gov

CONTRACT SUMMARY:			
DESCRIPTION: Revenue Maximization SRVC – DCH/DHS			
INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW
January 1, 2011	December 31, 2014	1 one year	December 31, 2014
PAYMENT TERMS	F.O.B	SHIPPED	SHIPPED FROM
N/A	N/A	N/A	N/A
ALTERNATE PAYMENT OPTIONS:			AVAILABLE TO MiDEAL PARTICIPANTS
<input type="checkbox"/> P-card	<input type="checkbox"/> Direct Voucher (DV)	<input type="checkbox"/> Other	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
MINIMUM DELIVERY REQUIREMENTS:			
N/A			

DESCRIPTION OF CHANGE NOTICE:				
EXTEND CONTRACT EXPIRATION DATE	EXERCISE CONTRACT OPTION YEAR(S)	EXTENSION BEYOND CONTRACT OPTION YEARS	LENGTH OF OPTION/EXTENSION	EXPIRATION DATE AFTER CHANGE
<input type="checkbox"/> No <input checked="" type="checkbox"/> Yes	<input checked="" type="checkbox"/>	<input type="checkbox"/>	12 Months	12/31/2015
VALUE/COST OF CHANGE NOTICE:			ESTIMATED REVISED AGGREGATE CONTRACT VALUE:	
\$0.00			\$9,105,771.42	
Effective January 1, 2015, the first option year available on this Contract is hereby exercised. The REVISED Contract expiration date is December 31, 2015. Please note the Primary Contact has been changed to Jeffrey DeVries. All other terms, conditions, specifications and pricing remain the same. Per vendor and agency agreement, and DTMB Procurement approval.				

STATE OF MICHIGAN
DEPARTMENT OF TECHNOLOGY, MANAGEMENT AND BUDGET November 15, 2011
PROCUREMENT
 P.O. BOX 30026, LANSING, MI 48909
 OR
 530 W. ALLEGAN, LANSING, MI 48933

CHANGE NOTICE NO. 4
TO
CONTRACT NO. 071B1300148
between
THE STATE OF MICHIGAN
and

NAME & ADDRESS OF CONTRACTOR		TELEPHONE Darlene Gregory (202) 785-3669
Health Management Associates 120 N. Washington Square, Suite 705 Lansing, MI 48933 dgregory@healthmanagement.com		CONTRACTOR NUMBER/MAIL CODE
		BUYER/CA (517) 241-1218 Brandon Samuel
Contract Compliance Inspectors: Penny Saites (DCH) saitesp@michigan.gov , Rita Hotchkin (DHS) hotchkinr@michigan.gov REVENUE MAXIMIZATION SRVC - DCH/DHS		
CONTRACT PERIOD:		From: January 1, 2011 To: December 31, 2014
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 attached Michigan Department of Community Health (MDCH) Scope of Work for Special Financing and Medical Consulting is hereby added to the contract.

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

AUTHORITY/REASON:

Per MDCH request, State Administrative Board approval on 10/18/2011, and DTMB Procurement approval.

TOTAL ESTIMATED CONTRACT VALUE REMAINS: \$9,105,771.42

EXHIBIT A-1

Scope of Work for Special Financing and Medicaid Consulting

Scope of Work Timeframe: 2/1/11 through 1/31/14

Overall Contractor Responsibilities:

HMA will assist the MDCH and its Medical Services Administration with all matters related to the management and financing of the Medicaid, CHIP and other related publicly funded health care programs. Work will include development of policy, monitoring of special issues and provision of specialized consulting services. Projects will require analysis of the fiscal implications to the State of Michigan and to health care providers of various financing and program options under consideration. Contractor must be able to assist in analysis of options for reducing the net cost of the Medicaid program through waivers and through financing options such as provider taxes, certified public expenditures, intergovernmental transfers and other potential financing options. Contractor will review and analyze federal and state statutes and regulations to ensure that all federal requirements are met and to identify any needed changes in state law or regulations. Contractor will provide other forms of assistance as may be required with regard to financing and reimbursement options for the Medicaid program.

Potential Special Financing and Medicaid Consulting Projects:

See Page 2.

Prime Contractor Key Personnel and Hourly Rates:

See Page 3.

Subcontractors' Key Personnel and Hourly Rates:

See Page 4 & 5.

POTENTIAL SPECIAL FINANCING AND MEDICAID CONSULTING PROJECTS

The following is a list of potential projects. However, Health Management Associates (HMA) may not be required to carry out all of these tasks nor is the MDCH constrained from supplementing this listing with additional tasks and projects, consistent with required skills and expertise, as needed to efficiently operate the Medicaid, CHIP and related programs. At the request of the department, the contractor will be required to provide details in writing as to methodologies and analytical techniques that will be employed to perform the specified work.

OBJECTIVE	TIME	DELIVERABLES
1. Assist with special financing initiatives including maintenance of existing programs and identification of new opportunities. Focus will be on maximization of non-state revenue sources with net financial benefit to state while maintaining or improving quality of services and access to services for Medicaid, CHIP and indigent beneficiaries.	Will vary depending on nature and scope of project and will be agreed to jointly by department and contractor.	Analysis of net financial impact on state and providers resulting from any specific initiative. Analysis must indicate recommended action and address fiscal, program, policy and legal implications. Position paper will be required as-needed.
2. Assist department in maximizing efficiency of its Medicaid pharmacy programs by advising on matters related to financing and financial management, including assistance with monitoring performance of contracted pharmacy benefits manager (PBM) and compliance with federal and state policies, laws and regulations. Other aspects of the program may be addressed in conjunction with this objective.	Will vary depending on nature and scope of project and will be agreed to jointly by department and contractor.	Will be specific to each task and at discretion of department to include written analysis, documentation of tasks completed and/or required product(s). Analysis must include recommended action and assessment of fiscal, program policy and legal implications. Position paper may be required as needed.
3. Assist with administrative and operational tasks needed for efficient management of Medicaid program. Examples include development of RFPs for specific functions, providing evaluations of various programs, conducting analysis of specific fiscal and programmatic issues, development of position papers, carrying out tasks needed for compliance with federal mandates and assistance with development of waivers.	Will vary depending on nature and scope of project and will be agreed to jointly by department and contractor.	Specific to each task and at discretion of department, will include written analysis, documentation of tasks completed and/or required product.
4. Assist with maintaining compliance with federal laws, rules, policies and regulations. Along with assessment of federal policy as it affects current initiatives, special attention will be directed towards interpretation and implementation of Health Care Reform.	Will vary depending on nature and scope of project and will be agreed to jointly by department and contractor. On occasion, short response time will be required in response to a particular issue.	At discretion of department, contractor will provide advice orally or will provide written assessment with recommendation for necessary and appropriate action or response to a particular issue.

Prime Contractor:

HMA – Key Personnel and Hourly Rates:

HMA Staff Name	Staff Level	Location	Hourly Rate for Services 2/2011 - 1/2012	Hourly Rate for Services 2/2012 – 1/2013	Hourly Rate for Services 2/2013 – 1/2014
Larry Bara	Senior Consultant	Lansing, MI	\$225	\$235	\$245
Tom Dehner	Principal	Boston, MA	\$265	\$275	\$285
Eileen Ellis	Managing Principal	Lansing, MI	\$265	\$275	\$285
Dave Ferguson	Managing Principal	Lansing, MI	\$265	\$275	\$285
Eliot Fishman	Principal	New York, NY	\$265	\$275	\$285
David Fosdick	Consultant	Lansing, MI	\$150	\$155	\$160
Jim Frizzera	Managing Principal	Washington, DC	\$265	\$275	\$285
Kevin Gorospe	Principal	Sacramento, CA	\$265	\$275	\$285
Sandy Kramer	Senior Consultant	Lansing, MI	\$225	\$235	\$245
Aimee Lashbrook	Senior Consultant	Lansing, MI	\$225	\$235	\$245
Dianne Longley	Principal	Austin, TX	\$265	\$275	\$285
Jane Longo	Senior Consultant	Chicago, IL	\$225	\$235	\$245
Jack Meyer	Managing Principal	Washington, DC	\$265	\$275	\$285
Juan Montanez	Principal	Washington, DC	\$265	\$275	\$285
Esther Reagan	Senior Consultant	Lansing, MI	\$225	\$235	\$245
Theresa Sachs	Managing Principal	Washington, DC	\$265	\$275	\$285
Lillian Spuria	Principal	Washington, DC	\$265	\$275	\$285
Donna Strugar- Fritsch	Principal	Lansing, MI	\$265	\$275	\$285
Rosemarie Day	Exclusive Sub	Boston, MA	\$265	\$275	\$285
Charles Milligan	Exclusive Sub	Baltimore, MD	\$265	\$275	\$285

Any work performed by Administrative Support staff will be charged at an hourly rate of \$75 for the duration of the three-year contract term.

* HMA agrees to negotiate lower hourly rates for any task or project of an extended duration.

Subcontractors':

Thomson Reuters Key Personnel and Hourly Rates:

Thomson Reuters Staff Name	Staff Level	Location	Hourly Rate for Services 2/2011 – 1/2012	Hourly Rate for Services 2/2012 – 1/2013	Hourly Rate for Services 2/2013 – 1/2014
Marisa Allen	Manager	Atlanta, GA	\$248	\$260	\$273
Brian Burwell	Vice President	Boston, MA	\$417	\$438	\$460
Jean Chenoweth	Vice President	Ann Arbor, MI	\$417	\$438	\$460
Rosana Coffey	Vice President	Washington, DC	\$417	\$438	\$460
Jonathan Conklin	Vice President	Santa Barbara, CA	\$417	\$438	\$460
Kim Dufour	Senior Consultant	Columbia, SC	\$220	\$231	\$243
Steve Eiken	Lead Researcher	St. Paul, MN	\$270	\$284	\$299
Ramond Fabius	Medical Director	Philadelphia, PA	\$417	\$438	\$460
Sara Galantowicz	Lead Researcher	Boston, MA	\$270	\$284	\$299
Teresa Gibson	Director	Ann Arbor, MI	\$385	\$404	\$425
Jeff Hanson	Vice President	Washington, DC	\$417	\$438	\$460
Robert Houchens	Vice President	Santa Barbara, CA	\$417	\$438	\$460
Millie Houtekier	Manager	Ann Arbor, MI	\$248	\$260	\$273
Beth Jackson	Director	Boston, MA	\$385	\$404	\$425
Jessica Kasten	Lead Researcher	Washington, DC	\$270	\$284	\$299
Bob Kelley	Vice President	Ann Arbor, MI	\$417	\$438	\$460
Rebecca Kolinski	Director	Ann Arbor, MI	\$385	\$404	\$425
Jean MacQuarrie	Vice President	Baltimore, MD	\$417	\$438	\$460
Michelle McAllister	Manager	Ann Arbor, MI	\$248	\$260	\$273
Barbara Montroy	Consultant	Ann Arbor, MI	\$150	\$156	\$165
Connie Perry	Vice President	Milwaukee, WI	\$417	\$438	\$460
Eric Poston	Senior Consultant	Frankfort, KY	\$220	\$231	\$243
Gary Redding	Vice President	Atlanta, GA	\$417	\$438	\$460
Beth Schneider	Vice President	Atlanta, GA	\$417	\$438	\$460
David Schutt	Medical Director	Washington, DC	\$417	\$438	\$460
Lisa Stegemann	Sr. Data Mgmt. Consultant	Ann Arbor, MI	\$220	\$231	\$243
Mary Steiner	Director	Lincoln, NE	\$385	\$404	\$425
Blong Xiong	Manager	Ann Arbor, MI	\$248	\$260	\$273

Michigan Health and Hospital Association's Key Personnel and Hourly Rates:

MHA Staff Name	Staff Level	Location	Hourly Rate for Services 2/2011 – 1/2012	Hourly Rate for Services 2/2012 – 1/2013	Hourly Rate for Services 2/2013 – 1/2014
Peter Schonfeld	Senior Vice President	Lansing, MI	\$320	\$325	\$330
Marilyn Litka-Klein	Vice President	Lansing, MI	\$240	\$245	\$250
Vickie Seal	Director of Finance	Lansing, MI	\$160	\$165	\$170
Jason Jorkasky	Manager of Finance	Lansing, MI	\$140	\$145	\$150

* If additional subcontractors are required for tasks requested by MDCH, HMA will first seek MDCH's approval of the subcontractor. Once subcontractor approval is received, HMA will present MDCH with the appropriate subcontractor hourly billing rates and projected expenses for approval prior to commencing any work. The information presented will be based upon the staff involved and the work to be performed.

STATE OF MICHIGAN
DEPARTMENT OF TECHNOLOGY, MANAGEMENT AND BUDGET November 15, 2011
PROCUREMENT
P.O. BOX 30026, LANSING, MI 48909
OR
530 W. ALLEGAN, LANSING, MI 48933

CHANGE NOTICE NO. 3 (Revised)
TO
CONTRACT NO. 071B1300148
between
THE STATE OF MICHIGAN
and

NAME & ADDRESS OF CONTRACTOR Health Management Associates 120 N. Washington Square, Suite 705 Lansing, MI 48933 dgregory@healthmanagement.com	TELEPHONE Darlene Gregory (202) 785-3669
	CONTRACTOR NUMBER/MAIL CODE
	BUYER/CA (517) 241-1218 Brandon Samuel
Contract Compliance Inspectors: Penny Saites (DCH) saitesp@michigan.gov , Rita Hotchkin (DHS) hotchkinr@michigan.gov REVENUE MAXIMIZATION SRVC - DCH/DHS	
CONTRACT PERIOD: From: January 1, 2011 To: December 31, 2014	
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 INCREASED by \$6,577,200.00 for use by the Michigan Department of Community Health (MDCH).

Effective immediately, the attached MDCH Scopes of Work for Hospital Credit Balance Resolution Services (Exhibit A-1), Third Liability Services (Exhibit A-2), and Recovery Audits (Exhibit A-3) are hereby added to the Contract.

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

AUTHORITY/REASON:

Per MDCH request, State Administrative Board approval on 10/18/2011, and DTMB Procurement approval.

INCREASE: \$6,577,200.00

TOTAL REVISED ESTIMATED CONTRACT VALUE: \$9,105,771.42

**071B1300148
Change Notice No.3 (rev.)
Signature Page**

FOR THE CONTRACTOR:

Health Management Associates

Firm Name

Authorized Agent Signature

Authorized Agent (Print or Type)

Date

FOR THE STATE:

Signature

Jeff Brownlee, Chief Procurement Officer

Name/Title

DTMB, Purchasing Operations

Division

Date

EXHIBIT A-1

Scope of Work for Hospital Credit Balance Resolution Services

Overall Contractor Responsibilities:

HMA, through its subcontractor Optum, will provide Credit Balance Resolution Services for the State of Michigan Department of Community Health (MDCH) to include the following services/operational delivery mechanisms. The objective of this Statement of Work is to provide MDCH with credit balance identification and recovery services focused on Michigan inpatient facilities (hereinafter "Hospital(s)" or "Provider(s)"). The objective of this work is to re-adjudicate accounts on a claim-by-claim basis to ensure both the Michigan Medicaid program administered by MDCH and the inpatient facilities have correct payments/credits resolved.

Optum's process and methodology utilizes workflow and process management based on each individual facility's business requirements. This includes such aspects as internal resources, approval criteria, business office accommodations, etc. Optum's audit staff analyzes each transaction associated with a credit balance account along with all electronic remittances and images.

The number of individuals assigned and the scope/range of technology components shall be determined by the Optum as needed to facilitate the identification and recovery of credit balances for MDCH. The general types of skill sets and technology support included in this effort include but are not limited to:

Operational / Project Management

- Provider Relations/Access Specialists
- Field Manager
- Onsite Auditors
- Quality Analysts
- State Services Support
- IT Infrastructure for HIPAA- Compliant Workflow and Reporting
- Secure FTP of Recovery Actions (Offset Requests) for State MMIS Posting
- Secure, Web-Based Reporting Portal Access for Transparency and Monitoring (e.g., "AIM Interactive")

With respect to addressing quality, the core objective in our scope of work is to audit Medicaid credit balance accounts within hospital data that have balances greater than or equal to \$500.

The five (5) functional categories of this scope of work are:

1. Optum Auditors Review Hospital Credit Balance Reports
2. Optum Audits Medicaid Accounts to Determine Resolution Action
3. Optum Submits Audit Findings to Provider for Review
4. Optum Quality Assurance Team Reviews Audit Findings and Prepares Posting Actions for MMIS

5. State agency reviews offset files for final approval and facilitates posting to MMIS

1. Optum Auditors Review Hospital Credit Balance Reports

Optum will determine which hospitals will be subject to review. Optum shall communicate the list of hospitals, in which Optum will have staff assigned, to MDCH. The actual number of hospitals in which Optum operates may fluctuate from time to time to reflect the periodic nature of Medicaid claiming levels and other factors. Optum shall determine which hospitals and when it will operate within those facilities. The selected hospitals will be notified by Optum's Provider Relations/Access Specialists (in writing or via teleconference) as follows:

- MDCH shall cooperate with Optum on any communication to Providers such as notification that Optum is being engaged to perform credit balance reviews in the various providers; or,
- Hospitals where Optum is currently performing credit balance recovery services will be notified that Optum is expanding its reviews to include the review and resolution of Michigan Medicaid credit balance accounts; or,
- Hospitals where Optum is not currently performing credit balance recovery services will be notified in writing and or teleconference for preliminary meetings scheduled that will be used to explain the project's purpose. The initial meeting with each new Provider will cover:
 - Establishing access to the Provider's credit balance account inventory,
 - Obtaining access to necessary Provider systems and resources (i.e., imaging, patient accounting, EOB storage, etc.),
 - Securing minimal workspace for the Optum auditor(s) at the Provider's facility; and
 - Scheduling the initial onsite analysis and Provider implementation.

During the initial onsite analysis of Michigan Medicaid ("Medicaid") credits at all selected Hospitals, the Optum Field Manager will conduct a review of the Provider's Medicaid credit balance inventory. Based on its initial review, the Optum Field Manager will then determine the appropriate level of staff and audit frequency required to re-adjudicate those accounts meeting the review threshold (credit balances >\$500) and estimated frequency of ongoing reviews (i.e. daily, weekly, bi-weekly, monthly, etc.) at each hospital. This review and resulting determination of staffing level and frequency is necessary due to the varying nature and volume of hospital credit balances on a daily basis and on a Provider-to-Provider basis.

2. Optum Audits Medicaid Accounts to Determine Resolution Action

Subsequent to the determination of staffing and audit frequency, Optum will notify identified Providers of the ongoing review schedule and commence work. Auditor activity will include:

1. Review of Michigan Medicaid accounts meeting the review threshold;
2. Resolution of credit balances and identification of overpayments due back to the State agency;
3. Documenting and electronically archiving all related backup and supporting materials associated with an overpayment (i.e. EOB's, UB04s, corrected bills, etc.).

Optum audit staff also employs mathematical formulas along with contractual and expected reimbursement information to identify the required resolution actions to bring the account to a zero-balance.

Upon review of each Michigan Medicaid account, the Optum auditor will document the audit finding/corrective action to bring the credit balance to a zero-balance status as one of the following:

- A. A non-cash accounting adjustment in the Hospital's system;
- B. A refund of the overpayment to the Medicaid Agency; or,
- C. Both of the above.

Additionally, in the review process, the Optum auditor will categorize the overpayment with one of the following reason codes:

- Improper Discount
- Retro-Active Contract
- Incorrect Total Charges
- Change in Billing
- Improper Discount
- Multi-payments/Same DOS
- Benefit Level not Applied
- Duplicate Payments
- COB Medicare
- COB Tricare
- TPL Worker's Comp
- TPL Auto, and
- COB Commercial

3. Optum Submits Audit Findings to Provider for Review

At regular intervals (based on onsite frequency), Optum will present overpayment findings to the Provider for review and to obtain concurrence from the Provider that the finding(s) is/are accurate.

Optum auditors work directly with the Provider staff so that the refund/offset process is completed accurately and timely. In an "offset" environment, Optum auditors work with the facility to help ensure that the "take-back" occurs correctly and within the appropriate timeframe.

4. Optum Quality Assurance Team Reviews Audit Findings and Prepares Posting Actions for MMIS

Once the Provider review is complete and after Provider concurrence of the identified credit balance overpayment, the Provider shall sign an authorization letter instructing MDCH to offset their claims for the overpayment amount agreed to by the Provider. Actual wording of the authorization letters shall be agreed upon by the Optum, the Providers and MDCH. The Optum quality assurance team will queue the overpayment inventory into its secure, web-based platform, AIM Interactive. Optum will coordinate with MDCH as necessary to facilitate the recovery of the overpayment via MDCH's claims processing system (MMIS, or CHAMPS). MDCH shall have access to the AIM Interactive system (as explained in section 5 following) and will have five (5) business days to agree to the identified overpayment and process the recovery into the MMIS.

In the unlikely event that the MDCH has already initiated a recovery of the credit balance, the Optum and MDCH will work together to reconcile any issues and prevent inappropriate "double recovery" from the Provider(s). MDCH and Optum will have five (5) business days to resolve such potential duplicate efforts. The MDCH shall provide Optum with information/documentation that previous overpayment identification/collection was underway.

5. MDCH Reviews Offset Files for Final Approval and Facilitates Posting to MMIS

MDCH shall have access to the AIM Interactive platform to facilitate the required adjustments and offsets in its MMIS/CHAMPS payment system. One of the features of AIM Interactive is that MDCH

may select one of the following types of adjustments:

- Cash payment - If the State prefers to receive a cash payment from the providers, AIM Interactive will provide an efficient and secure technology to allow for posting of the overpayments to the MMIS. The cash payment will then follow the current MMIS claims process in place with MDCH.
- Direct offset against claims being processed - As referenced in section 4, AIM Interactive will also provide the vehicle to prevent overlap with the State's primary recovery efforts. The state agency (or MMIS vendor) will be able to view the findings and to deny any overpayment previously identified by the State's primary efforts; thus preventing a duplicate recovery from occurring. It will be necessary for the State to arrange for offsets to future remittances in the MMIS and/or to post cash refunds to the MMIS. The MDCH shall provide Optum with information/documentation that previous overpayment identification/collection was underway.

Offsets to Providers' Medicaid claims shall be performed by MDCH and its MMIS/CHAMPS contractor in accordance with MDCH's existing claims offset procedures. Subsequent to the State Medicaid Agency's [do we mean "MDCH's"] "approval" of claims in AIM Interactive and the setting up of offsets against future claims payments in the MMIS, Optum shall prepare monthly reports used for reconciliation. These offsets will be sent to MMIS/CHAMPS for processing. These reports are typically delivered on or around the 15th day of the following month and contain individual and summary level information such as:

- Claim identification number
- Recipient/beneficiary information
- Claim amount
- Date of Service
- Amount identified as overpayment
- Year-to-date identified overpayments.

Additional ad-hoc reporting can be created for MDCH at no additional charge, if the data/reporting fields requested are present in Optum's Credit Balance reporting systems. Such reports will be defined by the Optum and MDCH. If data fields currently are not captured by Optum, additional discussions about the cost of modifying the reporting process may need to occur.

Furthermore, to ensure that feedback and communication loops are maintained at peak performance, Optum will hold quarterly business review conference calls with MDCH to discuss progress to date, any emerging issues, resolution of any outstanding items, and maintain open communications and processes. These conference calls are in addition to the state's real-time access to AIM Interactive.

Additional Requirements:

1. Credit Balance Overpayments to be pursued

Optum shall focus its credit balance overpayment activities on credit balances that exceed \$500 unless a specific agreement has been reached between the Optum and MDCH for exceptions.

2. Documentation of Audit Findings

Optum shall electronically provide all backup and supporting documentation (i.e. EOB's, etc.) for validation of Optum's audit findings. These documents/materials shall be shared with MDCH upon

request. This documentation is also scanned into AIM Interactive including roll-up reporting via Optum's online reporting application. Access to this technology will differ for MDCH (which shall have authorization to review all credit balance activities in all Providers) as opposed to Providers (who shall be able to see only their own Provider-specific credit balance activity and reporting).

Credit Balance Retraction Requests Submitted Electronically:

Optum will electronically submit all electronic credit balance retraction requests to the designated state agency adjustment area(s) at a minimum at least once a month. Prior to the start-up of this project, MDCH shall designate the individual/office to which such retraction requests shall be directed. These letters shall be reviewed in standard form (template) by the State prior to use in this engagement.

- Optum will electronically attach with the electronic retraction request signed Provider authorization letters (referenced in section 4 prior).
- The detailed audit findings, including other payer Explanation of Benefits, will be imaged with the electronic retraction requested and available for review by the Provider(s) within their access rights to AIM Interactive, and by MDCH for all Providers.

3. State Activities:

MDCH shall support the following activities:

- Review and provide feedback (not approval) on the list of Providers in which Optum will be performing credit balance work on behalf of MDCH;
- Cooperate in notification to Providers of Optum's role in performing credit balance audits on behalf of MDCH;
- Notify Optum in the event MDCH wants Optum to review/recover credit balances with a value of less than \$500;
- Designate contact person(s) within MDCH who shall have the authority for reviewing and approving credit balance recoveries;
- Promptly process (e.g. within the regularly scheduled MMIS claims processing cycle and no later than five (5) business days after submittal to MDCH for action) identified and agreed upon credit balance retractions from Providers;
- Designate contact person(s) within MDCH who shall have access to the AIM Interactive reporting and reconciliation tool;
- Notify Optum within five (5) business days of any potential duplicate overpayment recovery activity already commenced by MDCH;
- MDCH shall identify any ad hoc reports they may need as part of the AIM Interactive access and MDCH's monitoring of performance of Optum under this agreement;
- MDCH shall participate in the regularly scheduled conference calls and status meetings with Optum;
- Process payment to HMA/Optum for work, pursuant to the invoices submitted by HMA/Optum. Provide such other general support, assistance and participation as Optum may reasonably require to carry out Services.

EXHIBIT A-2

Scope of Work for Third Party Liability Services

Overall Optum Responsibilities:

Optum will provide other health insurance match services to the State of Michigan Department of Community Health (MDCH) for the purposes of increasing cost avoidance savings through the Third Party Liability (TPL) program. Additionally, Optum will provide pre-pay cost avoidance claims review, and TPL forwarding in which claims that are stopped due to other health insurance and are forwarded to the appropriate payer for action on behalf of MDCH and the Provider.

MDCH will begin receiving files with full membership roster information from Blue Cross Blue Shield (BCBS) of Michigan as early as July 2011. MDCH desires to implement a matching process for determining coverage overlaps between MDCH and Blue Cross member rosters upon receipt of the Blue Cross file. Optum will conduct this match between the MDCH member file and the Blue Cross Blue Shield of Michigan member roster according to data matching criteria agreed to by MDCH and Optum.

MDCH would like to further differentiate its pre-pay TPL program by offering a provider-friendly service of reviewing claims for cost avoidance, and forwarding pre-payment claims that are the responsibility of another payer to that payer for consideration of payment. Optum will leverage existing Provider relationships in order to demonstrate the claim volume and savings potential for a comprehensive pre-payment claims review and forwarding program.

Optum is able to leverage the enhanced data matching analytics that will be utilized for the new business between MDCH and Blue Cross for purposes of discovering overlap between MDCH and other commercial payers as a safety net to MDCH.

The number of individuals assigned and the scope/range of technology components will be determined by the Optum as needed to facilitate the identification of other health insurance and the forwarding of claims to appropriate payers. The general types of skill sets and technology support included in this effort include but are not limited to:

- Operational / Project Management
- Database Administrators
- Provider Relations/Access Specialists
- Quality Analysts
- State Services Support
- IT Infrastructure for HIPAA- Compliant Matching, Workflow and Reporting

The three functional categories of this scope of work are:

1. TPL Data Match (BCBS of Michigan)
2. Claims Review and Forwarding
3. Concurrent Review TPL Identifications

1. TPL Data Match (BCBS MI)

MDCH will receive files with full membership roster information from BCBS of Michigan and MDCH will provide the file to Optum in the form of a PA 593. At an interval not to exceed monthly, Optum will receive a full member roster for Blue Cross of Michigan in the PA 593 format. MDCH will not be obligated to send the file to Optum if an update file is not received from BCBS of Michigan. If acceptable to MDCH, the file can be provided directly to Optum by BCBS of Michigan.

MDCH will also provide a MDCH membership roster file at an interval not to exceed monthly (daily or weekly updates are preferred). Optum will implement a matching process for determining coverage overlaps between MDCH and BCBS of Michigan member rosters. Optum will utilize enhanced matching logic as well as related validation steps to include automated and manual validation as necessary.

Key steps in the process for matching BCBS of Michigan data with MDCH data are:

- Optum will execute a data sharing agreement between applicable parties,
- MDCH will provide Optum the PA 593 file layout, the MDCH member file layout, and a list of mandatory pay-and-chase claim types for development purposes,
- A member roster file from BCBS of Michigan will be provided to Optum from MDCH in the form of a PA 593. It is anticipated that the file will be provided at an interval not to exceed monthly. MDCH will not be obligated to provide the file if not provided by BCBS of Michigan. If acceptable to MDCH, the file can be provided directly to Optum by BCBS of Michigan,
- At an interval not to exceed monthly, MDCH will provide Optum with a full MDCH member roster file for purposes of conducting data match services on behalf of MDCH. Daily or weekly updates are preferred to promote maximum cost avoidance and payment accuracy,
- Optum will conduct matching activities. Matching will consist of multiple “levels”. Level 1 will consist of a full Social Security Number match and will be considered a Strong match,
- Additional levels of matching will be utilized as appropriate with accompanying validation and manual validation as necessary to promote accurate cost-avoidance opportunities,
- Optum will package results of this activity with the results of the Concurrent Review TPL Identifications (described below) in the “combined file layout” format requested by MDCH for delivery to State of Michigan (“SOM” or State”) and uploaded the file to the staging tables. (Combined File Layout received by Optum on 6/15/11),
- The schedule of files to be provided to SOM will be determined and agreed upon between parties. Optum recommends files be matched and sent to MDCH at a minimum frequency of monthly. The matched records shall be utilized to promote accurate cost-avoidance opportunities,
- Optum will utilize various methods to recover overpaid claims. These methods include both provider and payer recovery methods,
- At the State’s option Optum may perform its data matching services for payers other than BCBSMI as MDCH deems appropriate.

2. Claim Review and Forwarding Service

This EDI solution identifies TPL and/or claim errors on inbound pre-pay claims for cost avoidance purposes, and also forwards TPL claims to the appropriate payer for electronic adjudication and payment to the originating provider. As this service requires additional in depth collaboration between Optum and MDCH, listed are initial key steps in the process for pre-pay claim review and/or the forwarding of claims filed to MDCH that are payable by other health insurance carriers:

- At an interval not to exceed monthly, MDCH will provide Optum with a full MDCH member roster file for purposes of conducting data match services on behalf of MDCH. Daily or weekly updates are preferred to promote maximum cost avoidance and payment accuracy. If available to Optum, any other insurance information determined to exist by the state or other vendors can be leveraged for claim forwarding consideration,
- For claims uploaded to the Netwerkes portal for MDCH, Optum will check for other insurance coverage,
- Optum will apply standard HIPAA edits prior to processing to ensure claims are in a compliant format,
- Once claims have been processed for each type of error and do not contain a fatal error, the claims are passed on to MDCH for adjudication,
- If other insurance is determined to exist and to be applicable to the claim, Optum will also forward the claim to the other insurance,
- Optum will collaborate with MDCH in order to determine prepay cost avoidance claim edits to implement within the claims flow process,
- At the State's option, Optum may perform its data matching services for payers other than BCBSMI as MDCH deems appropriate.

3. Concurrent Review TPL Identifications

MDCH seeks to further differentiate its TPL program by shifting claims from post-payment recovery to pre-pay cost avoidance and seeks to maximize TPL identifications through concurrent review data match of Other Insurance ("OI") member rosters utilizing enhanced matching analytics. Optum will conduct enhanced matching activities.

Key steps in the process for matching other health insurance data for claims filed to MDCH are:

- Optum data sharing agreement to be executed between applicable parties,
- Optum will work with MDCH to establish authorization for obtaining any necessary data files in order to conduct TPL data matching services on behalf of MDCH. MDCH will support Optum receiving, at an interval not to exceed monthly, other insurance member files for purposes of timely discovery and reporting of OI Adds to MDCH,

- MDCH will provide, at an interval not to exceed monthly, a full member roster file from MDCH for purposes of conducting data match services on behalf of MDCH,
- At an interval not to exceed monthly, MDCH will provide Subcontractor with a full OI file from MDCH. This file will be utilized by Optum in order to “de-dup” the Add file that is sent to MDCH for upload to the staging tables. (Other Insurance file is in the “Combined File Layout” as received by Optum on 6/15/11),
- Additional levels of matching will be utilized as appropriate with accompanying validation and manual validation as necessary to promote accurate cost-avoidance opportunities,
- Optum will package results of this activity with the results of the TPL Data Match (BCBS of Michigan) (described in section 1 above) in the “combined file layout” format requested by MDCH for delivery to MDCH and uploaded the file to the staging tables. (Combined File Layout as received by Optum on 6/15/11),
- The schedule of files to be provided to MDCH will be determined and agreed upon between parties. Optum recommends files be matched and sent to MDCH at a minimum frequency of monthly. The matched records shall be utilized to promote accurate cost-avoidance opportunities,
- At MDCH’s option Optum may perform its data matching services for payers other than BCBSMI as MDCH deems appropriate.

MDCH Activities

MDCH shall be responsible for the following activities in support of tasks 1, 2, and 3 above:

- MDCH will provide Optum the PA 593 file layout, the MDCH member file layout, and a list of mandatory pay-and-chase claim types for development purposes,
- A member roster file from BCBS of Michigan will be provided to Optum from MDCH in the form of a PA 593. It is anticipated that the file will provided at an interval not to exceed monthly. MDCH will not be obligated to provide the file if not provided by BCBS of Michigan. If acceptable to MDCH, the file can be provided directly to Optum by BCBS of Michigan,
- At an interval not to exceed monthly, MDCH will provide Optum with a full MDCH member roster file for purposes of conducting data match services on behalf of MDCH. Daily or weekly updates are preferred to promote maximum cost avoidance and payment accuracy,
- At an interval not to exceed monthly, MDCH will provide Optum with a full MDCH member roster file for purposes of conducting data match services on behalf of MDCH. Daily or weekly updates are preferred to promote maximum cost avoidance and payment accuracy,
- At an interval not to exceed monthly, MDCH will provide Optum with a full OI file from MDCH. This file will be utilized by Optum in order to “de-dup” the Add file that is sent to MDCH for upload to the staging tables. (Other Insurance file is in the “Combined File Layout” as received by Optum on 6/15/11),
- MDCH will work with Optum to establish appropriate cash handling processes for any claims that have been recovered by the Optum,

- Provide such other general support, assistance and participation as Optum may reasonably require to carry out Services.

EXHIBIT A-3

Recovery Audit Contractor (RAC) Statement of Work

Optum will provide the staff and those information systems that Optum deems are necessary to conduct the analysis of Fee For Service (“FFS”) Medicaid paid claim data, review and identification of improper payments (over payments and underpayments), as well as performing defined services related to the recovery of overpayments made to Medicaid Providers by the State of Michigan Department of Community Health (MDCH). MDHC will provide Optum access to the required data from their Enterprise Data Warehouse and other data sources as required, for Optum to conduct reviews. DMCH will participate in reviews of findings, select and approve recovery actions with respect to those findings. In addition, MDHC will provide information on offsets authorized in lieu of overpayment funds returned and will further provide information on the resolution of underpayments to Optum.

For purposes of this Exhibit A-3 SOW, the following definitions shall apply regarding “overpayments” and “underpayments”:

- “Overpayment” means a payment made to an entity that was more than the amount to which the entity was supposed to have received. Examples of overpayments may include, without limitation payments made to providers that are in excess of the value of any goods or services rendered or may be the result of a more than sufficient payment by multiple payers, including Medicaid, for goods or services rendered, a payment for a non-covered service or service in an incorrect setting (not reasonable and necessary under Section 1862(a)(1)(A) of the Social Security Act), a payment made for incorrectly coded services, or a payment for services not provided.
- “Underpayment” means a payment made to an entity that results in a debit balance in the provider’s accounts receivable accounting records. Underpayments may result from payments made to providers that are inadequate in relation to the value of any goods or services rendered or may be the result of an insufficient payment by multiple payers, including Medicaid, for goods or services rendered. A provider’s failure to provide appropriate documentation does not constitute an underpayment.

In so far as the Centers for Medicaid and Medicare Services (“CMS”) has issued only a proposed rule providing guidance to the states related to Federal funding of Medicaid RACs, if and to the extent the final rules published by CMS include requirements that are not met by the terms of this Exhibit A-3 Statement of Work, the parties shall negotiate a mutually acceptable amendment to the terms, conditions and, if necessary, charges, to this Exhibit A-3 Statement of Work, to address those requirements. The parties shall be bound by the terms of this Exhibit A-3 Statement of Work unless and until such an amendment is executed by both parties.

The basic operational model for Recovery Audit Contract work is as follows:

Optum, working with MDCH's Medicaid Policy Subject Matter Experts (MDCH SMEs), will review current State policy and fee schedules along with a high level analysis of the State 'spend' in various categories, including by Provider type.

MDCH and Optum will then define and agree on a sequence of analysis of the paid claims by Provider type. MDCH will provide Optum a list of Providers which will be excluded from this analysis (exclusions will most likely be due to other recovery activities which are on-going by the State for those Providers).

Optum will then assemble and configure a collecting of pre-existing analytics (computer coded algorithms and models) and run those analytics for the paid claim data by Provider type. Optum will work closely with the MDCH SMEs to verify that the State policy has been correctly reflected in the configuration of the analytics with the goal of minimizing the 'false positives' in the analytics results set. Optum will run the analytics on the State data and produce results sets for review.

Optum will then assemble a multidisciplinary team of Optum SMEs to review the results sets. This review will be aimed at identifying the most appropriate recovery strategy for pursuing recoveries. Recovery strategies include but are not limited to the following:

- Demand Audit (i.e., Demand Letter)
- Complex Reviews or Medical Record Reviews:
 - Desk Audits
 - Field Audits
- Extrapolation Audit (including Corporate Extrapolation)
- Provider Self Review (i.e., Self Audit)
- Referral Review

Optum will then present recommendations to MDCH for consideration and final strategy determination. If in the course of this review, cases of suspected fraud are identified, Optum will work with the MDCH to refer these cases to the Michigan Medicaid Fraud Control Unit (MFCU) or other organization as deemed appropriate by MDCH.

In the case of Demand Audits, Optum will work closely with MDCH on the text of each set of Demand Letters and the final determination of the Providers who will receive the letters and the claims that will be included.

In the case of the various forms of 'audit' or 'self review', Optum will work closely with MDCH on the Providers to be audited, the claims to be included, and in the case of Provider Self Review, the text associated with the initiation of the review (i.e., why the collection of claims to being presented to the provider for review and request for supporting documentation).

Once audits are completed, the results will be presented to MDCH and approval will be requested for subsequent recovery actions.

Optum will issue recovery request letters on behalf of MDCH. Optum will maintain a State-specific lock box into which recovery payments will be made and will transfer funds from that lock box to MDCH on a minimum of a weekly basis.

MDCH will be responsible for final determination of recovery method (e.g., payment, establishment of offsetting credit balance to be debited in the case of future claim payments, etc.).

Optum will monitor and record all recovery activity (including offset amounts as determined by MDCH and resolution of underpayments as made MDCH) in a State-specific instance of the Optum hosted Recovery Management System (“RMS”) and provide reports to MDCH on a monthly basis. (Note MDCH will be responsible for updating their MMIS with claim adjustment and offset information). Recovery activities include interaction with Providers who may have questions about the demand letters, may have additional documentation to provide which supports their original claim, and/or who may have disputes or disagreements about the recovery request.

The Optum’s Recovery Resolution Operations team, composed of trained and certified medical and coding professionals will interface with Providers about their concerns or questions and Optum will bring to the attention of MDCH, any issues which Optum may not be able to resolve with Providers. All interactions are recorded in RMS. Optum will provide access to named MDCH employees to our Recovery Management System so that MDCH may monitor recovery activity as required.

A graphic depiction of this operational model is shown below:



Figure 1 Operational Model for RAC

The identification and recovery of overpayments requires close and timely collaboration between Optum and MDCH. Data has to be available on a timely basis. Information on policy and fee schedules needs to be made available to Optum promptly. Optum needs to promptly review policy and ask for State clarification when required, and MDCH needs to respond promptly to these questions. Results sets need comprehensive and timely review by Optum and recommendations must be provided to MDCH as quickly as possible. MDCH in turn needs to review the recommendations by Optum, make decisions with respect to the recommendations (including modifying recommendations as deemed appropriate by MDCH), and give Optum the required approvals for proceeding with recoveries. Close collaboration is a key factor in the defining the responsibilities between the parties in this Statement of Work.

For purposes of this Exhibit A-3 Statement of Work, the following definitions shall apply regarding the recovery strategies noted above:

1. **Demand Audit (or Automated Review).** An automated review is a computerized analysis of claims and coding practices using algorithms and models. Claims are identified when computerized records are sufficient to support the identification of possible improper payment, and after the algorithm or model results presented by Optum are approved by MDCH for recovery. Essentially, validation is done through review of payment policies, fee schedules and other requirements, rules-based applications of the policies/requirements, and a drill down into claim examples by Optum and State SMEs. From time to time, additional validation will occur through the request for and review of a sample of claims.
2. **Complex Review/Medical Record Review (i.e., Desk or Field Audits).** Complex reviews of Medical Records are conducted based on identification of questionable billings established through the deployment of analytics, reviews of billing patterns, random sampling, investigative analysis, and/or records that meet predefined “elevated risk” criteria. In a complex review, auditing personnel study the actual medical record or other documentation as submitted by the provider, to determine if the billings in question are proper. Medical record reviews of DRG coding errors and medical necessity determinations are two common types of complex reviews.
 - DRG validation reviews. The purpose of a DRG validation review is to assess the accuracy of ICD diagnosis and procedure codes assigned to the claim. Optum DRG Validation program examines hospital bills and provides oversight of the hospital’s classification of the Diagnosis Related Group (DRG), which is used to establish the correct reimbursement. In the complex review setting, the validation process consists of an in-depth independent review of the patient’s medical records to validate the diagnosis and procedure codes, and other information that is used to calculate the DRG for the claim being billed.

Optum uses its customized software and analytics to review claims and electronically evaluate those that have an elevated likelihood of being erroneous (due to coding or grouping errors, inappropriate DRG up-coding, missing records, or other documentation problems). Although Optum has a number of automated algorithms for DRG validation that do not require a review of the medical record, medical record reviews are often an important part of the validation process.

Audit findings focus on significant discrepancies or provider documentation problems which impact the DRG assignment and payment. All coding changes suggested by Optum are backed up by citations from the medical record (for complex reviews) and reliable, definitive sources for coding guidelines.

- Medical necessity reviews. If a review of claims that are subject to RAC services results in a conclusion that further analysis would require one or more medical necessity determinations (e.g., that the care provided was not reasonable and necessary), any medical record or other documentation review (and work related to that review if there is a subsequent appeal) that would involve medical necessity determinations may be undertaken by a subcontractor to the Optum. The use of any subcontractor would be subject to MDCH’s prior written approval.
3. **Extrapolation Audits.** Extrapolation audits are like complex reviews in that questionable billing, provider billing patterns, or recipient behavior is reviewed. However, the anticipated volume of questionable findings makes it most practical to conduct statistically valid random

sample reviews of medical records or other documentation and to apply findings to the population of suspected claims. Extrapolation audits can be at the billing or treating provider level, the corporate level, or a subset of these as deemed appropriate. Prior to determining whether a full extrapolation audit is warranted, Optum may perform a probe audit – small-scale, statistically valid random sample review, much like extrapolation audits, that help us gauge the magnitude, extent, and nature of the provider’s improper payments.

4. **Provider Self Reviews.** For certain types of questionable claims, Optum and MDCH may agree that the most appropriate method of validation of findings is for the provider to review the claims with State oversight. State has various approaches to providing the information to providers and supporting their review and response. The use of Provider Self Review does not preclude subsequent validation of claims and records through other methods as determined appropriate.
5. **Referral Review.** For cases that are State believes warrant a referral to the MFCU or other law enforcement authorities, State will develop a referral review that is designed to support subsequent criminal, civil, or administrative case development. This referral review will rely on data analysis results, unless a determination to refer the case has been made once other reviews have begun or unless other record review information is available.

Other Program Integrity Activities: Cost Containment Initiatives

Optum will draw on its unique experience working with numerous states on program integrity activities to support additional Cost Containment Initiative activities designed to stop inappropriate payments before they occur. Optum shall provide the following cost containment activities aimed at avoiding costs:

- Making recommendations of systems edits, process changes, and policy changes that can avoid unneeded costs or bring more cost effective practices to the Michigan Medicaid program, (i.e., Cost Containment Initiative)
- Calculating thirty six (36) months of program avoidance savings based on historical thirty six (36) monthly costs of the activities that are stopped.

Any reduction in billings by providers or change in behavior as a result of Medicaid RAC activities as described above shall be addressed or paid for through the Payment Provisions of the Cost Containment Activities.

Each Cost Containment Initiative will be presented to MDCH for approval. MDCH may approve or reject the initiative but will not owe HMA/Optum payment for any initiative until the initiative has been implemented. Implementation means passage or release of statutory, regulatory, policy, or procedure guidance on the initiative as submitted to MDCH by Optum.

Optum Responsibilities:

- 1) Receive from MDCH, documentation on their Medicaid claim payment policies and fee scheduled to be used by Optum for analysis of the data.
- 2) Establish State-specific instances of the Optum databases and information systems used within the RAC activities.
- 3) Provide access to up to five (5) named State personnel to the Optum owned and hosted RMS system.

- 4) Establish the State-specific lock-box to be used for receipt of recovered funds and document collection activities as agree to by MDCH
- 5) Extract from the State's EDW the paid FFS claim data, Provider, Member and other reference data needed by Optum. Load this data into the State-specific data bases used by Optum for analysis within the first thirty (30) work days.
- 6) Conduct a high level review of State Medicaid policy and the paid claim information provided within the first 60 work days.
- 7) Collaborate with MDCH on a review of the Optum high level findings to determine the sequence of analysis by provider type. Establish an overall work plan for claim review by Provider type and get agreement from MDCH to proceed within the first one-hundred (100) work days.
- 8) Assemble, configure and conduct primarily automated review of paid claims by provider- type and identify improper payment suspects within twenty (20) work days of agreement on the overall work plan.
- 9) Review the results set from the automated review and iterate, with collaboration from State SMEs, revising the configuration of analytics as required, until the results sets provide a high degree of confidence in 'positive' findings. For any given provider type, do this within a thirty (30) work day time frame from first result set to final results set.
- 10) Review final results sets and assemble recommendations for recovery strategies for State review and approval within twenty (20) work days of final results set being available.
- 11) Once State approval is received, proceed with identified recovery strategy:
 - a) For demand letters, issue demand letters to identify providers for approved claims within 20 work days of receiving approval from MDCH for the demand letter content.
 - b) For audits, initiate the defined audit strategy within thirty (30) work days of approval by MDCH and complete the review within 60 days of receiving the required documentation. If required documentation is not received from the provider within 45 days of request, MDCH agrees that Optum may conclude that an overpayment has occurred and MDCH shall perform a payment offset on the subsequent claims submitted by that provider until such time as the offset balance is zero.
 - c) For referral reviews, assemble supporting documentation and turn over to MDCH identified agency within ten (10) work days of approval by MDCH.
 - d) For audit results, produce recovery letters within ten (10) work days of approval MDCH of the content of the recovery letter.
- 12) On an ongoing basis throughout the operational term of RAC services:
 - a) Maintain and refresh the Optum database of paid claim, provider, member and reference data on at a minimum – a monthly basis.
 - b) Maintain a recovery tracking process that allows compilation, generation and mailing of demand letters, underpayment notifications, work papers, reports, etc. through Optum' Recovery Management System ("RMS"), where such RMS is a pre-existing system of hardware and software for which ownership shall remain with Optum.
 - c) Provide a provider call center to support response to provider inquiries using a pre-paid (i.e., toll free) phone number.
 - d) For providers identified as receiving overpayments, assist MDCH through the provider dispute process that includes responding to providers following the initial notification of overpayments, answering phone inquiries, reviewing provider documentation, tracking

communications and status, and providing recommendations for resolution of overpayment disputes. To this end, Optum will provide a toll free customer service telephone number in all correspondence sent to providers or other prospective debtors from 8:30 a.m. to 5:00 p.m. ET.

- e) Forward compromise and/or settlement requests to MDCH with a recommendation on the request and the justification for each recommendation
 - f) Maintain records of identified recovery cases and tracking collections and/or offsets authorized on those recovery cases, based on MDCH providing details of offsets authorized
 - g) Provide assistance to MDCH in connection with appeals lodged by providers using MDCH's current legal and administrative procedures where the provider seeks a review of an adverse Medicaid determination for which Optum had performed the identification and, where applicable, recovery work.
 - h) Produce reports from our standard library of RMS reports that will allow State management to provide appropriate oversight of recovery activities.
 - i) Maintaining required and consistent 'good cause' documentation of claim reviews and provide assistance in defending the findings resulting from the recovery activities at administrative hearings or in court, as required by MDCH
 - j) Provide assistance to MDCH in connection with appeals lodged by providers using MDCH's current legal and administrative procedures where the provider seeks a review of an adverse Medicaid determination for which Optum had performed the identification, validation and/or recovery work
 - k) At MDCH's direction, coordinate Optum recovery efforts with other State and Federal recovery efforts, including efforts by other State and Federal contractors so recovery efforts do not duplicate, replace or compromise existing audit or integrity programs
 - l) Submit an itemized monthly Statement with details for all recoveries and additional payouts (for underpayments) for the previous month as well as any reconciliation needed for previous month
 - m) Provide data extracts from the RMS system back to the States EDW as required.
- 13) Annually revise with work plan initially established in item 7) above
- 14) Repeat responsibilities 1) through 11) for each identified provider type per the work plan established in 7) and revised in item 13)
- 15) Furnish all material, labor, computers, software, equipment and supplies that Optum deems necessary to perform the services described above and shall follow all relevant laws, statutes, rules and State approved procedures in its review and collection activities
- 16) Provide record retention for seven (7) years for all recovery related activities including clinical documentation, claims documentation and other pertinent information (e.g. copy of request letters, contacts with audit contractors, CMS, DCH, HHS, OIG, or the Michigan Medicaid Fraud Control Unit, dates of calls made, and notes, etc.).
- 17) For Cost Containment Initiatives, Optum will provide written documentation of our recommendations with supporting information as to cost savings and program impact to MDCH for their consideration – including a projected thirty six (36) month savings to the Medicaid program based on the historical thirty six (36) months of costs to the program. Optum will formally present to State Medicaid program management our recommendations.

MDCH Responsibilities:

- 1) Permit Optum to extract the required data from the State's EDW for paid FFS claims, provider, member and reference data
- 2) Make available to Optum personnel the relevant Medicaid policy, fee schedules and other such materials as Optum may require for the configuration of Optum owned analytics to reflect Michigan-specific Medicaid policy (including waivers)
- 3) Identify up to five (5) MDCH employees who will be given access to the State- specific and Optum hosted RMS system
- 4) Work with Optum personnel to define collection activities and procedures and provide formal approval to the agreed procedures within ten (10) work days of submission of documentation by Optum
- 5) Make available MDCH Medicaid policy SMEs to participate in formal reviews of policy and paid claim data analysis by Optum. These reviews may be conducted on-site at a MDCH location or at the Optum office located in Lansing, or may be conducted using voice and web conferences established and hosted by Optum. It is expected that MDCH SMEs may be required for up to two (2) full work days for this review, and in the case of questions or issues, further time may be required. MDCH will make the MCDH SMEs available for these reviews on a timely basis, understanding that these reviews are a critical element of the recovery work
- 6) Respond to specific questions on policy or data posed by Optum and supported with documentation as required – within two (2) work days of the question being posed by Optum
- 7) Actively collaborate and contribute to the establishment of an overall work plan for the review of paid claims by provider type. Approve the final plan within five (5) work days of receipt from Optum
- 8) Provide a list of excluded Providers by Provider type prior to Optum doing the analysis of paid claims for that Provider type
- 9) Make available MDCH SMEs to review findings from Optum and to further review, comment on and make revisions to recommendations from Optum with respect to recovery strategies. MDCH will make decisions on recovery strategies within five (5) work days of the recommendations being submitted to MDCH by Optum
- 10) Work with Optum and approve the final text of recovery letters being sent to providers. MDCH will provide revisions or approval of the text of recovery letters within five (5) work days of the letter being submitted to MDCH by Optum
- 11) Approve the final list of providers and claims who will receive recovery letters. MDCH will provide this approval within five (5) work days of the candidate list being provided to MDCH by Optum
- 12) Approve identified underpayments within five (5) work days of the candidate list being provided to MDCH by Optum
- 13) On an ongoing basis throughout the operational term of the RAC services;
 - a) Allow Optum to refresh paid claim, provider, member and reference data from the States' EDW as required by Optum

- b) Work with Optum to review issues and concerns which Optum cannot resolve with respect to providers and recovery activities. MCDH will work with Optum on a timely basis so as to not unduly delay recovery activities
 - c) Provide information to Optum within two (2) work days with respect to recovery decisions to allow MDCH to establish offsets (i.e., credit balance) and the status of those balances for recording and reporting by RMS – with the shared objective of having the RMS system up to date on a monthly basis for current reporting
 - d) Make any necessary claim adjustments in the State’s MMIS due to recovery decisions
 - e) Establish offset balances equal to the total value of the mutually agreed overpayment when the provider has not submitted requested medical records and other supporting documentation to Optum for review within thirty (30) work days of the request from Optum
 - f) Receive, review and approve the monthly reports from Optum with respect to recovery activities.
- 14) Activity participate in a revision of the work plan on an annual basis, and approve the revised annual plan within ten (10) work day of submission by Optum
- 15) For Cost Containment Initiatives, MDCH will review written documentation and presentation by Optum of initiatives and will make a determination with respect to each initiative within thirty (30) work days of receipt. If MDCH accepts an initiative as proposed by Optum, MDCH will work with Optum to keep Optum informed of the implementation status such that HMA/Optum is notified as to the actual implementation for billing purposes
- 16) Provide such other general support, assistance and participation as Optum may reasonably require to carry out Services.

Assumptions

- 1) Optum would be the sole and exclusive RAC contractor for State of Michigan and all categories of Fee-For-Service Medicaid paid claims will be available for review by Optum.
- 2) Pre-existing algorithms, policy tables, rules and predictive models will be owned by Optum and will not be licensed to the State.
- 3) The RMS system will be hosted on Optum provided hardware and the State will not obtain any ownership rights in the RMS system but will be granted the limited rights necessary to update and access information stored within the RMS.
- 4) Algorithm output/results will be owned by the State.
- 5) Optum will supply only those algorithms that are within its standard library of algorithms or Michigan-specific algorithms that it has determined to be mutually beneficial if pursued. Should MDCH require additional state-specific algorithms, Optum will provide MDCH a separate quotation for this development and the resulting work will be treated as a Change Request. The State would own the portion of any algorithms developed under a State funded Change Request and the State would grant Optum the right to use the State-owned portion of any such algorithms for any business purpose.
- 6) If MDCH determines that State personnel will update RMS with actual collection information, underpayment and/or offset information, it will do so on a timely basis, but not later than two (2) work days after the funds have been received by MDCH and/or the offset determination has been made.

- 7) MDCH will inform its Provider community of this activity.
- 8) MDCH will inform specific Providers of the requirement to cooperate with Optum in the event that medical records need to be provided to Optum for review.
- 9) MDCH will further inform specific Providers of its authorization of Optum to provide Complex Medical Reviews and the requirement to cooperate with Optum and its subcontractors in the conduct of those reviews.
- 10) MDCH will provide designated individuals as a contact point for MDCH, with the ability to address issues regarding determinations and actions taken under this contract.
- 11) MDCH will make MDCH Medicaid Policy Subject Matter Experts available as reasonably needed to work with Optum on identified recovery activities and questions.
- 12) MDCH will authorize Optum to extract the required data from the EDW on a scheduled basis and authorize system access to named Optum personnel. In the event that Optum is not authorized to extract this data directly, MDCH will provide this data to Optum on an agreed schedule at no cost to Optum.

License Terms

Information systems, including the hardware and system software used by Optum in the course of this contract, are owned by Optum and are licensed to the State of Michigan for use during the term of this contract.

Consistent with the terms and conditions of the Agreement, Optum hereby conveys to the State, ownership in the modifications to the existing algorithms, policy tables and/or models developed under this Statement of Work that are specific to Michigan as well as to the result sets produced by such modifications (collectively, the “Michigan Specific Modifications and Result Sets”), subject to a royalty-free, irrevocable license and right for Optum to use, modify, market, prepare derivative works, license and support, directly or indirectly, the Michigan Specific Modifications and Result Sets for others, but with no additional obligation imposed on the State in connection with such license.

Term and Termination

The term of this Statement of Work shall be from the Effective Date through December 31, 2014 or as otherwise validly extended or terminated in accordance with the terms of the Prime Contract and Service Work Requests issued thereunder.

Notwithstanding the foregoing, the State of Michigan shall pay HMA/Optum contingent fee on any amounts collected, payments offset or costs avoided for up to the thirty six (36) months from implementation and during the one thousand ninety five (1095) day period following the service Term, and extensions thereof, if they arise out of services performed by HMA/Optum prior to the end of the Service Term or extension period.

HMA/Optum is obligated to provide all reasonable, necessary, and timely support requested by the State to ensure successful recovery efforts on these cases.

EXHIBIT B

The State of Michigan shall pay HMA for performing the Services at the rates and prices set forth below and in accordance with the invoicing and payment provisions of the Prime Contract;

1. Payment for Hospital Credit Balance Resolutions Services:

HMA shall be compensated by the State of Michigan for providing the hospital credit balance resolution services described in Exhibit A-1 to the Agreement at the rates and prices set forth below:

- Non-Cash Adjustments: There shall be no charge to MDCH for the resolution of Michigan Medicaid credits that result in a non-cash adjustment;
- Recovery/Offset Adjustments: Upon recovery/offset accepted and processed by the MDCH MMIS/CHAMPS, MDCH shall pay to HMA 14% of the amount recovered or offset for each credit balance processed or if the provider remits funds directly to the State;
- Credit Balances Less Than \$500: For credit balance recoveries of less than \$500 each, the State of Michigan shall pay HMA an amount equal to either 14.0% of recovered/offset credit balance or \$175.00 per credit balance, whichever is greater;

2. Payment for Third Party Liability Services:

HMA shall be compensated by the State of Michigan for providing the third party liability services described in Exhibit A-2 to the Agreement at the rates and prices set forth below:

TPL Data Match (BCBS MI)

- Per Member Cost Avoidance Fee: The fee shall be \$45.00 payable by the State of Michigan to HMA, for each MDHC member whose order of benefits has been appropriately adjusted. Each member becomes eligible for billable add fee after 9 months or upon termination of previously sent add.
- Claim Recovery/Offset Adjustments: Upon recovery/offset accepted and processed by the MDCH MMIS/CHAMPS, the State of Michigan shall pay to HMA 9.25% of the amount recovered for each recovery identified by TPL processes.

3. Payment for Recovery Audit Contractor (RAC) Services:

HMA shall be compensated by the State of Michigan for providing the Recovery Audit Contractor

services described in Exhibit A-3 to the Agreement at the rates set forth below:

Activity	Contingent Fee	Contingent Fee Based on
Identification and collection or other agreed recovery of overpayment	15.5%	Amount collected by Subcontractor , paid directly to the State of recover through payment offset
Identification and approval, by the State, of underpayments	5.25%	Underpayments identified by Subcontractor and approved by the State
Cost Avoidance from Cost Containment Initiatives not payable from the above which were implemented by the State based on the recommendation of Subcontractor	6.25%	Of 36 months of future cost avoidance from the date of implementation based on the most recent historical 36 months of average costs avoided

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

October 4, 2011

CHANGE NOTICE NO. 2
TO
CONTRACT NO. 071B1300148
between
THE STATE OF MICHIGAN
and

NAME & ADDRESS OF CONTRACTOR Health Management Associates 120 N. Washington Square, Suite 705 Lansing, MI 48933 dgregory@healthmanagement.com	TELEPHONE Darlene Gregory (202) 785-3669
	CONTRACTOR NUMBER/MAIL CODE
	BUYER/CA (517) 241-1218 Brandon Samuel
Contract Compliance Inspectors: Penny Saites (DCH) saitesp@michigan.gov , Rita Hotchkin (DHS) hotchkinr@michigan.gov REVENUE MAXIMIZATION SRVC - DCH/DHS	
CONTRACT PERIOD: From: January 1, 2011 To: December 31, 2014	
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 INCREASED by \$1,800,000.00 for use by the Department of Community Health.

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

AUTHORITY/REASON:

Per DCH request, State Administrative Board approval on 9/30/2011 and DTMB Purchasing Operations approval.

INCREASE: \$1,800,000.00

TOTAL REVISED ESTIMATED CONTRACT VALUE: \$2,528,571.42

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

January 19, 2011

CHANGE NOTICE NO. 1
TO
CONTRACT NO. 071B1300148
between
THE STATE OF MICHIGAN
and

NAME & ADDRESS OF CONTRACTOR		TELEPHONE Darlene Gregory (202) 785-3669
Health Management Associates 120 N. Washington Square, Suite 705 Lansing, MI 48933 dgregory@healthmanagement.com		CONTRACTOR NUMBER/MAIL CODE
		BUYER/CA (517) 241-1218 Brandon Samuel
Contract Compliance Inspectors: Penny Saites (DCH) saitesp@michigan.gov , Rita Hotchkin (DHS) hotchkinr@michigan.gov REVENUE MAXIMIZATION SRVC - DCH/DHS		
CONTRACT PERIOD:		From: January 1, 2011 To: December 31, 2014
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 this Contract is hereby INCREASED by \$300,000.00 to include estimated dollar amounts for Revenue Maximization for use by the Department of Community Health.

Per Health Management Associates request, contact person has been changed to Darlene Gregory.

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

AUTHORITY/REASON:

Per DCH request, Ad Board approval on 1/18/2011 and DTMB/Procurement & Real Estate Services Administration approval.

INCREASE: \$300,000.00

TOTAL REVISED ESTIMATED CONTRACT VALUE: \$728,571.42

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

January 19, 2011

NOTICE
TO
CONTRACT NO. 071B1300148
between
THE STATE OF MICHIGAN
and

NAME & ADDRESS OF CONTRACTOR Health Management Associates 120 N. Washington Square, Suite 705 Lansing, MI 48933 <p style="text-align: right;">mevert@healthmanagement.com</p>	TELEPHONE Marilyn Evert (517) 482-9236
	CONTRACTOR NUMBER/MAIL CODE
	BUYER/CA (517) 241-1218 Brandon Samuel
Contract Compliance Inspectors: Penny Saites (DCH) saitesp@michigan.gov , Rita Hotchkin (DHS) hotchkinr@michigan.gov <p style="text-align: center;">REVENUE MAXIMIZATION SRVC - DCH/DHS</p>	
CONTRACT PERIOD: From: January 1, 2011 To: December 31, 2014	
TERMS <p style="text-align: center;"><u>N/A</u></p>	SHIPMENT <p style="text-align: center;"><u>N/A</u></p>
F.O.B. <p style="text-align: center;"><u>N/A</u></p>	SHIPPED FROM <p style="text-align: center;"><u>N/A</u></p>
MINIMUM DELIVERY REQUIREMENTS <p style="text-align: center;"><u>N/A</u></p>	
MISCELLANEOUS INFORMATION:	

The terms and conditions of this Contract are those of ITB #10200239, this Contract Agreement and the vendor's proposal dated 10/13/2010. In the event of any conflicts between the specifications, and terms and conditions, indicated by the State and those indicated by the vendor, those of the State take precedence.

Estimated Contract Value: \$428,571.42

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

CONTRACT NO. 071B1300148
between
THE STATE OF MICHIGAN
and

NAME & ADDRESS OF CONTRACTOR Health Management Associates 120 N. Washington Square, Suite 705 Lansing, MI 48933 mevert@healthmanagement.com	TELEPHONE Marilyn Evert (517) 482-9236 CONTRACTOR NUMBER/MAIL CODE BUYER/CA (517) 241-1218 Brandon Samuel
Contract Compliance Inspectors: Penny Saites (DCH) saitesp@michigan.gov , Rita Hotchkin (DHS) hotchkinr@michigan.gov REVENUE MAXIMIZATION SRVC - DCH/DHS	
CONTRACT PERIOD: From: January 1, 2011 To: December 31, 2014	
TERMS N/A	SHIPMENT N/A
F.O.B. N/A	SHIPPED FROM N/A
MINIMUM DELIVERY REQUIREMENTS N/A	
MISCELLANEOUS INFORMATION: The terms and conditions of this Contract are those of ITB #10200239, this Contract Agreement and the vendor's proposal dated 10/13/2010. In the event of any conflicts between the specifications, and terms and conditions, indicated by the State and those indicated by the vendor, those of the State take precedence.	
Estimated Contract Value: \$428,571.42	

THIS IS NOT AN ORDER: This Contract Agreement is awarded on the basis of our inquiry bearing the ITB No. 10200239. Orders for delivery will be issued directly by the Department of Community Health through the issuance of a Purchase Order Form.

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

FOR THE CONTRACTOR: Health Management Associates _____ Firm Name _____ Authorized Agent Signature _____ Authorized Agent (Print or Type) _____ Date	FOR THE STATE: _____ Signature Kevin Dunn, Buyer Manager _____ Name/Title Service Division, Purchasing Operations _____ Division _____ Date
---	--



STATE OF MICHIGAN
Department of Technology, Management and Budget
Purchasing Operations

Revenue Maximization – Statewide Pre-Qualification

Buyer Name: Brandon Samuel
Telephone Number: 517-241-1218
E-Mail Address: samuelb@michigan.gov

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DEFINITIONS

24x7x365 means 24 hours a day, seven (7) days a week, and 365 days a year (including the 366th day in a leap year).

Additional Service means any Services within the scope of the Contract, but not specifically provided under any Statement of Work.

Audit Period means the seven (7) year period following Contractor's provision of any work under the Contract.

Bidder(s) are those companies that submit a proposal in response to this RFP.

Business Day means any day other than a Saturday, Sunday or State-recognized legal holiday from 8:00 a.m. EST through 5:00 p.m. EST unless otherwise stated.

Blanket Purchase Order is an alternate term for Contract.

CCI means Contract Compliance Inspector.

Days mean calendar days unless otherwise specified.

Deleted – N/A means that section is not applicable or included in this RFP. This is used as a placeholder to maintain consistent numbering.

Deliverable means physical goods and/or services required or identified in a Statement of Work.

DTMB means the Michigan Department of Technology, Management and Budget.

Environmentally Preferable Products means a product or service that has a lesser or reduced effect on human health and the environment when compared with competing products or services that serve the same purpose. Such products or services may include, but are not limited to: those which contain recycled content, minimize waste, conserve energy or water, and reduce the amount of toxics either disposed of or consumed.

Hazardous Material means any material defined as hazardous under the latest version of federal Emergency Planning and Community Right-to-Know Act of 1986 (including revisions adopted during the term of the Contract).

HIPPA means Health Insurance Portability and Accountability Act.

Incident means any interruption in any function performed for the benefit of a Plan Sponsor.

Key Personnel means any personnel identified in **Section 1.031** as Key Personnel.

New Work means any Services/Deliverables outside the scope of the Contract and not specifically provided under any Statement of Work, such that once added will result in the need to provide the Contractor with additional consideration. "New Work" does not include Additional Service.

Ozone-depleting Substance means any substance the Environmental Protection Agency designates in 40 CFR part 82 as: (1) Class I, including, but not limited to, chlorofluorocarbons, halons, carbon tetrachloride, and methyl chloroform; or (2) Class II, including, but not limited to, hydrochlorofluorocarbons.

Post-Consumer Waste means any product generated by a business or consumer which has served its intended end use; and which has been separated or diverted from solid waste for the purpose of recycling into a usable commodity or product, and which does not include post-industrial waste.

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

Recycling means the series of activities by which materials that are no longer useful to the generator are collected, sorted, processed, and converted into raw materials and used in the production of new products. This definition excludes the use of these materials as a fuel substitute or for energy production.

Reuse means using a product or component of municipal solid waste in its original form more than once.

RFP means a Request for Proposal designed to solicit proposals for services.

Services means any function performed for the benefit of the State.

SLA means Service Level Agreement.

Source Reduction means any practice that reduces the amount of any hazardous substance, pollutant, or contaminant entering any waste stream or otherwise released into the environment prior to recycling, energy recovery, treatment, or disposal.

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

Subcontractor means a company selected by the Contractor to perform a portion of the Services, but does not include independent contractors engaged by Contractor solely in a staff augmentation role.

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

Waste Prevention means source reduction and reuse, but not recycling.

Pollution Prevention means the practice of minimizing the generation of waste at the source and, when wastes cannot be prevented, utilizing environmentally sound on-site or off-site reuse and recycling. The term includes equipment or technology modifications, process or procedure modifications, product reformulation or redesign, and raw material substitutions. Waste treatment, control, management, and disposal are not considered pollution prevention, per the definitions under Part 143, Waste Minimization, of the Natural Resources and Environmental Protection Act (NREPA), 1994 PA 451, as amended.

Work in Progress means a Deliverable that has been partially prepared, but has not been presented to the State for Approval.

Work Product refers to any data compilations, reports, and other media, materials, or other objects or works of authorship created or produced by the Contractor as a result of an in furtherance of performing the services required by the Contract.

Article 1 – Statement of Work (SOW)

1.010 Project Identification

1.011 Project Request

This is a Contract for pre-qualification to provide expert consulting services to increase and maximize revenue received by the State of Michigan from non-State revenue sources. As the intended result of this Contract, the State will establish a pool of pre-qualified Contractors interested in supplying Revenue Maximization related services to State agencies. This Contractor pool may later be contacted by State agencies to propose solutions to agency specific project opportunities. Contracts resulting from future RFP's will be performance based contingency fee contracts. Fees to the resulting Contractor will be based on, and paid from, increased revenues and/or cost recovery realized by the State and from quantifiable cost avoidance.

1.012 Background

The State of Michigan is financially challenged to continue to provide goods and services to the people of the State during these difficult economic times. The State is interested in identifying and implementing Revenue Maximization strategies to increase and maximize federal and other non-State revenue realized by the State and strategies to avoid financial penalties.

Unidentified funding opportunities may exist within State operated programs where the State could be maximizing federal reimbursement or receiving other unclaimed revenue.

The purpose of this Contract is to develop and authorize a pre-qualified Contractor pool that may later be contacted by State agencies to propose solutions to agency specific revenue maximization project opportunities. This later contact by State agencies is known as the **Second Tier Work Request Process**. Once Contractors have been selected into the pre-qualified Contractor pool State agencies will use the pre-qualified Contractor list to administer the second phase of the process.

It is the State's intention that State agencies utilize this Revenue Maximization agreement and pre-qualified Contractor pool by preparing a Services Work Request format document identifying their services requirements. All Contractors in the pre-qualified Contractor pool will be notified of each Services Work Request in the Second Tier Work Request Process, and asked to respond regarding interest, capability and pricing. The Services Work Request will contain a Statement of Work, the expected time period of performance and any special terms to the work Contract. The Contractors' responses to the Services Work Request will be evaluated based on a set of criteria established in accordance with State agency specifications.

The Second Tier Work Request Process is as follows:

1. State agency will post on the Bid4Michigan.com website, Services Work Request to all pre-qualified Contractors;
2. Pre-qualified Contractors submit Services Work Request responses to State agency including all requested information (including percentage of recovery) within the specified time frame;
3. State agency conducts Contractor evaluations, negotiates and executes Services Work Contract with Contractor.

1.020 Scope of Work and Deliverables

1.021 In Scope – Deleted – N/A

1.022 Work and Deliverable

Contractor must provide Deliverables/Services and staff, and otherwise do all things necessary for or incidental to the performance of work, as set forth per the statement of work contained in the Second Tier work request. Examples of services and deliverables that will be included in the Second Tier Work Request include:

- Identify federal revenue enhancement opportunities and strategies for the State that exist under federal statutes, regulations and/or policies where the State is not maximizing potential federal revenues;
- Develop and assist in implementing changes in State programs, policies and procedures necessary to realize the federal revenue enhancement opportunities; and
- Develop and assist in implementing federal and other cost savings and cost containment strategies that minimize cost of services or enhance existing recovery activities and develop additional means of recovery for costs incurred by the State.

1.030 Roles and Responsibilities

1.031 Contractor Staff, Roles, and Responsibilities

In each resulting Services Work Request, the requesting State agency will ask for a detailed proposal that will include discussion of proposed Contractor's Staff, Roles and Responsibilities.

1.040 Project Plan

1.041 Project Plan Management

In each resulting Services Work Request, the requesting State agency will ask for a detailed proposal that will include discussion of proposed Project Plan.

1.042 Reports

In each resulting Services Work Request, the requesting State agency will ask for a detailed proposal that will include discussion of proposed Reports.

1.050 Acceptance

1.051 Criteria

The following criteria will be used by the State to determine Acceptance of the Services or Deliverables provided under this SOW:

In each resulting Services Work Request, the requesting State agency will ask for a detailed proposal that will include discussion of proposed Services of Deliverables Acceptance.

1.052 Final Acceptance

In each resulting Services Work Request, the requesting State agency will ask for a detailed proposal that will include discussion of proposed Final Acceptance.

1.060 Proposal Pricing

1.061 Proposal Pricing

The Contract is a no cost Contract. Any State agency specific Services Work Contract resulting from the Second Tier Work Request will be performance based. Compensation will be derived from revenue realized from non-State revenue sources and/or from cost avoidance.

In each resulting Services Work Request the requesting State agency will ask for a detailed proposal that will include discussion of Proposal Pricing.

Contractor's out-of-pocket expenses are not separately reimbursable by the State unless, on a case-by-case basis for unusual expenses, the State has agreed in advance and in writing to reimburse Contractor for the expense at the State's current travel reimbursement rates. See www.michigan.gov/dtmb for current rates.

1.062 Price Term

In each resulting Services Work Request, the requesting State agency will ask for a detailed proposal that will include discussion of Proposal Pricing and Price Term.

1.063 Tax Excluded from Price

1. Sales Tax: For purchases made directly by the State, the State is exempt from State and Local Sales Tax. Prices must not include the taxes. Exemption Certificates for State Sales Tax will be furnished upon request.
2. Federal Excise Tax: The State may be exempt from Federal Excise Tax, or the taxes may be reimbursable, if articles purchased under any resulting Contract are used for the State's exclusive use. Certificates showing exclusive use for the purposes of substantiating a tax-free or tax-reimbursable sale will be sent upon request. If a sale is tax exempt or tax reimbursable under the Internal Revenue Code, prices must not include the Federal Excise Tax.

1.064 Holdback – Deleted – N/A

1.070 Additional Requirements – Deleted – N/A

Article 2, Terms and Conditions

2.000 Contract Structure and Term

2.001 Contract Term

The Contract is for a period of four (4) years beginning January 1, 2011 through December 31, 2014. All outstanding Purchase Orders must also expire upon the termination (cancellation for any of the reasons listed in **Section 2.150**) of the Contract, unless otherwise extended under the Contract. Absent an early termination for any reason, Purchase Orders issued but not expired, by the end of the Contract's stated term, will remain in effect for the balance of the fiscal year for which they were issued.

2.002 Options to Renew

The Contract may be renewed in writing by mutual agreement of the parties not less than 30 days before its expiration. The Contract may be renewed for up to one (1) additional one (1) year period.

2.003 Legal Effect

Contractor must show acceptance of the Contract by signing two (2) copies of the Contract and returning them to the Contract Administrator. The Contractor must not proceed with the performance of the work to be done under the Contract, including the purchase of necessary materials, until both parties have signed the Contract to show acceptance of its terms, and the Contractor receives a Contract release/purchase order that authorizes and defines specific performance requirements.

Except as otherwise agreed in writing by the parties, the State assumes no liability for costs incurred by Contractor or payment under the Contract, until Contractor is notified in writing that the Contract (or Change Order) has been approved by the State Administrative Board (if required), approved and signed by all the parties, and a Purchase Order against the Contract has been issued.

2.004 Attachments & Exhibits

All Attachments and Exhibits affixed to any and all Statement(s) of Work, or appended to or referencing the Contract, are incorporated in their entirety and form part of the Contract.

2.005 Ordering

The State will issue a written Purchase Order, Blanket Purchase Order, Direct Voucher or Procurement Card Order, which must be approved by the Contract Administrator or the Contract Administrator's designee, to order any Services/Deliverables under the Contract. All orders are subject to the terms and conditions of the Contract. No additional terms and conditions contained on either a Purchase Order or Blanket Purchase Order apply unless they are also specifically contained in that Purchase Order's or Blanket Purchase Order's accompanying Statement of Work. Exact quantities to be purchased are unknown; however, the Contractor must furnish all such materials and services as may be ordered during the Contract period. Quantities specified, if any, are estimates based on prior purchases, and the State is not obligated to purchase in these or any other quantities.

2.006 Order of Precedence

1. The Contract, including any Statements of Work and Exhibits, to the extent not contrary to the Contract, each of which is incorporated for all purposes, constitutes the entire agreement between the parties with respect to the subject matter and supersedes all prior agreements, whether written or oral, with respect to the subject matter and as additional terms and conditions on the purchase order must apply as limited by **Section 2.005**.
2. In the event of any inconsistency between the terms of the Contract and a Statement of Work, the terms of the Statement of Work will take precedence (as to that Statement of Work only); provided, however, that a Statement of Work may not modify or amend the terms of the Contract, which may be modified or amended only by a formal Contract amendment.

2.007 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 the Contract.

2.008 Form, Function & Utility

If the Contract is for use of more than one (1) State agency and if the Deliverable/Service does not meet the form, function, and utility required by that State agency, that agency may, subject to State purchasing policies, procure the Deliverable/Service from another source.

2.009 Reformation and Severability

Each provision of the Contract is severable from all other provisions of the Contract and, if one (1) or more of the provisions of the Contract is declared invalid, the remaining provisions of the Contract remain in full force and effect.

2.010 Consents and Approvals

Except as expressly provided otherwise in the Contract, if either party requires the consent or approval of the other party for the taking of any action under the Contract, the consent or approval must be in writing and must not be unreasonably withheld or delayed.

2.011 No Waiver of Default

If a party fails to insist upon strict adherence to any term of the Contract then the party has not waived the right to later insist upon strict adherence to that term, or any other term, of the Contract.

2.012 Survival

Any provisions of the Contract that impose continuing obligations on the parties, including without limitation the parties' respective warranty, indemnity and confidentiality obligations, survive the expiration or termination of the Contract for any reason. Specific references to survival in the Contract are solely for identification purposes and not meant to limit or prevent the survival of any other section.

2.020 Contract Administration

2.021 Issuing Office

The Contract is issued by DTMB, Purchasing Operations and MDCH (collectively, including all other relevant State of Michigan departments and agencies, the "State"). Purchasing Operations is the sole point of contact in the State with regard to all procurement and contractual matters relating to the Contract. Purchasing Operations **is the only State office authorized to change, modify, amend, alter or clarify the prices, specifications, terms and conditions of the Contract.** The Contractor Administrator within Purchasing Operations for the Contract is:

Brandon Samuel
DTMB – Purchasing Operations
Mason Bldg, 2nd Floor
PO Box 30026
Lansing, MI 48909
E-mail: samuelb@michigan.gov
Phone: 517-241-3768

2.022 Contract Compliance Inspector

After DTMB-Purchasing Operations receives the properly executed Contract, it is anticipated that the Director of Purchasing Operations, in consultation with MDCH, will direct the person named below, or any other person so designated, to monitor and coordinate the activities for the Contract on a day-to-day basis during its term. However, monitoring of the Contract implies **no authority to change, modify, clarify, amend, or otherwise alter the prices, terms, conditions and specifications of the Contract as that authority is retained by DTMB Purchasing Operations.** The CCI for the Contract is:

Rita Hotchkin, Manager
Business Services Section
Michigan Department of Human Services
235 S. Grand Avenue, Suite 1205
Lansing, MI 48909
email: hotchkinr@michigan.gov
Phone: 517-335-4005
Fax: 517-335-6251

Penny Saites, Manager
Purchasing Section
Michigan Department of Community Health
Lewis Cass Building
Lansing, Michigan 48913
email: Saitesp@michigan.gov
Phone: 517-335-5096
Fax: 517-241-4845

2.023 Project Manager

The following individual will be responsible for monitoring and managing the daily operations under the Contract:

Bill Bridge

Richard Miles

Michigan Department of Human Services
235 South Grand Avenue, Suite 1416
Lansing, MI 48909
email: bridgew@michigan.gov
Phone: 517-241-0611
Fax: 517-241-8390

Michigan Department of Community Health
400 S. Pine Street
Lansing MI 48909
email: miles@michigan.gov
Phone: 517-373-2378

2.024 Change Requests

The State reserves the right to request, from time to time, any changes to the requirements and specifications of the Contract and the work to be performed by the Contractor under the Contract. During the course of ordinary business, it may become necessary for the State to discontinue certain business practices or create Additional Services/Deliverables. At a minimum, to the extent applicable, the State would like the Contractor to provide a detailed outline of all work to be done, including tasks necessary to accomplish the services/deliverables, timeframes, listing of key personnel assigned, estimated hours for each individual per task, and a complete and detailed cost justification.

If the Contractor does not so notify the State, the Contractor has no right to claim thereafter that it is entitled to additional compensation for performing that service or providing that deliverable.

Change Requests:

1. By giving Contractor written notice within a reasonable time, the State must be entitled to accept a Contractor proposal for Change, to reject it, or to reach another agreement with Contractor. Should the parties agree on carrying out a Change, a written Contract Change Notice must be prepared and issued under the Contract, describing the Change and its effects on the Services and any affected components of the Contract (a "Contract Change Notice").
2. No proposed Change may be performed until the proposed Change has been specified in a duly executed Contract Change Notice issued by the DTMB-Purchasing Operations.
3. If the State requests or directs the Contractor to perform any activities that Contractor believes constitute a Change, the Contractor must notify the State that it believes the requested activities are a Change before beginning to work on the requested activities. If the Contractor fails to notify the State before beginning to work on the requested activities, then the Contractor waives any right to assert any claim for additional compensation or time for performing the requested activities. If the Contractor commences performing work outside the scope of the Contract and then ceases performing that work, the Contractor must, at the request of the State, retract any out-of-scope work that would adversely affect the Contract.

2.025 Notices

Any notice given to a party under the Contract must be deemed effective, if addressed to the State contact as noted in Section 2.021 and the Contractor's contact as noted on the cover page of the Contract, 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 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.

Either party may change its address where notices are to be sent by giving notice according to this Section.

2.026 Binding Commitments

Representatives of Contractor must have the authority to make binding commitments on Contractor's behalf within the bounds set forth in the Contract. Contractor may change the representatives from time to time upon written notice.

2.027 Relationship of the Parties

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

2.028 Covenant of Good Faith

Each party must act reasonably and in good faith. Unless stated otherwise in the Contract, the parties must not unreasonably delay, condition, or withhold the giving of any consent, decision, or approval that is either requested or reasonably required of them in order for the other party to perform its responsibilities under the Contract.

2.029 Assignments

1. Neither party may assign the Contract, or assign 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 other party; provided, however, that the State may assign the Contract to any other State agency, department, division or department without the prior consent of Contractor and Contractor may assign the Contract to an affiliate so long as the affiliate is adequately capitalized and can provide adequate assurances that the affiliate can perform the requirements of the Contract. The State may withhold consent from proposed assignments, subcontracts, or novations when the transfer of responsibility would operate to decrease the State's likelihood of receiving performance on the Contract or the State's ability to recover damages.
2. Contractor may not, without the prior written approval of the State, assign its right to receive payments due under the Contract. If the State permits an assignment, the Contractor is not relieved of its responsibility to perform any of its contractual duties, and the requirement under the Contract that all payments must be made to one (1) entity continues.
3. If the Contractor intends to assign the Contract or any of the Contractor's rights or duties under the Contract, the Contractor must notify the State in writing at least 90 days before the assignment. The Contractor also must provide the State with adequate information about the assignee within a reasonable amount of time before the assignment for the State to determine whether to approve the assignment.

2.030 General Provisions

2.031 Media Releases

News releases (including promotional literature and commercial advertisements) pertaining to this RFP and Contract or project to which it relates must not be made without prior written State approval, and then only in accordance with the explicit written instructions from the State. No results of the activities associated with this RFP and Contract are to be released without prior written approval of the State and then only to persons designated.

2.032 Contract Distribution

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

2.033 Permits

Contractor must obtain and pay any associated costs for all required governmental permits, licenses and approvals for the delivery, installation and performance of the Services. The State must pay for all costs and expenses incurred in obtaining and maintaining any necessary easements or right of way.

2.034 Website Incorporation

The State is not 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 the content and has expressly agreed to be bound by it in a writing that has been manually signed by an authorized representative of the State.

2.035 Future Bidding Preclusion

Contractor acknowledges that, to the extent the Contract involves the creation, research, investigation or generation of a future RFP, it may be precluded from bidding on the subsequent RFP.

The State reserves the right to disqualify any bidder if the State determines that the bidder has used its position (whether as an incumbent Contractor, or as a Contractor hired to assist with the RFP development, or as a Contractor offering free assistance) to gain a competitive advantage on the RFP.

2.036 Freedom of Information

All information in any proposal submitted to the State by Contractor and the Contract is subject to the provisions of the Michigan Freedom of Information Act, 1976 PA 442, MCL 15.231, et seq (the "FOIA").

2.037 Disaster Recovery

Contractor and the State recognize that the State provides essential services in times of natural or man-made disasters. Therefore, except as so mandated by Federal disaster response requirements, Contractor personnel dedicated to providing Services/Deliverables under the Contract must provide the State with priority service for repair and work around in the event of a natural or man-made disaster.

2.040 Financial Provisions

2.041 Fixed Prices for Services/Deliverables

Each Statement of Work or Purchase Order issued under the Contract must specify (or indicate by reference to the appropriate Contract Exhibit) the firm, fixed prices for all Services/Deliverables, and the associated payment milestones and payment amounts. The State may make progress payments to the Contractor when requested as work progresses, but not more frequently than monthly, in amounts approved by the Contract Administrator, after negotiation. Contractor must show verification of measurable progress at the time of requesting progress payments.

2.042 Adjustments for Reductions in Scope of Services/Deliverables

If the scope of the Services/Deliverables under any Statement of Work issued under the Contract is subsequently reduced by the State, the parties must negotiate an equitable reduction in Contractor's charges under such Statement of Work commensurate with the reduction in scope.

2.043 Services/Deliverables Covered

For all Services/Deliverables to be provided by Contractor (and its Subcontractors, if any) under the Contract, the State must not be obligated to pay any amounts in addition to the charges specified in the Contract.

2.044 Invoicing and Payment – In General

1. Each Statement of Work issued under the Contract must list (or indicate by reference to the appropriate Contract Exhibit) the prices for all Services/Deliverables, equipment and commodities to be provided, and the associated payment milestones and payment amounts.
2. Each Contractor invoice must show details as to charges by Service/Deliverable component and location at a level of detail reasonably necessary to satisfy the State's accounting and charge-back requirements. Invoices for Services performed on a time and materials basis must show, for each individual, the number of hours of Services performed during the billing period, the billable skill/labor category for such person and the applicable hourly billing rate. Prompt payment by the State is contingent on the Contractor's invoices showing the amount owed by the State minus any holdback amount to be retained by the State in accordance with **Section 1.064**.
3. Correct invoices will be due and payable by the State, in accordance with the State's standard payment procedure as specified in 1984 PA 279, MCL 17.51 et seq., within 45 days after receipt, provided the State determines that the invoice was properly rendered.

2.045 Pro-ration

To the extent there are any Services that are to be paid for on a monthly basis, the cost of such Services must be pro-rated for any partial month.

2.046 Antitrust Assignment

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

2.047 Final Payment

The making of final payment by the State to Contractor does not constitute a waiver by either party of any rights or other claims as to the other party's continuing obligations under the Contract, nor will it constitute a waiver of any claims by one (1) party against the other arising from unsettled claims or failure by a party to comply with the Contract, including claims for Services and Deliverables not reasonably known until after acceptance to be defective or substandard. Contractor's acceptance of final payment by the State under the Contract must constitute a waiver of all claims by Contractor against the State for payment under the Contract, other than those claims previously filed in writing on a timely basis and still unsettled.

2.048 Electronic Payment Requirement

Electronic transfer of funds is required for payments on State contracts. The Contractor must register with the State electronically at <http://www.cpexpress.state.mi.us>. As stated in 1984 PA 431, all contracts that the State enters into for the purchase of goods and services must provide that payment will be made by Electronic Fund Transfer (EFT).

2.050 Taxes

2.051 Employment Taxes

Contractors are expected to collect and pay all applicable federal, state, and local employment taxes.

2.052 Sales and Use Taxes

Contractors are required to be registered and to remit sales and use taxes on taxable sales of tangible personal property or services delivered into the State. Contractors that lack sufficient presence in Michigan to be required to register and pay tax must do so as a volunteer. This requirement extends to: (1) all members of any controlled group as defined in § 1563(a) of the Internal Revenue Code and applicable regulations of which the company is a member, and (2) all organizations under common control as defined in § 414(c) of the Internal Revenue Code and applicable regulations of which the company is a member that make sales at retail for delivery into the State are registered with the State for the collection and remittance of sales and use taxes. In applying treasury regulations defining “two (2) or more trades or businesses under common control” the term “organization” means sole proprietorship, a partnership (as defined in § 701(a)(2) of the Internal Revenue Code), a trust, an estate, a corporation, or a limited liability company.

2.060 Contract Management

2.061 Contractor Personnel Qualifications

All persons assigned by Contractor to the performance of Services under the Contract must be employees of Contractor or its majority-owned (directly or indirectly, at any tier) subsidiaries (or a State-approved Subcontractor) and must be fully qualified to perform the work assigned to them. Contractor must include a similar provision in any subcontract entered into with a Subcontractor. For the purposes of the Contract, independent contractors engaged by Contractor solely in a staff augmentation role must be treated by the State as if they were employees of Contractor for the Contract only; however, the State understands that the relationship between Contractor and Subcontractor is an independent contractor relationship.

2.062 Contractor Key Personnel

1. The Contractor must provide the CCI with the names of the Key Personnel.
2. Key Personnel must be dedicated as defined in the Statement of Work to the Project for its duration in the applicable Statement of Work with respect to other individuals designated as Key Personnel for that Statement of Work.
3. The State reserves the right to recommend and approve in writing the initial assignment, as well as any proposed reassignment or replacement, of any Key Personnel. Before assigning an individual to any Key Personnel position, Contractor must notify the State of the proposed assignment, must introduce the individual to the appropriate State representatives, and must provide the State with a resume and any other information about the individual reasonably requested by the State.

The State reserves the right to interview the individual before granting written approval. In the event the State finds a proposed individual unacceptable, the State must provide a written explanation including reasonable detail outlining the reasons for the rejection.

4. Contractor must not remove any Key Personnel from their assigned roles on the Contract without the prior written consent of the State. The Contractor's removal of Key Personnel without the prior written consent of the State is an unauthorized removal (“Unauthorized Removal”). Unauthorized Removals does not include replacing Key Personnel for reasons beyond the reasonable control of Contractor, including illness, disability, leave of absence, personal emergency circumstances, resignation or for cause termination of the Key Personnel's employment. Unauthorized Removals does not include replacing Key Personnel because of promotions or other job movements allowed by Contractor personnel policies or Collective Bargaining Agreement(s) as long as the State receives prior written notice before shadowing occurs and Contractor provides 30 days of shadowing unless parties agree to a different time period. The Contractor with the State must review any Key Personnel replacements and appropriate transition planning must be established. Any Unauthorized Removal may be considered by the State to be a material breach of the Contract, in respect of which the State may elect to exercise its termination and cancellation rights.
5. The Contractor must notify the CCI and the Contract Administrator at least 10 business days before redeploying non-Key Personnel, who are dedicated to primarily to the Project, to other projects. If the State does not object to the redeployment by its scheduled date, the Contractor may then redeploy the non-Key Personnel.

2.063 Re-assignment of Personnel at the State's Request

The State reserves the right to require the removal from the Project of Contractor personnel found, in the judgment of the State, to be unacceptable. The State's request must be written with reasonable detail outlining the reasons for the removal request. Additionally, the State's request must be based on legitimate, good-faith reasons. Replacement

personnel for the removed person must be fully qualified for the position. If the State exercises this right, and the Contractor cannot immediately replace the removed personnel, the State agrees to an equitable adjustment in schedule or other terms that may be affected by the State's required removal. If any incident with removed personnel results in delay not reasonably anticipatable under the circumstances and which is attributable to the State, the applicable SLAs for the affected Service will not be counted for a time as agreed to by the parties.

2.064 Contractor Personnel Location

All staff assigned by Contractor to work on the Contract must perform their duties either primarily at Contractor's offices and facilities or at State facilities. Without limiting the generality of the foregoing, Key Personnel must, at a minimum, spend at least the amount of time on-site at State facilities as indicated in the applicable Statement of Work. Subject to availability, selected Contractor personnel may be assigned office space to be shared with State personnel.

2.065 Contractor Identification

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

2.066 Cooperation with Third Parties

Contractor must cause its personnel and the personnel of any Subcontractors to cooperate with the State and its agents and other contractors including the State's Quality Assurance personnel. As reasonably requested by the State in writing, the Contractor must provide to the State's agents and other contractors reasonable access to Contractor's Project personnel, systems and facilities to the extent the access relates to activities specifically associated with the Contract and will not interfere or jeopardize the safety or operation of the systems or facilities. The State acknowledges that Contractor's time schedule for the Contract is very specific and must not unnecessarily or unreasonably interfere with, delay, or otherwise impede Contractor's performance under the Contract with the requests for access.

2.067 Contractor Return of State Equipment/Resources

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

2.068 Contract Management Responsibilities

The Contractor must assume responsibility for all contractual activities, whether or not that Contractor performs them. Further, the State considers the Contractor to be the sole point of contact with regard to contractual matters, including payment of any and all charges resulting from the 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.

2.070 Subcontracting by Contractor

2.071 Contractor Full Responsibility

Contractor has full responsibility for the successful performance and completion of all of the Services and Deliverables. The State will consider Contractor to be the sole point of contact with regard to all contractual matters under the Contract, including payment of any and all charges for Services and Deliverables.

2.072 State Consent to Delegation

Contractor must not delegate any duties under the Contract to a Subcontractor unless DTMB-Purchasing Operations has given written consent to such delegation. The State reserves the right of prior written approval of all Subcontractors and to require Contractor to replace any Subcontractors found, in the reasonable judgment of the State, to be unacceptable. The State's request must be written with reasonable detail outlining the reasons for the removal request. Additionally, the State's request must be based on legitimate, good-faith reasons. Replacement Subcontractor(s) for the removed Subcontractor must be fully qualified for the position. If the State exercises this right, and the Contractor cannot immediately replace the removed Subcontractor, the State will agree to an equitable adjustment in schedule or other terms that may be affected by the State's required removal. If any such incident with a removed Subcontractor results in delay not reasonable anticipatable under the circumstances and which is attributable to the State, the applicable SLA for the affected Work will not be counted for a time agreed upon by the parties.

2.073 Subcontractor Bound to Contract

In any subcontracts entered into by Contractor for the performance of the Services, Contractor must require the Subcontractor, to the extent of the Services to be performed by the Subcontractor, to be bound to Contractor by the terms of the Contract and to assume toward Contractor all of the obligations and responsibilities that Contractor, by the Contract, assumes toward the State. The State reserves the right to receive copies of and review all subcontracts, although Contractor may delete or mask any proprietary information, including pricing, contained in such contracts before providing them to the State. The management of any Subcontractor is the responsibility of Contractor, and Contractor must remain responsible for the performance of its Subcontractors to the same extent as if Contractor had not subcontracted such performance. Contractor must make all payments to Subcontractors or suppliers of Contractor. Except as otherwise agreed in writing by the State and Contractor, the State will not be obligated to direct payments for the Services other than to Contractor. The State's written approval of any Subcontractor engaged by Contractor to perform any obligation under the Contract will not relieve Contractor of any obligations or performance required under the Contract.

2.074 Flow Down

Except where specifically approved in writing by the State on a case-by-case basis, Contractor must flow down the obligations in **Sections 2.031, 2.060, 2.100, 2.110, 2.120, 2.130, 2.200** in all of its agreements with any Subcontractors.

2.075 Competitive Selection

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

2.080 State Responsibilities

2.081 Equipment

The State must provide only the equipment and resources identified in the Statements of Work and other Contract Exhibits.

2.082 Facilities

The State must designate space as long as it is available and as provided in the Statement of Work, to house the Contractor's personnel whom the parties agree will perform the Services/Deliverables at State facilities (collectively, the "State Facilities"). The Contractor must have reasonable access to, and, unless agreed otherwise by the parties in writing, must observe and comply with all rules and regulations relating to each of the State Facilities (including hours of operation) used by the Contractor in the course of providing the Services. Contractor must not, without the prior written consent of the State, use any State Facilities or access any State information systems provided for the Contractor's use, or to which the Contractor otherwise gains access in the course of performing the Services, for any purpose other than providing the Services to the State.

2.090 Security

2.091 Background Checks

On a case-by-case basis, the State may investigate the Contractor's personnel before they may have access to State facilities and systems. The scope of the background check is at the discretion of the State and the results will be used to determine Contractor personnel eligibility for working within State facilities and systems. The investigations will include Michigan State Police Background checks (ICHAT) and may include the National Crime Information Center (NCIC) Finger Prints. Proposed Contractor personnel may be required to complete and submit an RI-8 Fingerprint Card for the NCIC Finger Print Check. Any request for background checks will be initiated by the State and will be reasonably related to the type of work requested.

All Contractor personnel must comply with the State's security and acceptable use policies for State IT equipment and resources. See <http://www.michigan.gov/dit>. Furthermore, Contractor personnel must agree to the State's security and acceptable use policies before the Contractor personnel will be accepted as a resource to perform work for the State. The Contractor must present these documents to the prospective employee before the Contractor presents the individual to the State as a proposed resource. Contractor staff must comply with all Physical Security procedures in place within the facilities where they are working.

2.092 Security Breach Notification

If the Contractor breaches this Section, the Contractor must (i) promptly cure any deficiencies and (ii) comply with any applicable federal and state laws and regulations pertaining to unauthorized disclosures. Contractor and the State will cooperate to mitigate, to the extent practicable, the effects of any breach, intrusion, or unauthorized use or disclosure. Contractor must report to the State, in writing, any use or disclosure of Confidential Information, whether suspected or

actual, other than as provided for by the Contract within 10 days of becoming aware of the use or disclosure or the shorter time period as is reasonable under the circumstances.

2.093 PCI Data Security Requirements – Deleted N/A

2.100 Confidentiality

2.101 Confidentiality

Contractor and the State each acknowledge that the other possesses, and will continue to possess, confidential information that has been developed or received by it. As used in this Section, “Confidential Information” of Contractor must mean all non-public proprietary information of Contractor (other than Confidential Information of the State as defined below) which is marked confidential, restricted, proprietary, or with a similar designation. “Confidential Information” of the State must mean any information which is retained in confidence by the State (or otherwise required to be held in confidence by the State under applicable federal, state and local laws and regulations) or which, in the case of tangible materials provided to Contractor by the State under its performance under the Contract, is marked as confidential, proprietary, or with a similar designation by the State. “Confidential Information” excludes any information (including the Contract) that is publicly available under the Michigan FOIA.

2.102 Protection and Destruction of Confidential Information

The State and Contractor must each use at least the same degree of care to prevent disclosing to third parties the Confidential Information of the other as it employs to avoid unauthorized disclosure, publication, or dissemination of its own confidential information of like character, but in no event less than reasonable care. Neither Contractor nor the State will (i) make any use of the Confidential Information of the other except as contemplated by the Contract, (ii) acquire any right in or assert any lien against the Confidential Information of the other, or (iii) if requested to do so, refuse for any reason to promptly return the other party's Confidential Information to the other party. Each party must limit disclosure of the other party's Confidential Information to employees and Subcontractors who must have access to fulfill the purposes of the Contract. Disclosure to, and use by, a Subcontractor is permissible where (A) use of a Subcontractor is authorized under the Contract, (B) the disclosure is necessary or otherwise naturally occurs in connection with work that is within the Subcontractor's scope of responsibility, and (C) Contractor obligates the Subcontractor in a written Contract to maintain the State's Confidential Information in confidence. At the State's request, any employee of Contractor and of any Subcontractor having access or continued access to the State's Confidential Information may be required to execute an acknowledgment that the employee has been advised of Contractor's and the Subcontractor's obligations under this Section and of the employee's obligation to Contractor or Subcontractor, as the case may be, to protect the Confidential Information from unauthorized use or disclosure.

Promptly upon termination or cancellation of the Contract for any reason, Contractor must certify to the State that Contractor has destroyed all State Confidential Information.

2.103 Exclusions

Notwithstanding the foregoing, the provisions of **Section 2.100** will not apply to any particular information which the State or Contractor can demonstrate (i) was, at the time of disclosure to it, in the public domain; (ii) after disclosure to it, is published or otherwise becomes part of the public domain through no fault of the receiving party; (iii) was in the possession of the receiving party at the time of disclosure to it without an obligation of confidentiality; (iv) was received after disclosure to it from a third party who had a lawful right to disclose the information to it without any obligation to restrict its further disclosure; or (v) was independently developed by the receiving party without reference to Confidential Information of the furnishing party. Further, the provisions of **Section 2.100** will not apply to any particular Confidential Information to the extent the receiving party is required by law to disclose the Confidential Information, provided that the receiving party (i) promptly provides the furnishing party with notice of the legal request, and (ii) assists the furnishing party in resisting or limiting the scope of the disclosure as reasonably requested by the furnishing party.

2.104 No Implied Rights

Nothing contained in this Section must be construed as obligating a party to disclose any particular Confidential Information to the other party, or as granting to or conferring on a party, expressly or impliedly, any right or license to the Confidential Information of the other party.

2.105 Respective Obligations

The parties' respective obligations under this Section must survive the termination or expiration of the Contract for any reason.

2.110 Records and Inspections

2.111 Inspection of Work Performed

The State's authorized representatives must at all reasonable times and with 10 days prior written request, have the right to enter Contractor's premises, or any other places, where the Services are being performed, and must have access, upon reasonable request, to interim drafts of Deliverables or work-in-progress. Upon 10 Days prior written notice and at all reasonable times, the State's representatives must be allowed to inspect, monitor, or otherwise evaluate the work being performed and to the extent that the access will not reasonably interfere or jeopardize the safety or operation of the systems or facilities. Contractor must provide all reasonable facilities and assistance for the State's representatives.

2.112 Examination of Records

For seven (7) years after the Contractor provides any work under the Contract (the "Audit Period"), the State may examine and copy any of Contractor's books, records, documents and papers pertinent to establishing Contractor's compliance with the Contract and with applicable laws and rules. The State must notify the Contractor 20 days before examining the Contractor's books and records. The State does not have the right to review any information deemed confidential by the Contractor to the extent access would require the confidential information to become publicly available. This provision also applies to the books, records, accounts, documents and papers, in print or electronic form, of any parent, affiliated or subsidiary organization of Contractor, or any Subcontractor of Contractor performing services in connection with the Contract.

2.113 Retention of Records

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

2.114 Audit Resolution

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

2.115 Errors

1. If the audit demonstrates any errors in the documents provided to the State, then the amount in error must be reflected as a credit or debit on the next invoice and in subsequent invoices until the amount is paid or refunded in full. However, a credit or debit may not be carried for more than four (4) invoices. If a balance remains after four (4) invoices, then the remaining amount will be due as a payment or refund within 45 days of the last quarterly invoice that the balance appeared on or termination of the Contract, whichever is earlier.
2. In addition to other available remedies, the difference between the payment received and the correct payment amount is greater than 10 percent, then the Contractor must pay all of the reasonable costs of the audit.

2.120 Warranties

2.121 Warranties and Representations

The Contractor represents and warrants:

1. It is capable in all respects of fulfilling and must fulfill all of its obligations under the Contract. The performance of all obligations under the Contract must be provided in a timely, professional, and workman-like manner and must meet the performance and operational standards required under the Contract.
2. The Contract Appendices, Attachments and Exhibits identify the equipment and software and services necessary for the Deliverable(s) to perform and Services to operate in compliance with the Contract's requirements and other standards of performance.
3. It is the lawful owner or licensee of any Deliverable licensed or sold to the State by Contractor or developed by Contractor under the Contract, and Contractor has all of the rights necessary to convey to the State the ownership rights or licensed use, as applicable, of any and all Deliverables. None of the Deliverables provided by Contractor to the State under the Contract, nor their use by the State, will infringe the patent, copyright, trade secret, or other proprietary rights of any third party.

4. If, under the Contract, Contractor procures any equipment, software or other Deliverable for the State (including equipment, software and other Deliverables manufactured, re-marketed or otherwise sold by Contractor under Contractor's name), then in addition to Contractor's other responsibilities with respect to the items in the Contract, Contractor must assign or otherwise transfer to the State or its designees, or afford the State the benefits of, any manufacturer's warranty for the Deliverable.
5. The Contract signatory has the power and authority, including any necessary corporate authorizations, necessary to enter into the Contract, on behalf of Contractor.
6. It is qualified and registered to transact business in all locations where required.
7. Neither the Contractor nor any affiliates, nor any employee of either, has, must have, or must acquire, any contractual, financial, business, or other interest, direct or indirect, that would conflict in any manner or degree with Contractor's performance of its duties and responsibilities to the State under the Contract or otherwise create an appearance of impropriety with respect to the award or performance of the Contract. Contractor must notify the State about the nature of the conflict or appearance of impropriety within two (2) days of learning about it.
8. If any of the certifications, representations or disclosures made in the Contractor's original bid response change after the Contract start date, the Contractor must report those changes immediately to the DTMB, Purchasing Operations.
9. Neither Contractor nor any Affiliates, nor any employee of either has accepted or wil accept anything of value based on an understanding that the actions of the Contractor or Affiliates or employee on behalf of the State would be influenced. Contractor must not attempt to influence any State employee by the direct or indirect offer of anything of value.
10. Neither Contractor nor any Affiliates, nor any employee of either has paid or agreed to pay any person, other than bona fide employees and consultants working solely for Contractor or such Affiliate, any fee, commission, percentage, Contractorage fee, gift, or any other consideration, contingent upon or resulting from the award or making of the Contract.
11. The prices proposed by the Bidder were arrived at independently, without consultation, communication, or agreement with any other Bidder for the purpose of restricting competition; the prices quoted were not knowingly disclosed by the Bidder to any other Bidder; and no attempt was made by Bidder to induce any other person to submit or not submit a proposal for the purpose of restricting competition.
12. All financial statements, reports, and other information furnished by Bidder to the State as part of its response to the RFP or otherwise in connection with the award of the Contract fairly and accurately represent the business, properties, financial condition and results of operations of Contractor as of the respective dates, or for the respective periods, covered by such financial statements, reports, other information. Since the respective dates or periods covered by such financial statements, reports, or other information, there have been no material adverse change in the business, properties, financial condition, or results of operations of Contractor.
12. All written information furnished to the State by or behalf of Contractor in connection with the Contract, including its bid, it true, accurate, and complete and contains no untrue statement of material fact or omits any material fact necessary to make such information not misleading.
13. It is not in material default or breach of any other contract or agreement that it may have with the State or any of its departments, commissions, boards or agencies. Contractor further represents and warrants that it has not been a party to any contract with the State or any of its departments that was terminated by the State or such department within the previous five (5) years for the reason that Contractor failed to perform or otherwise breached an obligation of such contract.

2.122 Warranty of Merchantability

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

2.123 Warranty of Fitness for a Particular Purpose

When the Contractor has reason to know or knows any particular purpose for which the goods are required, and the State

is relying on the Contractor's skill or judgment to select or furnish suitable goods, there is a warranty that the goods are fit for such purpose.

2.124 Warranty of Title

Contractor must, in providing goods to the State, convey good title in those goods, whose transfer is right and lawful. All goods provided by Contractor must 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 Contractor, under the Contract, must be delivered free of any rightful claim of any third person by of infringement or the like.

2.125 Equipment Warranty – Deleted – N/A

2.126 Equipment to be New – Deleted – N/A

2.127 Prohibited Products – Deleted – N/A

2.128 Consequences For Breach

In addition to any remedies available in law, if the Contractor breaches any of the warranties contained in this section, the breach may be considered as a default in the performance of a material obligation of the Contract.

2.130 Insurance

2.131 Liability Insurance

The Contractor must provide proof of the minimum levels of insurance coverage as indicated below. The insurance must protect the State from claims which may arise out of or result from the Contractor's performance of Services under the terms of the Contract, whether the 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 under the Contract.

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

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

The insurers selected by Contractor must have an A.M. Best rating of A or better, or as otherwise approved in writing by the State, or if the ratings are no longer available, with a comparable rating from a recognized insurance rating agency. All policies of insurance required in the Contract must be issued by companies that have been approved to do business in the State. See www.michigan.gov/deleg.

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

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

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 the 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 according to applicable laws governing the employees and employers work activities in the state of the Contractor's domicile. If the applicable coverage is provided by a self-insurer, 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 must 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. Professional Liability (Errors and Omissions) Insurance with the following minimum coverage: \$2,000,000.00 each occurrence and \$2,000,000.00 annual aggregate.

2.132 Subcontractor Insurance Coverage

Except where the State has approved in writing a Contractor subcontract with other insurance provisions, Contractor must require all of its Subcontractors under the 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 must fully comply with the insurance coverage required in this Section. Failure of Subcontractor to comply with insurance requirements does not limit Contractor's liability or responsibility.

2.133 Certificates of Insurance and Other Requirements

Contractor must furnish to DTMB-Purchasing Operations, certificate(s) of insurance verifying insurance coverage or providing satisfactory evidence of self-insurance as required in this Section (the "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) must contain a provision indicating that coverages afforded under the policies **MUST NOT BE CANCELLED, MATERIALLY CHANGED, OR NOT RENEWED** without 30 days prior written notice, except for 10 days for non-payment of premium, having been given to the Director of Purchasing Operations, DTMB. The notice must include the Contract or Purchase Order number affected. Before the Contract is signed, and not less than 20 days before the insurance expiration date every year thereafter, the Contractor must provide evidence that the State and its agents, officers and employees are listed as additional insureds under each commercial general liability and commercial automobile liability policy. 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.

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

2.140 Indemnification

2.141 General Indemnification

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

2.142 Code Indemnification

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

2.143 Employee Indemnification

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

2.144 Patent/Copyright Infringement Indemnification

To the extent permitted by law, the Contractor must indemnify, defend and hold harmless the State from and against all losses, liabilities, damages (including taxes), and all related costs and expenses (including reasonable attorneys' fees 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 the 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 the equipment, software, commodity or service, or the use or reproduction of any documentation provided with the equipment, software, commodity or service infringes any United States patent, copyright, trademark or trade secret of any person or entity, which is enforceable under the laws of the United States.

In addition, should the equipment, software, commodity, or service, or its operation, become or in the State's or Contractor's opinion be likely to become the subject of a claim of infringement, the Contractor must at the Contractor's sole expense (i) procure for the State the right to continue using the equipment, software, commodity or service or, if the option is not reasonably available to the Contractor, (ii) replace or modify to the State's satisfaction the same with equipment, software, commodity or service of equivalent function and performance so that it becomes non-infringing, or, if the 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.

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

2.145 Continuation of Indemnification Obligations

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

2.146 Indemnification Procedures

The procedures set forth below must apply to all indemnity obligations under the Contract.

1. After the State receives notice of the action or proceeding involving a claim for which it will seek indemnification, the State must promptly notify Contractor of the 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 notify the Contractor relieves the Contractor of its indemnification obligations except to the extent that the Contractor can prove damages attributable to the failure. Within 10 days following receipt of written notice from the State relating to any claim, the Contractor must 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 before the State receiving Contractor's Notice of Election, the State is entitled to defend against the

claim, at the Contractor's expense, and the Contractor will be responsible for any reasonable costs incurred by the State in defending against the claim during that period.

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

2.150 Termination/Cancellation

2.151 Notice and Right to Cure

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

The notice of breach and opportunity to cure is inapplicable for successive or repeated breaches 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.

2.152 Termination for Cause

1. The State may terminate the Contract, for cause, by notifying the Contractor in writing, if the Contractor (i) breaches any of its material duties or obligations under the Contract (including a Chronic Failure to meet any particular SLA), or (ii) fails to cure a breach within the time period specified in the written notice of breach provided by the State
2. If the Contract is terminated for cause, the Contractor must pay all costs incurred by the State in terminating the Contract, including but not limited to, State administrative costs, reasonable attorneys' fees and court costs, and any reasonable additional costs the State may incur to procure the Services/Deliverables required by the Contract from other sources. Re-procurement costs are not consequential, indirect or incidental damages, and cannot be excluded by any other terms otherwise included in the Contract, provided the costs are not in excess of 50 percent more than the prices for the Service/Deliverables provided under the Contract.
3. If the State chooses to partially terminate the Contract for cause, charges payable under the Contract will be equitably adjusted to reflect those Services/Deliverables that are terminated and the State must pay for all Services/Deliverables for which Final Acceptance has been granted provided up to the termination date. Services and related provisions of the Contract that are terminated for cause must cease on the effective date of the termination.
4. If the State terminates the Contract for cause under this Section, and it is determined, for any reason, that Contractor was not in breach of contract under the provisions of this section, that termination for cause must be deemed to have been a termination for convenience, effective as of the same date, and the rights and obligations of the parties must be limited to that otherwise provided in the Contract for a termination for convenience.

2.153 Termination for Convenience

The State may terminate the Contract for its convenience, in whole or part, if the State determines that a termination is in the State's best interest. Reasons for the termination must be left to the sole discretion of the State and may include, but not necessarily be 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 Services no longer practical or feasible, (c) unacceptable prices for Additional Services or New Work requested by the State, or (d) falsification or misrepresentation, by inclusion or non-inclusion, of information material to a response to any RFP issued by the State. The State may terminate the Contract for its convenience, in whole or in part, by giving Contractor written notice at least 30 days before the date of termination. If the State chooses to terminate the Contract in part, the charges payable under the Contract must be equitably adjusted to reflect those Services/Deliverables that are terminated. Services and related provisions of the Contract that are terminated for cause must cease on the effective date of the termination.

2.154 Termination for Non-Appropriation

1. Contractor acknowledges that, if the Contract extends for several fiscal years, continuation of the Contract is subject to appropriation or availability of funds for the Contract. If funds to enable the State to effect continued payment under the Contract are not appropriated or otherwise made available, the State must terminate the Contract and all affected Statements of Work, in whole or in part, at the end of the last period for which funds have been appropriated or otherwise made available by giving written notice of termination to Contractor. The State must give Contractor at least 30 days advance written notice of termination for non-appropriation or unavailability (or the time as is available if the State receives notice of the final decision less than 30 days before the funding cutoff).
2. If funding for the Contract is reduced by law, or funds to pay Contractor for the agreed-to level of the Services or production of Deliverables to be provided by Contractor are not appropriated or otherwise unavailable, the State may, upon 30 days written notice to Contractor, reduce the level of the Services or the change the production of Deliverables in the manner and for the periods of time as the State may elect. The charges payable under the Contract will be equitably adjusted to reflect any equipment, services or commodities not provided by reason of the reduction.
3. If the State terminates the Contract, eliminates certain Deliverables, or reduces the level of Services to be provided by Contractor under this Section, the State must pay Contractor for all Work-in-Process performed through the effective date of the termination or reduction in level, as the case may be and as determined by the State, to the extent funds are available. This Section will not preclude Contractor from reducing or stopping Services/Deliverables or raising against the State in a court of competent jurisdiction, any claim for a shortfall in payment for Services performed or Deliverables finally accepted before the effective date of termination.

2.155 Termination for Criminal Conviction

The State may terminate the Contract immediately and without further liability or penalty in the event Contractor, an officer of Contractor, or an owner of a 25 percent or greater share of Contractor is convicted of a criminal offense related to a State, public or private Contract or subcontract.

2.156 Termination for Approvals Rescinded

The State may terminate the Contract if any final administrative or judicial decision or adjudication disapproves a previously approved request for purchase of personal services under Constitution 1963, Article 11, § 5, and Civil Service Rule 7-1. In that case, the State must pay the Contractor for only the work completed to that point under the Contract. 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 the written notice.

2.157 Rights and Obligations upon Termination

1. If the State terminates the Contract for any reason, the Contractor must (a) stop all work as specified in the notice of termination, (b) take any action that may be necessary, or that the State may direct, for preservation and protection of Deliverables or other property derived or resulting from the Contract that may be in Contractor's possession, (c) return all materials and property provided directly or indirectly to Contractor by any entity, agent or employee of the State, (d) transfer title in, and deliver to, the State, unless otherwise directed, all Deliverables intended to be transferred to the State at the termination of the Contract and which are resulting from the Contract (which must be provided to the State on an "As-Is" basis except to the extent the amounts paid by the State in respect of the items included compensation to Contractor for the provision of warranty services in respect of the materials), and (e) take any action to mitigate and limit any potential damages, or requests for Contractor adjustment or termination settlement costs, to the maximum practical extent, including terminating or limiting as otherwise applicable those subcontracts and outstanding orders for material and supplies resulting from the terminated Contract.

2. If the State terminates the Contract before its expiration for its own convenience, the State must pay Contractor for all charges due for Services provided before the date of termination and, if applicable, as a separate item of payment under the Contract, for Work In Process, on a percentage of completion basis at the level of completion determined by the State. All completed or partially completed Deliverables prepared by Contractor under the Contract, at the option of the State, becomes the State's property, and Contractor is entitled to receive equitable fair compensation for the Deliverables. Regardless of the basis for the termination, the State is not obligated to pay, or otherwise compensate, Contractor for any lost expected future profits, costs or expenses incurred with respect to Services not actually performed for the State.
3. Upon a good faith termination, the State may assume, at its option, any subcontracts and agreements for Services and Deliverables provided under the Contract, and may further pursue completion of the Services/Deliverables under the Contract by replacement contract or otherwise as the State may in its sole judgment deem expedient.

2.158 Reservation of Rights

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

2.160 Termination by Contractor

2.161 Termination by Contractor

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

The Contractor may terminate the Contract if the State (i) materially breaches its obligation to pay the Contractor undisputed amounts due and owing under the Contract, (ii) breaches its other obligations under the Contract to an extent that makes it impossible or commercially impractical for the Contractor to perform the Services, or (iii) does not cure the breach within the time period specified in a written notice of breach. But the Contractor must discharge its obligations under **Section 2.190** before it terminates the Contract.

2.170 Transition Responsibilities

2.171 Contractor Transition Responsibilities

If the State terminates the Contract, for convenience or cause, or if the Contract is otherwise dissolved, voided, rescinded, nullified, expires or rendered unenforceable, the Contractor agrees to comply with direction provided by the State to assist in the orderly transition of equipment, services, software, leases, etc. to the State or a third party designated by the State. If the Contract expires or terminates, the Contractor agrees to make all reasonable efforts to effect an orderly transition of services within a reasonable period of time that in no event will exceed 90 business days. These efforts must include, but are not limited to, those listed in **Sections 2.171, 2.172, 2.173, 2.174, and 2.175**.

2.172 Contractor Personnel Transition

The Contractor must work with the State, or a specified third party, to develop a transition plan setting forth the specific tasks and schedule to be accomplished by the parties to effect an orderly transition. The Contractor must allow as many personnel as practicable to remain on the job to help the State, or a specified third party, maintain the continuity and consistency of the services required by the Contract. In addition, during or following the transition period, in the event the State requires the Services of the Contractor's Subcontractors or Contractors, as necessary to meet its needs, Contractor agrees to reasonably, and with good-faith, work with the State to use the Services of Contractor's Subcontractors or Contractors. Contractor must notify all of Contractor's subcontractors of procedures to be followed during transition.

2.173 Contractor Information Transition

The Contractor agrees to provide reasonable detailed specifications for all Services/Deliverables needed by the State, or specified third party, to properly provide the Services/Deliverables required under the Contract. The Contractor must provide the State with asset management data generated from the inception of the Contract through the date on which the Contractor is terminated in a comma-delineated format unless otherwise requested by the State. The Contractor must deliver to the State any remaining owed reports and documentation still in Contractor's possession subject to appropriate payment by the State.

2.174 Contractor Software Transition

The Contractor must reasonably assist the State in the acquisition of any Contractor software required to perform the Services/use the Deliverables under the Contract. This must include any documentation being used by the Contractor to perform the Services under the Contract. If the State transfers any software licenses to the Contractor, those licenses must, upon expiration of the Contract, transfer back to the State at their current revision level. Upon notification by the State, Contractor may be required to freeze all non-critical changes to Deliverables/Services.

2.175 Transition Payments

If the transition results from a termination for any reason, reimbursement must be governed by the termination provisions of the Contract. If the transition results from expiration, the Contractor will be reimbursed for all reasonable transition costs (i.e. costs incurred within the agreed period after contract expiration that result from transition operations) at the rates agreed upon by the State. The Contractor must prepare an accurate accounting from which the State and Contractor may reconcile all outstanding accounts.

2.176 State Transition Responsibilities

In the event that the Contract is terminated, dissolved, voided, rescinded, nullified, or otherwise rendered unenforceable, the State agrees to perform the following obligations, and any others upon which the State and the Contractor agree:

1. Reconciling all accounts between the State and the Contractor;
2. Completing any pending post-project reviews.

2.180 Stop Work

2.181 Stop Work Orders

The State may, at any time, by written stop work order to Contractor, require that Contractor stop all, or any part, of the work called for by the Contract for a period of up to 90 calendar days after the stop work order is delivered to Contractor, and for any further period to which the parties may agree. The stop work order must be identified as a stop work order and must indicate that it is issued under this **Section 2.180**. Upon receipt of the stop work order, Contractor must immediately comply with its terms and take all reasonable steps to minimize incurring costs allocable to the work covered by the stop work order during the period of work stoppage. Within the period of the stop work order, the State must either: (a) cancel the stop work order; or (b) terminate the work covered by the stop work order as provided in **Section 2.150**.

2.182 Cancellation or Expiration of Stop Work Order

The Contractor must resume work if the State cancels a Stop Work Order or if it expires. The parties will agree upon an equitable adjustment in the delivery schedule, the Contract price, or both, and the Contract must be modified, in writing, accordingly, if: (a) the stop work order results in an increase in the time required for, or in Contractor's costs properly allocable to, the performance of any part of the Contract; and (b) Contractor asserts its right to an equitable adjustment within 30 calendar days after the end of the period of work stoppage; provided that, if the State decides the facts justify the action, the State may receive and act upon a Contractor proposal submitted at any time before final payment under the Contract. Any adjustment must conform to the requirements of **Section 2.024**.

2.183 Allowance of Contractor Costs

If the stop work order is not canceled and the work covered by the stop work order is terminated for reasons other than material breach, the termination must be deemed to be a termination for convenience under **Section 2.150**, and the State will pay reasonable costs resulting from the stop work order in arriving at the termination settlement. For the avoidance of doubt, the State is not liable to Contractor for loss of profits because of a stop work order issued under this **Section 2.180**.

2.190 Dispute Resolution

2.191 In General

Any claim, counterclaim, or dispute between the State and Contractor arising out of or relating to the Contract or any Statement of Work must be resolved as follows. For all Contractor claims seeking an increase in the amounts payable to Contractor under the Contract, or the time for Contractor's performance, Contractor must submit a letter, together with all data supporting the claims, executed by Contractor's Contract Administrator or the Contract Administrator's designee certifying that (a) the claim is made in good faith, (b) the amount claimed accurately reflects the adjustments in the amounts payable to Contractor or the time for Contractor's performance for which Contractor believes the State is liable and covers all costs of every type to which Contractor is entitled from the occurrence of the claimed event, and (c) the claim and the supporting data are current and complete to Contractor's best knowledge and belief.

2.192 Informal Dispute Resolution

1. All disputes between the parties must be resolved under the Contract Management procedures in the Contract. If the parties are unable to resolve any disputes after compliance with the processes, the parties must meet with the Director of Purchasing Operations, DTMB, or designee, for the purpose of attempting to resolve the dispute without the need for formal legal proceedings, as follows:
 - a) The representatives of Contractor and the State must meet as often as the parties reasonably deem necessary to gather and furnish to each other all information with respect to the matter in issue which the parties believe to be appropriate and germane in connection with its resolution. The representatives must discuss the problem and negotiate in good faith in an effort to resolve the dispute without the necessity of any formal proceeding.
 - b) During the course of negotiations, all reasonable requests made by one (1) party to another for non-privileged information reasonably related to the Contract must be honored in order that each of the parties may be fully advised of the other's position.
 - c) The specific format for the discussions will be left to the discretion of the designated State and Contractor representatives, but may include the preparation of agreed upon statements of fact or written statements of position.
 - d) Following the completion of this process within 60 calendar days, the Director of Purchasing Operations, DTMB, or designee, must issue a written opinion regarding the issue(s) in dispute within 30 calendar days. The opinion regarding the dispute must be considered the State's final action and the exhaustion of administrative remedies.
2. This Section must not be construed to prevent either party from instituting, and a party is authorized to institute, formal proceedings earlier to avoid the expiration of any applicable limitations period, to preserve a superior position with respect to other creditors, or under **Section 2.193**.
3. The State will not mediate disputes between the Contractor and any other entity, except state agencies, concerning responsibility for performance of work under the Contract.

2.193 Injunctive Relief

The only circumstance in which disputes between the State and Contractor will not be subject to the provisions of **Section 2.192** is where a party makes a good faith determination that a breach of the terms of the Contract by the other party is the that the damages to the party resulting from the breach will be so immediate, so large or severe and so incapable of adequate redress after the fact that a temporary restraining order or other immediate injunctive relief is the only adequate remedy.

2.194 Continued Performance

Each party agrees to continue performing its obligations under the Contract while a dispute is being resolved except to the extent the issue in dispute precludes performance (dispute over payment must not be deemed to preclude performance) and without limiting either party's right to terminate the Contract as provided in **Section 2.150**, as the case may be.

2.200 Federal and State Contract Requirements

2.201 Nondiscrimination

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

2.202 Unfair Labor Practices

Under 1980 PA 278, MCL 423.321, et seq., the State must not award a Contract or subcontract to an employer whose name appears in the current register of employers failing to correct an unfair labor practice compiled under Section 2 of the Act. This information is compiled by the United States National Labor Relations Board. A Contractor of the State, in relation to the Contract, must not enter into a contract with a Subcontractor, manufacturer, or supplier whose name appears in this register. Under Section 4 of 1980 PA 278, MCL 423.324, the State may void any Contract if, after award of the Contract, the name of Contractor as an employer or the name of the Subcontractor, manufacturer or supplier of Contractor appears in the register.

2.203 Workplace Safety and Discriminatory Harassment

In performing Services for the State, the Contractor must comply with the Department of Civil Services Rule 2-20 regarding Workplace Safety and Rule 1-8.3 regarding Discriminatory Harassment. In addition, the Contractor must comply with Civil Service regulations and any applicable agency rules provided to the Contractor. For Civil Service Rules, see <http://www.mi.gov/mdcs/0,1607,7-147-6877---,00.html>.

2.204 Prevailing Wage – Deleted – N/A

2.210 Governing Law

2.211 Governing Law

The Contract must in all respects be governed by, and construed according to, the substantive laws of the State of Michigan without regard to any Michigan choice of law rules that would apply the substantive law of any other jurisdiction to the extent not inconsistent with, or pre-empted by federal law.

2.212 Compliance with Laws

Contractor must comply with all applicable state, federal and local laws and ordinances in providing the Services/Deliverables.

2.213 Jurisdiction

Any dispute arising from the Contract must be resolved in the State of Michigan. With respect to any claim between the parties, Contractor consents to venue in Ingham County, Michigan, and irrevocably waives any objections it may have to the jurisdiction on the grounds of lack of personal jurisdiction of the court or the laying of venue of the court or on the basis of forum non conveniens or otherwise. Contractor agrees to appoint agents in the State of Michigan to receive service of process.

2.220 Limitation of Liability

2.221 Limitation of Liability

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

2.230 Disclosure Responsibilities

2.231 Disclosure of Litigation

1. Disclosure. Contractor must disclose any material criminal litigation, investigations or proceedings involving the Contractor (and each Subcontractor) or any of its officers or directors or any litigation, investigations or proceedings under the Sarbanes-Oxley Act. In addition, each Contractor (and each Subcontractor) must notify the State of any material civil litigation, arbitration or proceeding which arises during the term of the Contract and extensions, to which Contractor (or, to the extent Contractor is aware, any Subcontractor) is a party, and which involves: (i) disputes that might reasonably be expected to adversely affect the viability or financial stability of Contractor or any Subcontractor; or (ii) a claim or written allegation of fraud against Contractor or, to the extent Contractor is aware, any Subcontractor by a governmental or public entity arising out of their business dealings with governmental or public entities. The Contractor must disclose in writing to the Contract Administrator any litigation, investigation, arbitration or other proceeding (collectively, "Proceeding") within 30 days of its occurrence. Details of settlements which are prevented from disclosure by the terms of the settlement may be annotated. Information provided to the State from Contractor's publicly filed documents referencing its material litigation will be deemed to satisfy the requirements of this Section.
2. Assurances. If any Proceeding disclosed to the State under this Section, or of which the State otherwise becomes aware, during the term of the Contract would cause a reasonable party to be concerned about:
 - a) the ability of Contractor (or a Subcontractor) to continue to perform the Contract according to its terms and conditions, or

- b) whether Contractor (or a Subcontractor) in performing Services for the State is engaged in conduct which is similar in nature to conduct alleged in the Proceeding, which conduct would constitute a breach of the Contract or a violation of Michigan law, regulations or public policy, then the Contractor must provide the State all reasonable assurances requested by the State to demonstrate that:
 - c) Contractor and its Subcontractors must be able to continue to perform the Contract and any Statements of Work according to its terms and conditions, and
 - d) Contractor and its Subcontractors have not and will not engage in conduct in performing the Services which is similar in nature to the conduct alleged in the Proceeding.
3. Contractor must make the following notifications in writing:
- a) Within 30 days of Contractor becoming aware that a change in its ownership or officers has occurred, or is certain to occur, or a change that could result in changes in the valuation of its capitalized assets in the accounting records, Contractor must notify DTMB-Purchasing Operations.
 - b) Contractor must also notify DTMB 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.
 - c) Contractor must also notify DTMB Purchasing Operations within 30 days whenever changes to company affiliations occur.

2.232 Call Center Disclosure

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

2.233 Bankruptcy

The State may, without prejudice to any other right or remedy, terminate the Contract, in whole or in part, and, at its option, may take possession of the "Work in Process" and finish the Works in Process by whatever appropriate method the State may deem expedient if:

- 1. the Contractor files for protection under the bankruptcy laws;
- 2. an involuntary petition is filed against the Contractor and not removed within 30 days;
- 3. the Contractor becomes insolvent or if a receiver is appointed due to the Contractor's insolvency;
- 4. the Contractor makes a general assignment for the benefit of creditors; or
- 5. the Contractor or its affiliates are unable to provide reasonable assurances that the Contractor or its affiliates can deliver the services under the Contract.

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

2.240 Performance

2.241 Time of Performance

- 1. Contractor must use commercially reasonable efforts to provide the resources necessary to complete all Services and Deliverables according to the time schedules contained in the Statements of Work and other Exhibits governing the work, and with professional quality.
- 2. Without limiting the generality of **Section 2.241(a)**, Contractor must notify the State in a timely manner upon becoming aware of any circumstances that may reasonably be expected to jeopardize the timely and successful completion of any Deliverables/Services on the scheduled due dates in the latest State-approved delivery schedule and must inform the State of the projected actual delivery date.
- 3. If the Contractor believes that a delay in performance by the State has caused or will cause the Contractor to be unable to perform its obligations according to specified Contract time periods, the Contractor must notify the State in a timely manner and must use commercially reasonable efforts to perform its obligations according to the Contract time periods notwithstanding the State's failure. Contractor will not be in default for a delay in performance to the extent the delay is caused by the State.

2.242 Service Level Agreements (SLAs) – Deleted – N/A

2.243 Liquidated Damages – Deleted – N/A

2.244 Excusable Failure

Neither party will be liable for any default, damage, or delay in the performance of its obligations under the Contract to the extent the default, damage or delay is caused by government regulations or requirements (executive, legislative, judicial, military, or otherwise), power failure, lightning, earthquake, war, water or other forces of nature or acts of God, delays or failures of transportation, equipment shortages, suppliers' failures, or acts or omissions of common carriers, fire; riots, civil disorders; strikes or other labor disputes, embargoes; injunctions (provided the injunction was not issued as a result of any fault or negligence of the party seeking to have its default or delay excused); or any other cause beyond the reasonable control of a party; provided the non-performing party and its Subcontractors are without fault in causing the default or delay, and the default or delay could not have been prevented by reasonable precautions and cannot reasonably be circumvented by the non-performing party through the use of alternate sources, workaround plans or other means, including disaster recovery plans.

If a party does not perform its contractual obligations for any of the reasons listed above, the non-performing party will be excused from any further performance of its affected obligation(s) for as long as the circumstances prevail. but the party must use commercially reasonable efforts to recommence performance whenever and to whatever extent possible without delay. A party must promptly notify the other party in writing immediately after the excusable failure occurs, and also when it abates or ends.

If any of the above-enumerated circumstances substantially prevent, hinder, or delay the Contractor's performance of the Services/provision of Deliverables for more than 10 Business 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/Deliverables from an alternate source, and the State is not be liable for payment for the unperformed Services/ Deliverables not provided under the Contract for so long as the delay in performance continues; (b) the State may terminate any portion of the Contract so affected and the charges payable will be equitably adjusted to reflect those Services/Deliverables terminated; or (c) the State may terminate the affected Statement of Work without liability to Contractor as of a date specified by the State in a written notice of termination to the Contractor, except to the extent that the State must pay for Services/Deliverables provided through the date of termination.

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/Deliverables not provided as a result of the Excusable Failure condition. Defaults or delays in performance by Contractor which are caused by acts or omissions of its Subcontractors will not relieve Contractor of its obligations under the Contract except to the extent that a Subcontractor is itself subject to an Excusable Failure condition described above and Contractor cannot reasonably circumvent the effect of the Subcontractor's default or delay in performance through the use of alternate sources, workaround plans or other means.

2.250 Approval of Deliverables

2.251 Delivery Responsibilities

Unless otherwise specified by the State within an individual order, the following must be applicable to all orders issued under the Contract.

1. Shipment responsibilities - Services performed/Deliverables provided under the Contract must be delivered "F.O.B. Destination, within Government Premises." The Contractor must have complete responsibility for providing all Services/Deliverables to all site(s) unless otherwise stated. Actual delivery dates must be specified on the individual purchase order.
2. Delivery locations - Services must be performed/Deliverables must be provided at every State of Michigan location within Michigan unless otherwise stated in the SOW. Specific locations will be provided by the State or upon issuance of individual purchase orders.
3. Damage Disputes - At the time of delivery to State Locations, the State must examine all packages. The quantity of packages delivered must be recorded and any obvious visible or suspected damage must be noted at time of delivery using the shipper's delivery document(s) and appropriate procedures to record the damage. Where there is no obvious or suspected damage, all deliveries to a State Location must be opened by the State and the contents inspected for possible internal damage not visible externally within 14 days of receipt. Any damage must be reported to the Contractor within five days of inspection

2.252 Delivery of Deliverables

Where applicable, the Statements of Work/POs contain lists of the Deliverables to be prepared and delivered by Contractor including, for each Deliverable, the scheduled delivery date and a designation of whether the Deliverable is a

document ("Written Deliverable"), a good ("Physical Deliverable") or a Service. All Deliverables must be completed and delivered for State review and written approval and, where applicable, installed according to the State-approved delivery schedule and any other applicable terms and conditions of the Contract.

2.253 Testing

1. Before delivering any of the above-mentioned Statement of Work Physical Deliverables or Services to the State, Contractor must first perform all required quality assurance activities to verify that the Physical Deliverable or Service is complete and conforms with its specifications listed in the applicable Statement of Work or Purchase Order. Before delivering a Physical Deliverable or Service to the State, Contractor must certify to the State that (1) it has performed the quality assurance activities, (2) it has performed any applicable testing, (3) it has corrected all material deficiencies discovered during the quality assurance activities and testing, (4) the Deliverable or Service is in a suitable state of readiness for the State's review and approval, and (5) the Deliverable/Service has all Critical Security patches/updates applied.
2. If a Deliverable includes installation at a State Location, then Contractor must (1) perform any applicable testing, (2) correct all material deficiencies discovered during the quality assurance activities and testing, and (3) inform the State that the Deliverable is in a suitable state of readiness for the State's review and approval. To the extent that testing occurs at State Locations, the State is entitled to observe or otherwise participate in testing.

2.254 Approval of Deliverables, In General

1. All Deliverables (Physical Deliverables and Written Deliverables) and Services require formal written approval by the State, according to the following procedures. Formal approval by the State requires the State to confirm in writing that the Deliverable meets its specifications. Formal approval may include the successful completion of Testing as applicable in **Section 2.253**, to be led by the State with the support and assistance of Contractor. The approval process will be facilitated by ongoing consultation between the parties, inspection of interim and intermediate Deliverables and collaboration on key decisions.
2. The State's obligation to comply with any State Review Period is conditioned on the timely delivery of Deliverables/Services being reviewed.
3. Before commencement of its review or testing of a Deliverable/Service, the State may inspect the Deliverable/Service to confirm that all components of the Deliverable/Service have been delivered without material deficiencies. If the State determines that the Deliverable/Service has material deficiencies, the State may refuse delivery of the Deliverable/Service without performing any further inspection or testing of the Deliverable/Service. Otherwise, the review period will be deemed to have started on the day the State receives the Deliverable or the Service begins, and the State and Contractor agree that the Deliverable/Service is ready for use and, where applicable, certification by Contractor according to **Section 2.253**.
4. The State must approve in writing a Deliverable/Service after confirming that it conforms to and performs according to its specifications without material deficiency. The State may, but is not be required to, conditionally approve in writing a Deliverable/Service that contains material deficiencies if the State elects to permit Contractor to rectify them post-approval. In any case, Contractor will be responsible for working diligently to correct within a reasonable time at Contractor's expense all deficiencies in the Deliverable/Service that remain outstanding at the time of State approval.
5. If, after three (3) opportunities (the original and two (2) repeat efforts), the Contractor is unable to correct all deficiencies preventing Final Acceptance of a Deliverable/Service, the State may: (i) demand that the Contractor cure the failure and give the Contractor additional time to cure the failure at the sole expense of the Contractor; or (ii) keep the Contract in force and do, either itself or through other parties, whatever the Contractor has failed to do, and recover the difference between the cost to cure the deficiency and the contract price plus an additional sum equal to 10% of the cost to cure the deficiency to cover the State's general expenses provided the State can furnish proof of the general expenses; or (iii) terminate the particular Statement of Work for default, either in whole or in part by notice to Contractor provided Contractor is unable to cure the breach. Notwithstanding the foregoing, the State cannot use, as a basis for exercising its termination rights under this Section, deficiencies discovered in a repeat State Review Period that could reasonably have been discovered during a prior State Review Period.
6. The State, at any time and in its reasonable discretion, may halt the testing or approval process if the process reveals deficiencies in or problems with a Deliverable/Service in a sufficient quantity or of a sufficient severity that renders continuing the process unproductive or unworkable. If that happens, the State may stop using the Service or return the applicable Deliverable to Contractor for correction and re-delivery before resuming the testing or approval process.

2.255 Process For Approval of Written Deliverables

The State Review Period for Written Deliverables will be the number of days set forth in the applicable Statement of Work following delivery of the final version of the Deliverable (and if the Statement of Work does not state the State Review Period, it is by default five (5) Business Days for Written Deliverables of 100 pages or less and 10 Business Days for Written Deliverables of more than 100 pages). The duration of the State Review Periods will be doubled if the State has not had an opportunity to review an interim draft of the Written Deliverable before its submission to the State. The State agrees to notify Contractor in writing by the end of the State Review Period either stating that the Deliverable is approved in the form delivered by Contractor or describing any deficiencies that must be corrected before approval of the Deliverable (or at the State's election, after approval of the Deliverable). If the State notifies the Contractor about deficiencies, the Contractor must correct the described deficiencies and within 30 Business Days resubmit the Deliverable in a form that shows all revisions made to the original version delivered to the State. Contractor's correction efforts must be made at no additional charge. Upon receipt of a corrected Deliverable from Contractor, the State must have a reasonable additional period of time, not to exceed the length of the original State Review Period, to review the corrected Deliverable to confirm that the identified deficiencies have been corrected.

2.256 Process for Approval of Services

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

2.257 Process for Approval of Physical Deliverables

The State Review Period for approval of Physical Deliverables is governed by the applicable Statement of Work (and if the Statement of Work does not state the State Review Period, it is by default 30 continuous Business Days for a Physical Deliverable).

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

2.258 Final Acceptance

Unless otherwise stated in the Article 1, Statement of Work or Purchase Order, "Final Acceptance" of each Deliverable must occur when each Deliverable/Service has been approved by the State following the State Review Periods identified in **Sections 2.251-2.257**. Payment will be made for Deliverables installed and accepted. Upon acceptance of a Service, the State will pay for all Services provided during the State Review Period that conformed to the acceptance criteria.

2.260 Ownership

2.261 Ownership of Work Product by State

The State owns all Deliverables as they are works made for hire by the Contractor for the State. The State owns all United States and international copyrights, trademarks, patents, or other proprietary rights in the Deliverables.

2.262 Vesting of Rights

With the sole exception of any preexisting licensed works identified in the SOW, the Contractor assigns, and upon creation of each Deliverable automatically assigns, to the State, ownership of all United States and international copyrights, trademarks, patents, or other proprietary rights in each and every Deliverable, whether or not registered by the Contractor, insofar as any the Deliverable, by operation of law, may not be considered work made for hire by the Contractor for the State. From time to time upon the State's request, the Contractor must confirm the assignment by execution and delivery of the assignments, confirmations of assignment, or other written instruments as the State may

request. The State may obtain and hold in its own name all copyright, trademark, and patent registrations and other evidence of rights that may be available for Deliverables.

2.263 Rights in Data

1. The State is the owner of all data made available by the State to the Contractor or its agents, Subcontractors or representatives under the Contract. The Contractor must not use the State's data for any purpose other than providing the Services, nor will any part of the State's data be disclosed, sold, assigned, leased or otherwise disposed of to the general public or to specific third parties or commercially exploited by or on behalf of the Contractor. No employees of the Contractor, other than those on a strictly need-to-know basis, have access to the State's data. Contractor must not possess or assert any lien or other right against the State's data. Without limiting the generality of this Section, the Contractor must only use personally identifiable information as strictly necessary to provide the Services and must disclose the information only to its employees who have a strict need-to-know the information. The Contractor must comply at all times with all laws and regulations applicable to the personally identifiable information.
2. The State is the owner of all State-specific data under the Contract. The State may use the data provided by the Contractor for any purpose. The State must not possess or assert any lien or other right against the Contractor's data. Without limiting the generality of this Section, the State may use personally identifiable information only as strictly necessary to utilize the Services and must disclose the information only to its employees who have a strict need to know the information, except as provided by law. The State must comply at all times with all laws and regulations applicable to the personally identifiable information. Other material developed and provided to the State remains the State's sole and exclusive property.

2.264 Ownership of Materials

The State and the Contractor will continue to own their respective proprietary technologies developed before entering into the Contract. Any hardware bought through the Contractor by the State, and paid for by the State, will be owned by the State. Any software licensed through the Contractor and sold to the State, will be licensed directly to the State.

2.270 State Standards

2.271 Existing Technology Standards

The Contractor must adhere to all existing standards as described within the comprehensive listing of the State's existing technology standards at <http://www.michigan.gov/dit>.

2.272 Acceptable Use Policy

To the extent that Contractor has access to the State computer system, Contractor must comply with the State's Acceptable Use Policy, see <http://www.michigan.gov/ditservice>. All Contractor employees must be required, in writing, to agree to the State's Acceptable Use Policy before accessing the State system. The State reserves the right to terminate Contractor's access to the State system if a violation occurs.

2.273 Systems Changes – Deleted – N/A

Contractor is not responsible for and not authorized to make changes to any State systems without written authorization from the Project Manager. Any changes Contractor makes to State systems with the State's approval must be done according to applicable State procedures, including security, access, and configuration management procedures.

2.280 Extended Purchasing

2.281 MIDEAL

1984 PA 431 permits DTMB to provide purchasing services to any city, village, county, township, school district, intermediate school district, non-profit hospital, institution of higher education, community, or junior college. A current listing of approved program members is available at: www.michigan.gov/buymichiganfirst. Unless otherwise stated, the Contractor must ensure that the non-state agency is an authorized purchaser before extending the Contract pricing.

The Contractor must supply Contract Services and equipment to these local governmental agencies at the established State of Michigan Contract prices and terms to the extent applicable and where available. The Contractor must send its invoices to, and pay the local unit of government, on a direct and individual basis.

To the extent that authorized local units of government purchase quantities of Services and/or equipment under the Contract, the quantities of Services and/or equipment purchased must be included in determining the appropriate rate wherever tiered pricing based on quantity is provided.

Please Visit Mi DEAL at www.michigan.gov/buymichiganfirst under MiDeal.

Estimated requirements for authorized local units of government are not included in the quantities shown in this RFP.

State Administrative Fee

The Contractor must collect an Administrative Fee on the sales transacted under the Contract. The Contractor must remit the Administrative Fee in U.S. dollars within 30 days after the end of the quarterly sales reporting period. The Administrative Fee equals one percent (1%) of the total quarterly sales reported. Contractor must include the Administrative Fee in their prices.

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 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:

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

Please make check payable to: State of Michigan

2.282 State Employee Purchases – Deleted – N/A

2.290 Environmental Provision – Deleted N/A

2.300 Other Provisions

2.311 Forced Labor, Convict Labor, Forced or Indentured Child Labor, or Indentured Servitude Made Materials
Equipment, materials, or supplies, that will be furnished to the State under the Contract must not be produced in whole or in part by forced labor, convict labor, forced or indentured child labor, or indentured servitude.

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

Attachment A – Price Proposal

Pricing must be the submitted during the Second Tier Work Request Process.