



**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 10  
 to  
 Contract Number 071B2200127

<b>CONTRACTOR</b>	HEALTH MANAGEMENT SYSTEMS INC
	360 Park Avenue South
	New York, NY 10016
	Michele Carpenter
	703-759-0389
	michele.carpenter@hms.com
	*****0433

<b>STATE</b>	<b>Program Manager</b>	Kevin Dunn	MDHHS
		517-335-5096	
		Dunnk3@Michigan.gov	
	<b>Contract Administrator</b>	Chelsea Edgett	DTMB
		(517) 284-7017	
		edgettc@michigan.gov	

**CONTRACT SUMMARY**

<b>MEDICAID RECOVERY AUDIT CONTRACTOR</b>			
<b>INITIAL EFFECTIVE DATE</b>	<b>INITIAL EXPIRATION DATE</b>	<b>INITIAL AVAILABLE OPTIONS</b>	<b>EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW</b>
March 12, 2012	March 11, 2015	2 - 1 Year	April 11, 2017
<b>PAYMENT TERMS</b>		<b>DELIVERY TIMEFRAME</b>	
NET45		N/A	
<b>ALTERNATE PAYMENT OPTIONS</b>			<b>EXTENDED PURCHASING</b>
<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**

<b>OPTION</b>	<b>LENGTH OF OPTION</b>	<b>EXTENSION</b>	<b>LENGTH OF EXTENSION</b>	<b>REVISED EXP. DATE</b>
<input type="checkbox"/>	N/A	<input checked="" type="checkbox"/>	30 Days	April 11, 2017
<b>CURRENT VALUE</b>	<b>VALUE OF CHANGE NOTICE</b>	<b>ESTIMATED AGGREGATE CONTRACT VALUE</b>		
\$3,000,000.00	\$0.00	\$3,000,000.00		

**DESCRIPTION**

Effective March 12, 2017, this contract is hereby extended through April 11, 2017.

Please note the Contract Administrator has been changed to Chelsea Edgett, Section 2.021; and the Contractor's Contact has changed to Michele Carpenter.

All other terms, conditions, specifications and pricing remain the same. Per contractor and agency 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. 071B2200127**

to

**CONTRACT NO. 9**

between

**THE STATE OF MICHIGAN**

and

NAME & ADDRESS OF CONTRACTOR	PRIMARY CONTACT	EMAIL
Health Management Systems, Inc. 360 Park Avenue South, 17th Floor New York, NY 10016	Ron Singh	Colleen.fournier@hms.com
	PHONE	CONTRACTOR'S TAX ID NO. (LAST FOUR DIGITS ONLY)
	972-786-7512	0433

STATE CONTACTS	AGENCY	NAME	PHONE	EMAIL
PROGRAM MANAGER / CCI	DHHS	Kevin Dunn	517-335-5096	Dunnk3L@michigan.gov
CONTRACT ADMINISTRATOR	DTMB	Lance Kingsbury	517-284-7017	kingsbury1@michigan.gov

CONTRACT SUMMARY				
<b>DESCRIPTION:</b> Medicaid Recovery Audit Contractor – Michigan Department of Health and Human Services				
INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW	
March 12, 2012	March 11, 2015	2 – one year	March 11, 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 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 checked="" type="checkbox"/>	1 year	<input type="checkbox"/>		March 11, 2017
CURRENT VALUE		VALUE OF CHANGE NOTICE	ESTIMATED AGGREGATE CONTRACT VALUE	
\$3,000,000.00		\$0.00	\$3,000,000.00	

**DESCRIPTION:** Effective January 1, 2016, a one-year contract option is hereby exercised and the Key Personnel table in Section 1.031 is updated to reflect the following:

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Title	Key Employee as of 12/21/2015
Accountable Executive and Project Director	Colleen Fournier, Illinois
Sr. Director, Clinical Operations	Caleb Kinzer, Irving TX
Manager, Clinical Operations	Janine Gatlin, Irving TX
Chief Medical Officer	Gary S. Call, Las Vegas NV
Data/Systems Business Analysis Manager	Christopher Kendrick, Irving TX
Security/HIPAA Compliance	Scott Pettigrew, Irving TX
Research Analytics/Development Sr. Manager	Deborah White, Georgia
Vice President, Recovery Audit	Shane Hochradel, Las Vegas NV
Director, Clinical Appeals	Kelli Capps, Oklahoma
Provider Communications Director	Mary Leigh Covington, Irving TX
Director, Coding Review	Robbie Andrachak, Las Vegas NV
Director, Nurse Review	Margaret James, Ohio
Rx Integrity, Sr. Director	Erwin Acuna , California

All other terms, conditions, specifications and pricing remain the same. Per contractor and agency 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. 8**  
 to  
**CONTRACT NO. 071B2200127**  
 between  
**THE STATE OF MICHIGAN**  
 and

NAME & ADDRESS OF CONTRACTOR		PRIMARY CONTACT		EMAIL
Health Management Systems, Inc. 360 Park Avenue South, 17th Floor New York, NY 10016		Jeffrey Mullins		Jeffrey.mullins@hms.com
		<b>PHONE</b>		<b>CONTRACTOR'S TAX ID NO. (LAST FOUR DIGITS ONLY)</b>
		415-361-0900		0433
STATE CONTACTS	AGENCY	NAME	PHONE	EMAIL
PROGRAM MANAGER / CCI	DCH	Laura Kwiecien	517-241-4878	KwiecienL@michigan.gov
CONTRACT ADMINISTRATOR	DTMB	Chelsea Edgett	517-284-7031	edgettc@michigan.gov
CONTRACT SUMMARY				
<b>DESCRIPTION: Medicaid Recovery Audit Contractor – Michigan Department of Community Health</b>				
INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW	
March 12, 2012	March 11, 2015	2 – one year	March 11, 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 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 type="checkbox"/>		
CURRENT VALUE		VALUE OF CHANGE NOTICE	ESTIMATED AGGREGATE CONTRACT VALUE	
\$3,000,000.00		\$0.00	\$3,000,000.00	
<b>DESCRIPTION:</b> Effective July 20, 2015, the following Key Personal changes have been made:				

Title	Previous Key Employee List	Updated Key Employee List
Accountable Executitbe and Project Director	Colleen Fournier. Illinois	Colleen Fournier. Illinois
RAC Implementation Director	Lisa Leong, California	Lisa Leong, California
Chief Medical Officer	Dr. Larry Rainey, MD, North Carolina	Gary S. Call, Las Vegas NV
Data/Systems Business Analysis Manager	Christopher Kendrick, Irving TX	Christopher Kendrick, Irving TX
Security/HIPAA Compliance	Scott Pettigrew, Irving TX	Scott Pettigrew, Irving TX
Research Analystics/Development Sr. Manager	Deborah James, Georgia	Deborah White, Georgia
Vice President, Recovery Audit	Doug Colburn, North Carolina	Shane Hochradel, Las Vegas NV
Director, Clinical Services	Kelli Capps, Oklahoma	Kelli Capps, Oklahoma
Proovidor Communication Services	Shane Lucabaugh, Irving TX	Shane Lucabaugh, Irving TX
Coding Analyst	Joyelle Constantine, Colorado	Joyelle Constantine, Colorado
Nurse Reviewer, Supervisor	Lisa Dadulo, Oklahoma	Lisa Dadulo, Oklahoma
Rx Integrity, Sr. Director	Erwin Acuna, California	Erwin Acuna, California
Long Term Care Audit Directory	Gail Whitmore, Connecticut	Gail Whitmore, Connecticut

All other terms, conditions, specifications and pricing remain the same. Per contractor and agency 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. 071B2200127**  
 between  
**THE STATE OF MICHIGAN**  
 and

NAME & ADDRESS OF CONTRACTOR:	PRIMARY CONTACT	EMAIL
Health Management Systems, Inc. 360 Park Avenue South, 17 <sup>th</sup> Floor New York, NY 10016	Jeffrey Mullins	jeffrey.mullins@hms.com
	TELEPHONE	CONTRACTOR #, MAIL CODE
	415-361-0900	

STATE CONTACTS	AGENCY	NAME	PHONE	EMAIL
CONTRACT COMPLIANCE INSPECTOR	DCH	Laura Kwiecien	517-241-4878	KwiecienL@michigan.gov
BUYER	DTMB	Brandon Samuel	517-284-7025	samuelb@michigan.gov

CONTRACT SUMMARY:			
DESCRIPTION			
<b>Medicaid Recovery Audit Contractor – Michigan Department of Community Health</b>			
INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW
March 12, 2012	March 11, 2015	2, one year	March 11, 2015
PAYMENT TERMS	F.O.B	SHIPPED	SHIPPED FROM
Net 45	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	March 11, 2016
VALUE/COST OF CHANGE NOTICE:		ESTIMATED REVISED AGGREGATE CONTRACT VALUE:		
\$0.00		\$3,000,000.00		
Effective March 12, 2015, the 1 <sup>st</sup> option year available on this Contract is hereby exercised. The REVISED Contract expiration date is March 11, 2016.				
Effective January 9, 2015, the following Key Personal changes have been made:				

Title	Key Employee as of 1/9/2015
Accountable Executive and Project Director	Colleen Fournier, Illinois
RAC Implementation Director	Lisa Leong, California
Chief Medical Officer	Dr. Larry Raney, MD, North Carolina
Data/Systems Business Analysis Manager	Christopher Kendrick, Irving TX
Security/HIPAA Compliance	Scott Pettigrew, Irving TX
Research Analytics/Development Sr. Manager	Deborah James, Georgia
Vice President, Recovery Audit	Doug Colburn, North Carolina
Director, Clinical Services	Kelli Capps, Oklahoma
Provider Communications Director	Shae Lucabaugh, Irving, TX
Coding Analyst	Joyelle Constantine, Colorado
Nurse Reviewer, Supervisor	Lisa Dadulo, Oklahoma
Rx Integrity, Sr. Director	Erwin Acuna , California
Long Term Care Audit Director	Gail Whitmore, Connecticut

Title	Updated Title	Key Employee as of 10/7/2014	Current Key Employee as of 1/2/15
Accountable Executive and Project Director	No Change	Colleen Fournier, Illinois	No change
RAC Implementation Director	No Change	Lisa Leong, California	No change (location updated)
Chief Medical Officer	No Change	Dr. Larry Raney, MD, North Carolina	No change
<del>Information Systems Director</del>	Data/Systems Business Analysis Manager	Christopher Kendrick, Irving TX	No change (title updated)
Security/HIPAA Compliance	No Change	Scott Pettigrew, Irving TX	No change
<del>Recovery Audit Development Manager</del>	Research Analytics/Development Sr. Manager	Deborah James, Georgia	No change
<del>Data Analytics Director</del>	Combined to above role	Deborah James, Georgia	Position/role combined with another
<del>Director of Operations Fraud, Waste, and Abuse</del>	Vice President, Recovery Audit	Doug Colburn, North Carolina	No change (title updated)
<del>Audit Recovery Operations Director</del>	Director, Clinical Services	Kelli Capps, Oklahoma	No change
Provider Communications Director		Shae Lucabaugh, Irving, TX	No change
<del>Automated Review Coding Analyst</del>	Coding Analyst	Joyelle Constantine, Colorado	No change (updated title)
<del>Medical Review/Utilization Manager</del>	Nurse Reviewer, Supervisor	Lisa Dadulo, Oklahoma	No change (updated title)
<del>Pharmacy Audit Director</del>	Rx Integrity, Sr. Director	Erwin Acuna , California	No Change (updated title, name spelling, location)
Long Term Care Audit Director		Gail Whitmore, Connecticut	No Change (location updated)
<del>Billing Audit Director</del>	Combined to Director, Clinical Services	Kelli Capps, Oklahoma	Position/role combined with another

Effective February 25, 2015, the definition of Chief Medical Director in Section 1.031 is AMENDED to the following:  
 “Chief Medical Director- one full time equivalent; consults with the other key personnel when necessary; reviews medical necessity determinations involving practitioners that must be reviewed by a licensed physician or dentist with a like specialty.”

Effective February 25, 2015, Section 2.062 (b) is AMENDED to the following:  
 “Key Personnel must be assigned as described in the Statement of Work with respect to the other individuals designated as Key Personnel for that Statement of Work.”

Effective February 25, 2015, Section 2.062 (e) is hereby DELETED.

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  
 PROCUREMENT  
 P.O. BOX 30026, LANSING, MI 48909  
 OR  
 530 W. ALLEGAN, LANSING, MI 48933

**CHANGE NOTICE NO. 6**  
 to  
**CONTRACT NO. 071B2200127**  
 between  
**THE STATE OF MICHIGAN**  
 and

NAME & ADDRESS OF CONTRACTOR:	PRIMARY CONTACT	EMAIL
Health Management Systems, Inc. 360 Park Avenue South, 17 <sup>th</sup> Floor New York, NY 10016	Jeffrey Mullins	<a href="mailto:.jeffrey.mullins@hms.com">.jeffrey.mullins@hms.com</a>
	TELEPHONE	CONTRACTOR #, MAIL CODE
	415-361-0900	

STATE CONTACTS	AGENCY	NAME	PHONE	EMAIL
CONTRACT COMPLIANCE INSPECTOR	DCH	Laura Kwiecien	517-241-4878	KwicienL@michigan.gov
BUYER	DTMB	Brandon Samuel	517-284-7025	samuelb@michigan.gov

CONTRACT SUMMARY:			
DESCRIPTION: Medicaid Recovery Audit Contractor – Michigan Department of Community Health			
INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW
March 12, 2012	March 11, 2015	2, one year	March 11, 2015
PAYMENT TERMS	F.O.B	SHIPPED	SHIPPED FROM
Net 45	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 type="checkbox"/> Yes	<input type="checkbox"/>	<input type="checkbox"/>		
VALUE/COST OF CHANGE NOTICE:		ESTIMATED AGGREGATE CONTRACT VALUE REMAINS:		
		<b>\$3,000,000.00</b>		

Effective October 27, 2014 the following Key Personnel changes have been made:

Title	Key Employee in Contract	Current Key Employee as of 10/27/2014
Accountable Executive and Project Director	Kevin McDonald	Colleen Fournier, Illinois
RAC Implementation Director	Joleen Bond-Livingston	Lisa Leong, Irving, TX
Chief Medical Officer	Dr. David Sand	Dr. Larry Raney, MD
Information Systems Director	Joseph Joy	Christopher Kendrick, Irving TX

Security/HIPAA Compliance	Scott Pettigrew	No change
Recovery Audit Development Manager	Rebecca Ocker	Deborah James, Georgia
Data Analytics Director	Michael Hostetler	Deborah James, Georgia
Director of Operations Fraud, Waste, and Abuse	Brandon Lewis	Doug Colburn, North Carolina
Audit Recovery Operations Director	Julia Baker	Kelli Capps, Oklahoma
Provider Communications Director	Niki Love	Shae Lucabaugh, Irving, TX
Automated Review Coding Analyst	Carrie Casillas	Joyelle Constantine, Colorado
Medical Review/Utilization Manager	Lila Holland	Lisa Dadulo, Oklahoma
Pharmacy Audit Director	Edwin Acuna	No change
Long Term Care Audit Director	Gail Whitmore	No change
Billing Audit Director	Tenna Behm	Kelli Capps, Oklahoma

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

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

**CHANGE NOTICE NO. 5**  
 to  
**CONTRACT NO. 071B2200127**  
 between  
**THE STATE OF MICHIGAN**  
 and

NAME & ADDRESS OF CONTRACTOR:	PRIMARY CONTACT	EMAIL
Health Management Systems, Inc. 360 Park Avenue South, 17 <sup>th</sup> Floor New York, NY 10016	Jeffrey Mullins	<a href="mailto:.jeffrey.mullins@hms.com">.jeffrey.mullins@hms.com</a>
	TELEPHONE	CONTRACTOR #, MAIL CODE
	415-361-0900	

STATE CONTACTS	AGENCY	NAME	PHONE	EMAIL
CONTRACT COMPLIANCE INSPECTOR	DCH	Laura Kwiecien	517-241-4878	KwicienL@michigan.gov
BUYER	DTMB	Brandon Samuel	517-241-1218	samuelb@michigan.gov

CONTRACT SUMMARY:			
DESCRIPTION: Medicaid Recovery Audit Contractor – Michigan Department of Community Health			
INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW
March 12, 2012	March 11, 2015	2, one year	March 11, 2015
PAYMENT TERMS	F.O.B	SHIPPED	SHIPPED FROM
Net 45	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 type="checkbox"/> Yes	<input type="checkbox"/>	<input type="checkbox"/>		
VALUE/COST OF CHANGE NOTICE:			ESTIMATED AGGREGATE CONTRACT VALUE REMAINS:	
			<b>\$3,000,000.00</b>	

Effective immediately, the primary vendor contact has been change to Jeffrey Mullins, Senior Vice President, State Government Services. Phone: 415-361-0900, email: Jeffrey.mullins@hms.com.

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

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

November 4, 2013

**CHANGE NOTICE NO. 4**  
 to  
**CONTRACT NO. 071B2200127**  
 between  
**THE STATE OF MICHIGAN**  
 and

NAME & ADDRESS OF CONTRACTOR:	PRIMARY CONTACT	EMAIL
Health Management Systems, Inc. 360 Park Avenue South, 17 <sup>th</sup> Floor New York, NY 10016	Kevin McDonald	KMcDonald@hms.com
	TELEPHONE	CONTRACTOR #, MAIL CODE
	(214) 453-3110	

STATE CONTACTS	AGENCY	NAME	PHONE	EMAIL
CONTRACT COMPLIANCE INSPECTOR	DCH	Laura Kwiecien	517-241-4878	KwecienL@michigan.gov
BUYER	DTMB	Brandon Samuel	517-241-1218	samuelb@michigan.gov

CONTRACT SUMMARY:			
DESCRIPTION: Medicaid Recovery Audit Contractor – Michigan Department of Community Health			
INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW
March 12, 2012	March 11, 2015	2, one year	March 11, 2015
PAYMENT TERMS	F.O.B	SHIPPED	SHIPPED FROM
Net 45	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 checked="" type="checkbox"/> No <input type="checkbox"/> Yes	<input type="checkbox"/>	<input type="checkbox"/>		March 11, 2015
VALUE/COST OF CHANGE NOTICE:		ESTIMATED AGGREGATE CONTRACT VALUE REMAINS:		
\$0.00		\$3,000,000.00		

Effective immediately, the address for this vendor is updated to the following:

360 Park Avenue South, 17<sup>th</sup> Floor

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  
 PROCUREMENT  
 P.O. BOX 30026, LANSING, MI 48909  
 OR  
 530 W. ALLEGAN, LANSING, MI 48933

**CHANGE NOTICE NO. 3**  
 to  
**CONTRACT NO. 071B2200127**  
 between  
**THE STATE OF MICHIGAN**  
 and

NAME & ADDRESS OF CONTRACTOR:	PRIMARY CONTACT	EMAIL
Health Management Systems, Inc. 401 Park Avenue South New York, NY 10016	Kevin McDonald	KMcDonald@hms.com
	TELEPHONE	CONTRACTOR #, MAIL CODE
	(214) 453-3110	

STATE CONTACTS	AGENCY	NAME	PHONE	EMAIL
CONTRACT COMPLIANCE INSPECTOR	DCH	Laura Kwiecien	517-241-4878	KwicienL@michigan.gov
BUYER	DTMB	Brandon Samuel	517-241-1218	samuelb@michigan.gov

CONTRACT SUMMARY:			
DESCRIPTION: Medicaid Recovery Audit Contractor – Michigan Department of Community Health			
INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW
March 12, 2012	March 11, 2015	2, one year	March 11, 2015
PAYMENT TERMS	F.O.B	SHIPPED	SHIPPED FROM
Net 45	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 checked="" type="checkbox"/> No <input type="checkbox"/> Yes	<input type="checkbox"/>	<input type="checkbox"/>		March 11, 2015
VALUE/COST OF CHANGE NOTICE:		ESTIMATED AGGREGATE CONTRACT VALUE REMAINS:		
\$0.00		\$3,000,000.00		

Effective immediately, Section 1.022 (Work and Deliverable), Task 2 (Identification of Improper Payments), J. (Contractor Medical Director), is deleted and replaced with the following (see attachments):

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

Per vendor and agency agreement and DTMB Procurement approval.

## J. Contractor Medical Director

1. Contractor must hire or contract with a part-time Chief Medical Director to oversee the medical record review process for the MI RAG contract; manage quality assurance procedures; and maintain relationships with provider associations. Contractor must also arrange for an alternate Medical Director when the Medical Director is unavailable for extended periods or if a conflict of interest exists. The Chief Medical Director must be composed of either a Doctor of Medicine or a Doctor of Osteopathy in good standing **with a licensing authority of a State within the US** and who has relevant work and educational experience.

### Relevant Work Experience

Prior work experience in the health insurance industry, utilization review firm or health care claims processing organization, extensive knowledge of the Michigan Medicaid program particularly the coverage and payment rules and Public relations experience such as working with physician groups, beneficiary organizations or Congressional offices.

### Relevant Educational Experience

Experience practicing medicine as a board certified doctor of medicine or doctor of osteopathy in good standing with **a licensing authority of a State within the US** and who is currently licensed.

Contractor must periodically verify that the license is current. When recruiting Medical Directors, Contractor must give preference to physicians who have patient care experience and are actively involved in the practice of medicine.

Primary duties include:

- Providing the clinical expertise and judgment to understand Medicaid policy, federal and State Rules and Regulations;
- Serving as a readily available source of medical information to provide guidance in questionable claims reviews situations;
- Recommending when provider education, system edits or other corrective actions are needed or must be revised to address;
- Contractor vulnerabilities;
- Briefing and directing personnel on the correct application of policy during claim adjudication, including through written internal claim review guidelines;
- Keeping abreast of medical practice and technology changes that may result in improper billing or program abuse.
- Provide national perspective and an understanding of Medicaid, health issues and practices.

Other duties include:

- Interacting with the Medical Directors at other contractors and/or Contractor to share information on potential problem areas;
- Participating in Medical Director clinical workgroups, as appropriate; and
- Participating in Medicaid/Contractor presentations to providers and associations.

To prevent conflict of interest issues, the Medical Director must provide written notification to MDCH IG prior to the appointment, election, or membership effective date if the Medical Director becomes a committee member or is appointed or elected as an officer in any State or national medical societies or other professional organizations. In addition, Medical Directors who are currently in practice must notify MDCH IG Contract Manager of the type and extent of the practice.

The Contractor must hire or contract with a part-time Michigan licensed physician that will manage the panel of medical doctors; assists nurses, therapists, and certified coders upon request; manage quality assurance procedures; and maintain relationships with provider associations. Contractor must also arrange for an alternate Michigan licensed physician when this physician unavailable for extended periods or if a conflict of interest exists. The Michigan licensed physician must be composed of either a Doctor of Medicine or a Doctor of Osteopathy in good standing with the Michigan State licensing authority and who has relevant work and educational experience.

#### Relevant Work Experience

Prior work experience in the health insurance industry, utilization review firm or health care claims processing organization, extensive knowledge of the Michigan Medicaid program particularly the coverage and payment rules and Public relations experience such as working with physician groups, beneficiary organizations or Congressional offices.

#### Relevant Educational Experience

Experience practicing medicine as a board certified doctor of medicine or doctor of osteopathy in good standing with the Michigan State licensing authority and who is currently licensed.

Contractor must periodically verify that the license is current. When recruiting, Contractor must give preference to physicians who have patient care experience and are actively involved in the practice of medicine.

Primary duties include:

- Providing the clinical expertise and judgment to understand Michigan Medicaid policy, federal and State Rules and Regulations;
- Serving as a readily available source of medical information to provide guidance in questionable claims reviews situations;
- Recommending when provider education, system edits or other corrective actions are needed or must be revised to address;
- Contractor vulnerabilities;
- Briefing and directing personnel on the correct application of policy during claim adjudication, including through written internal claim review guidelines;
- Keeping abreast of medical practice and technology changes that may result in improper billing or program abuse.
- Provide a local perspective and an understanding of Michigan health issues and practices.

To prevent conflict of interest issues, the Medical Director and Michigan licensed physician must provide written notification to MDCH IG prior to the appointment, election, or membership effective date if the physician becomes a committee member or is appointed or elected as an officer in any State or national medical societies or other professional organizations. In addition, physicians who are currently in practice must notify MDCH IG Contract Manager of the type and extent of the practice.

3. The Contractor must hire or contract with a panel of medical doctors in various fields of medicine who are available as needed for our RAC contract.

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

March 26, 2013

**CHANGE NOTICE NO. 2**  
 to  
**CONTRACT NO. 071B2200127**  
 between  
**THE STATE OF MICHIGAN**  
 and

NAME & ADDRESS OF CONTRACTOR:	PRIMARY CONTACT	EMAIL
Health Management Systems, Inc. 401 Park Avenue South New York, NY 10016	Kevin McDonald	KMcDonald@hms.com
	TELEPHONE	CONTRACTOR #, MAIL CODE
	(214) 453-3110	

STATE CONTACTS	AGENCY	NAME	PHONE	EMAIL
CONTRACT COMPLIANCE INSPECTOR	DCH	Laura Kwiecien	517-241-4878	KwiecienL@michigan.gov
BUYER	DTMB	Brandon Samuel	517-241-1218	samuelb@michigan.gov

CONTRACT SUMMARY:			
DESCRIPTION: Medicaid Recovery Audit Contractor – Michigan Department of Community Health			
INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW
March 12, 2012	March 11, 2015	2, one year	March 11, 2015
PAYMENT TERMS	F.O.B	SHIPPED	SHIPPED FROM
Net 45	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 checked="" type="checkbox"/> No <input type="checkbox"/> Yes	<input type="checkbox"/>	<input type="checkbox"/>		March 11, 2015
VALUE/COST OF CHANGE NOTICE:			ESTIMATED AGGREGATE CONTRACT VALUE REVISED:	
\$0.00			\$3,000,000.00	

Effective immediately, DTMB consents to intracompany Employee Services Subcontract between Health Management, Inc. and HMS Business Services, Inc.

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  
 PROCUREMENT  
 P.O. BOX 30026, LANSING, MI 48909  
 OR  
 530 W. ALLEGAN, LANSING, MI 48933

**CHANGE NOTICE NO. 1**  
 to  
**CONTRACT NO. 071B2200127**  
 between  
**THE STATE OF MICHIGAN**  
 and

NAME & ADDRESS OF CONTRACTOR:	PRIMARY CONTACT	EMAIL
Health Management Systems, Inc. 401 Park Avenue South New York, NY 10016	Kevin McDonald	KMcDonald@hms.com
	TELEPHONE	CONTRACTOR #, MAIL CODE
	(214) 453-3110	

STATE CONTACTS	AGENCY	NAME	PHONE	EMAIL
CONTRACT COMPLIANCE INSPECTOR	DCH	Laura Kwiecien	517-241-4878	KwiecienL@michigan.gov
BUYER	DTMB	Brandon Samuel	517-241-1218	samuelb@michigan.gov

CONTRACT SUMMARY:			
DESCRIPTION: <b>Medicaid Recovery Audit Contractor – Michigan Department of Community Health</b>			
INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW
March 12, 2012	March 11, 2015	2, one year	March 11, 2015
PAYMENT TERMS	F.O.B	SHIPPED	SHIPPED FROM
Net 45	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 checked="" type="checkbox"/> No <input type="checkbox"/> Yes	<input type="checkbox"/>	<input type="checkbox"/>		
VALUE/COST OF CHANGE NOTICE:			ESTIMATED AGGREGATE CONTRACT VALUE REMAINS:	
\$0.00			\$3,000,000.00	

Effective December 12, 2012, Health Management Systems, Inc. will be using the following new Subcontractor:

Digital Harbor  
 1851 Alexander Bell Drive  
 Reston, VA 20191

Contact – Rohit Agarwal, President, CTO  
 rohit.agarwal@dharbor.com  
 Phone: 949-630-2759 Fax: 949-891-0443

Description of work to be done: Data mining and analysis duties.

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



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

March 6, 2012

**NOTICE**  
**OF**  
**CONTRACT NO. 071B2200127**  
**between**  
**THE STATE OF MICHIGAN**  
**and**

NAME & ADDRESS OF CONTRACTOR <b>Health Management Systems, Inc</b> <b>401 Park Avenue South</b> <b>New York, NY 10016</b>  Email: <a href="mailto:KMcDonald@hms.com">KMcDonald@hms.com</a>	TELEPHONE (214) 453-3110 <b>Kevin McDonald</b> CONTRACTOR NUMBER/MAIL CODE  BUYER/CA (517) 241-1218 <b>Brandon Samuel</b>
Contract Compliance Inspector: Laura Kwiecien 517-241-4878 <a href="mailto:KwiecienL@michigan.gov">KwiecienL@michigan.gov</a> <b>Medicaid Recovery Audit Contractor – Michigan Department of Community Health</b>	
CONTRACT PERIOD: <b>3 yrs. + 2 one-year options</b> From: <b>3/12/2012</b> To: <b>3/11/2015</b>	
TERMS <p style="text-align: center;"><b>Net 45</b></p>	SHIPMENT <p style="text-align: center;"><b>N/A</b></p>
F.O.B. <p style="text-align: center;"><b>N/A</b></p>	SHIPPED FROM <p style="text-align: center;"><b>N/A</b></p>
ALTERNATE PAYMENT OPTIONS: <input type="checkbox"/> P-card <input type="checkbox"/> Direct Voucher (DV) <input type="checkbox"/> Other	
MINIMUM DELIVERY REQUIREMENTS <p style="text-align: center;"><b>N/A</b></p>	
MISCELLANEOUS INFORMATION:	

**Estimated Contract Value: \$3,000,000.00**

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

**CONTRACT NO. 071B2200127**  
**between**  
**THE STATE OF MICHIGAN**  
**and**

NAME & ADDRESS OF CONTRACTOR <b>Health Management Systems, Inc</b> <b>401 Park Avenue South</b> <b>New York, NY 10016</b>  Email: <a href="mailto:KMcDonald@hms.com">KMcDonald@hms.com</a>	TELEPHONE (214) 453-3110 <b>Kevin McDonald</b> CONTRACTOR NUMBER/MAIL CODE  BUYER/CA (517) 241-1218 <b>Brandon Samuel</b>
Contract Compliance Inspector: Laura Kwiecien 517-241-4878 <a href="mailto:KwiecienL@michigan.gov">KwiecienL@michigan.gov</a> <b>Medicaid Recovery Audit Contractor – Michigan Department of Community Health</b>	
CONTRACT PERIOD: <b>3 yrs. + 2 one-year options</b> From: <b>3/12/2012</b> To: <b>3/11/2015</b>	
TERMS <p style="text-align: center;"><b>Net 45</b></p>	SHIPMENT <p style="text-align: center;"><b>N/A</b></p>
F.O.B. <p style="text-align: center;"><b>N/A</b></p>	SHIPPED FROM <p style="text-align: center;"><b>N/A</b></p>
ALTERNATE PAYMENT OPTIONS: <input type="checkbox"/> P-card <input type="checkbox"/> Direct Voucher (DV) <input type="checkbox"/> Other	
MINIMUM DELIVERY REQUIREMENTS <p style="text-align: center;"><b>N/A</b></p>	
MISCELLANEOUS INFORMATION: <b>The terms and conditions of this Contract are those of ITB #071I2200049, this Contract Agreement and the vendor's quote dated January 3, 2012 and final pricing dated January 23, 2012. 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.</b>  <b>Estimated Contract Value:    \$3,000,000.00</b>	

**THIS IS NOT AN ORDER: This Contract Agreement is awarded on the basis of our inquiry bearing the ITB #071I2200049. 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 Systems, Inc.  
 Firm Name

\_\_\_\_\_  
 Authorized Agent Signature

\_\_\_\_\_  
 Authorized Agent (Print or Type)

\_\_\_\_\_  
 Date

**FOR THE STATE:**

\_\_\_\_\_  
 Signature  
 Jeff Brownlee Chief Procurement Officer

\_\_\_\_\_  
 Name/Title  
 DTMB-Procurement

\_\_\_\_\_  
 Division

\_\_\_\_\_  
 Date



**STATE OF MICHIGAN**  
**Department of Technology Management and Budget**  
**DTMB-Procurement**

Contract Number: [071B2200127](#)  
Medicaid Recovery Audit Contractor for the Michigan Department of Community Health

Buyer Name: Brandon Samuel  
Telephone Number: 517-241-1218  
E-Mail Address: [samuelb@michigan.gov](mailto:samuelb@michigan.gov)



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Attachment A, Pricing



## DEFINITIONS

**24x7x365** means 24 hours a day, seven 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.

**Asset Management Data** refers to contractor providing information on equipment purchased throughout the contract period in order to fulfill services/deliverables.

**Audit Period** means the seven 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 8:00am EST through 5:00pm EST unless otherwise stated.

**Blanket Purchase Order** is an alternate term for Contract and is used in the Plan Sponsors' computer system.

**CCI** means Contract Compliance Inspector.

**Days** means 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.

**Fraud** means an intentional deception or misrepresentation made by a person with the knowledge that the deception could result in some unauthorized benefit to himself or some other person. It includes any act that constitutes fraud under applicable Federal or State law. 42CFR 455.2. Patterns identified in the overpayments would be considered a red flag for potential fraud and necessitate a fraud referral.

**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).

**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.

**Quality of Care Issues** would be instances in which action may be taken against a licensed provider by State licensing based on his or her actions or inactions, including but not limited to, verbally abusing a patient, leaving a surgical instrument in a patient that should have been removed prior to closure, etc.

**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.

**Voluntary/Self-Reported Overpayments by the Provider** means when the provider discloses overpayments not already addressed in the demand letter or not applicable to the medical records requested by the contractor. If the self-reported item is within the type and dates of services contained in the contractor's most recently approved project plan, a discounted contingency fee is applied to the actual dollars recovered from the self-report. If not, no contingency fee is paid to the contractor for the provider self-reported items.

**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**

The mission of a Recovery Audit Contractor (RAC) is to reduce Medicaid improper payments through the efficient detection and assistance with collection of overpayments, the identification of underpayments and assistance with implementation of actions that will prevent future improper payments. The purpose of the Contract is to provide support to the Michigan Department of Community Health (MDCH) Office of Inspector General (IG) in completing this mission through the identification of overpayments and underpayments and assistance with recoupment of overpayments for services, including waiver services, paid under Title XIX of the Social Security Act.

#### **1.012 Background**

Federal regulation 42 CFR Part 455 Medicaid Program: Recovery Audit Contractors requires the Medicaid program to contract with one or more RACs to identify underpayments and overpayments and recoup overpayments under the Medicaid program for services paid under Title XIX of the Social Security Act.

MDCH is required to actively review Medicaid payments for services to determine accuracy and if errors are noted to pursue the collection of any payment that it determines was in error.

Throughout this Contract, RAC oftentimes is substituted with the word Contractor.

Throughout this Contract, the term “improper payment” is used to refer collectively to overpayments and underpayments. Situations where the provider submits a claim containing an incorrect code, but the mistake does not change the payment amount are NOT considered to be improper payments. This Contract includes the following tasks which are defined in detail in subsequent sections of the Contract:

1. Identifying Medicaid claims that contain underpayments for which payment was made under Title XIX of the Social Security Act.
2. Identify and assist with recouping Medicaid claims that contain overpayments for which payment was made under Title XIX of the Social Security Act. This includes corresponding with the provider.
3. For any RAC-identified overpayment that is appealed by the provider, the RAC will provide support to MDCH IG throughout the administrative appeals process and, where applicable, a subsequent appeal to the appropriate Circuit court.
4. For any RAC identified vulnerability, support MDCH IG by recommending edits or other improper payment prevention strategies to help prevent similar overpayments from occurring in the future.

### **1.020 Scope of Work and Deliverables**

#### **1.021 In Scope**

Independently and not as an agent of the State of Michigan, the Contractor will furnish all the necessary services, qualified personnel, material, equipment, and facilities, not otherwise provided by the State, as needed to perform the Statement of Work.

MDCH will provide minimum administrative support which may include standard system changes when appropriate, help communicating with Medicaid contractors, policy interpretations as necessary and other support deemed necessary by Medicaid to allow the Contractor to perform their tasks efficiently. MDCH will support changes it determines are necessary, but cannot guarantee timeframes or constraints. In changing systems to support greater efficiencies for MDCH, the end product could result in an administrative task being placed on the Contractor that was not previously. These administrative tasks will not extend from the tasks in the Contract and will be applicable to the identification and recovery of the improper payment.



**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 below:

Task Number	Deliverable Number	Deliverable	Due Date (from Contract award date)
1.A.	1	Initial Meeting	2 weeks
1.A.	2	Project Plan	4 weeks
1.B.	3	Monthly Conference Calls	Monthly
1.C.	4	Monthly Progress Reports	Monthly
6a	5	Financial Report	Monthly
1.A.1	6	Vulnerability Report	Monthly
6b	7	Training on RAC Coordination System	Within 15 days of the start of Task 2
2.E.3	8	Case File Transfers	Within 15 days after Contract end
8	9	Final Report- Draft	Within 4 weeks of Contract end date
8	10	Final Report- Final	Within 8 weeks of Contract end date

**Task 1- General Requirements**

**A. Initial Meeting between MDCH Staff and Contractor**

Contractor’s key project staff will meet in Lansing, Michigan with the relevant MDCH staff within two weeks of the date of award (DOA) to discuss the project plan. The specific focus will be to discuss the time frames for the tasks outlined below. Within two weeks of this meeting, the Contractor must submit a formal project plan, outlining the resources and time frame for completing the work listed. It will be the responsibility of the Contractor to update this project plan. The project plan will serve as a snapshot of everything the Contractor is identifying at the time. As new issues rise the project plan will be updated.

The project plan must include the following:

**1. Detailed quarterly projection by vulnerability issue including:**

- a) incorrect procedure code and correct procedure code;
- b) type of review (automated, complex, extrapolation);
- c) type of vulnerability (medical necessity, incorrect coding)

**2. Organizational Chart** - A draft organizational chart must be submitted prior to Contract. The organizational chart must identify all key personnel as well as the organizational structure. A detailed organizational chart extending past the key personnel must be submitted within two weeks of the initial meeting.

**B. Monthly Conference Calls**

Contractor must participate in monthly conference call(s) to discuss the project. Additionally, the Contractor’s key project staff must participate in a monthly conference call with MDCH IG to discuss:

- 1. Progress of the work, evaluate any problems, and discuss plans for immediate next steps of the project.
- 2. Findings and process improvements that will facilitate MDCH in paying claims accurately in the future.

Contractor is responsible for setting up the conference calls, preparing an agenda, documenting the minutes of the meeting and preparing any other supporting materials as needed.

**C. Monthly Progress Reports**

1. Contractor must submit monthly administrative progress reports outlining all work accomplished during the previous month. Contractor must develop the report format and have it approved by MDCH. These reports must include the following:

- a. Complications completing any task
- b. Update of Project Plan
- c. Update of what vulnerability issues are being reviewed in the next month
- d. Recommended corrective actions for vulnerabilities (i.e. system edit, provider education)



- e. Update on how vulnerability issues were identified and what potential vulnerabilities cannot be reviewed because of potentially ineffective policies
- f. Action Items
- g. Appeal Statistics
- h. Process Improvements to be completed by Contractor

2. Contractor must submit monthly financial reports outlining all work accomplished during the previous month. Contractor must develop the report format and have it approved by MDCH IG. This report must be broken down into eight categories:

- a. Overpayments collected- Amounts will only be on this report if the amount has been collected by MDCH (in summary and detail).
- b. Underpayments Identified and paid back to provider- Amounts will only be on this report if the amount has been paid back to the provider by MDCH (in summary and detail).
- c. Overpayments adjusted- Amounts will be included on this report if an appeal has been decided in the provider's favor or if the Contractor rescinded the overpayment after adjustment occurred (in summary and detail).
- d. Overpayments in the queue - This report includes claims where the Contractor believes an overpayment exists because of an automated or complex review, but the amount has not been recovered by MDCH.
- e. Underpayments in the queue- This report includes claims where the Contractor believes an underpayment exists because of an automated or complex review, but the amount has not been paid back to the provider yet.
- f. Number of medical records requested from each provider (in detail).
- g. Number of medical reviews completed within 60 days.
- h. Number of reviews that failed to meet the 60 day review timeframe and the rationale for failure to complete the reviews within 60 days.

All reports must be in summary format with all applicable supporting documentation.

Each monthly report must be submitted by the close of business on the fifth business day following the end of the month by email to the MDCH IG Contract Manager and is to include the Contractor's voucher.

#### **D. Coordination System**

Contractor must have a Coordination System, that is a web-based application which houses all Contractor identifications and collections. The Coordination System includes all suppressions and exclusions. Suppressions and exclusions are claims that are not available to the Contractor for review. Contractor must maintain and provide MDCH IG access to their Coordination System.

#### **E. Technical Capability**

Contractor must have the necessary technical capability to accomplish all tasks within the Contract.

### **Task 2- Identification of Improper Payments**

#### **A. Identification of Medicaid Improper payments**

Contractor must pursue the identification of Medicaid claims which contain improper payments for which payment was made or should have been made under Title XIX of the Social Security Act. Contractor is required to comply with Reopening Regulations located at 42 CFR 405.980. Before a Contractor makes a decision to reopen a claim, the Contractor must have good cause. Additionally, Contractor must ensure that processes are developed to minimize provider burden to the greatest extent possible when identifying Medicaid improper payments.

#### **B. Improper payments INCLUDED in this Statement of Work**

Contractor will receive guidance from MDCH IG regarding which types of providers are included in this Statement of Work. Contractor must be able to perform this task for all providers, including Mental Health providers, Substance Abuse providers, Home Help providers, and Non-Emergency Medical Transportation providers. Contractor will work with MDCH IG to identify targeted provider types. Contractor must obtain MDCH IG approval prior to auditing a provider or a claim.



Unless prohibited by MDCH, Contractor may attempt to identify improper payments that result from any of the following. This is not an all-inclusive list.

- Incorrect payment amounts, except in cases where MDCH issues instructions directing Contractor to not pursue certain incorrect payments made
- Non-covered services, including services that are not reasonable and necessary under section 1862(a)(1)(A) of the Social Security Act
- Incorrectly coded services, including DRG miscoding
- Duplicate services
- Claims that violate policy

### **C. Improper payments EXCLUDED from this Statement of Work**

Contractor may NOT attempt to identify improper payments arising from any of the following:

#### **1. Cost report settlement process**

Contractor must not attempt to identify underpayments and overpayments that result from Indirect Medical Education (IME) and Graduate Medical Education (GME) payments.

#### **2. Claims more than 3 years past the date of service**

Contractor must not attempt to identify any overpayment or underpayment more than three years past the date of the service. Any overpayment or underpayment inadvertently identified after this timeframe must be set aside and reported to MDCH IG.

**Note:** MDCH IG reserves the right to limit or expand the time period available for Contractor review by claim type, by type of provider, or by any other reason where MDCH IG believes it is in the best interest of the Medicaid program to limit claim review. This notice will be in writing to the Contractor and will be effective immediately.

#### **3. Random selection of claims**

Contractor must utilize data analysis techniques in order to identify those claims most likely to contain overpayments. Random selection of claims to review is not included in the scope of the Contract.

#### **4. Prepayment Review**

Contractor must identify Medicaid improper payments using the post payment claims review process. Prepayment review of a Medicaid overpayment or underpayment is not included in the scope of the Contract.

### **D. Preventing Overlap**

#### ***Preventing overlap with Contractor performing claim review and/or responsible for recoveries.***

Contractor must minimize the impact on the provider community by avoiding situations where the Contractor and another entity (e.g. Medicaid contractors, Medicaid Integrity Contractor, law enforcement) are working on the same claim.

Therefore, the Contractor's Coordination System must be used to determine if another entity already has the provider and/or claim under review. The Coordination System must include a master table of excluded providers and claims. This table must be updated on an as needed basis. Before beginning a claim review, the Contractor must utilize the Coordination System and coordinate with the MDCH IG Contract Manager to determine if exclusions exist for that claim. If an exclusion exists for that claim, the Contractor is not permitted to review that claim. If the exclusion is entered after the Contractor begins its review, the Contractor and MDCH will be notified so that the Contractor can cease all activity.

An excluded claim is a claim that has been reviewed post-payment by another entity. Exclusions are permanent. This means that an excluded claim will never be available for the Contractor to review.



## **E. Obtaining and Storing Medical Records for Reviews**

Contractor may obtain medical records by going onsite to the provider's location to view/copy the records or by requesting that the provider mail/fax or securely transmit (e.g. encrypted CD/DVD) the records. Contractor must accept electronic medical records on CD/DVD or via facsimile at the provider's request.

If the Contractor attempts an onsite visit and the provider refuses to allow access to their facility, the Contractor may not make an overpayment determination based upon the lack of access. Instead, the Contractor must request the needed records in writing, as well as notify the MDCH IG Contract Manager.

Only when an onsite review results in an improper payment finding, Contractor must copy the relevant portions of the medical record and retain them for future use. When an onsite review results in no finding of improper payment, the RAC need not retain a copy of the medical record.

Contractor must use discretion when requesting medical records to ensure the number of medical records in the request is not negatively impacting the provider's ability to provide care. MDCH IG will institute a medical record request limit and frequency.

### **1. Updating the case file**

Contractor must include in the case file (See Task 7; section F for additional case record maintenance instructions):

- A copy of all request letters,
- Contacts with Medicaid Contractors, MDCH IG, others involved in the case,
- Dates of any calls made, and
- Notes indicating what transpired during the call.

### **2. Assessing an overpayment for failing to provide requested medical record.**

Contractor may find the claim to be an overpayment if medical records are requested more than once and not received within 45 days.

### **3. Storing and sharing medical records**

Contractor must make available to MDCH IG any requested medical record, or to any other MDCH IG approved entity on a case-by-case basis. Each non-MDCH IG request must be approved by MDCH IG.

Contractor must, on the effective date of the Contract, be prepared to store and share imaged medical records. Contractor must:

- Provide a MDCH IG-approved document management system;
- Store medical record NOT associated with an overpayment for one year;
- Store medical records associated with an overpayment for duration of the Contract;
- Maintain a log of all requests for medical records indicating at least the requester, a description of the medical record being requested, the date the request was received, and the date the request was fulfilled.

Contractor must make information about the status of a medical record (outstanding, received, review underway, review complete, case closed) available to providers upon request. Contractor must develop a web-based application for this purpose and provide the MDCH IG Contractor Manager access to this application.

For purposes of this section sharing or sending imaged medical records means the transmission of the record on an encrypted CD, FTP, or other means specified by MDCH IG. Upon the end of the Contract, the Contractor must send copies of the imaged records to MDCH IG or MDCH IG specified entity (see III.

## **Transitions from Outgoing RAC to Incoming RAC)**

## **F. The Claim Review Process**

### **1. Types of Determinations Contractor may make**

Contractor may find a full or partial overpayment exists if the claim was coded incorrectly. In order to be covered by Medicaid, a claim must be:

- medically necessary
- in compliance with federal and State regulations and Medicaid policy
- billed correctly



### **a. Medical Necessity**

If Contractor identifies a full or partial overpayment because an item or service is not medically necessary, Contractor must completely document their reasons. Since these determinations can be appealed, it is important that the rationale for the determination be documented both initially and at each level of appeal.

### **b. Coding Determinations**

Contractor may find that an overpayment or underpayment exists if the service is not correctly coded according to national coding requirements (i.e., CPT or CPT Assistant, HCPCS, ADA, ICD).

### **c. Other Determinations**

Contractor may determine that an overpayment or underpayment exists if the claim was paid twice (i.e., a "duplicate claim") or was priced incorrectly.

## **2. Medicaid Policies**

Contractor must apply all applicable federal and State regulations and Medicaid policy when reviewing providers/claims.

## **3. Internal Guidelines**

Contractor must develop detailed written review guidelines as part of its process of reviewing claims for coverage and coding purposes. For the purposes of this Contract, these guidelines will be called "Internal Guidelines." Internal Guidelines must specify what information should be reviewed by reviewers and the appropriate resulting determination. Contractor must receive approval of the internal guidelines from the MDCH IG and make their Internal Guidelines available to MDCH IG upon request. Internal Guidelines will not create or change policy.

## **4. Evidence**

Contractor must only identify a claims overpayment where there is supportable evidence of the overpayment. Contractor must utilize data analysis techniques in order to identify those claims most likely to contain overpayments. Contractor must document the good cause for reviewing a claim. There are two primary ways of identification:

- a) Through "automated review" of claims data without human review of medical or other records; and
- b) Through "complex review" which entails human review of a medical record or other documentation.

## **5. Automated Review vs. Complex Review**

a. **Automated Review** occurs when Contractor makes a claim determination at the system level without a human review of the medical record.

### i. Coverage/Coding Determinations Made Through Automated Review

Contractor may use automated review when making coverage and coding determinations only where BOTH of the following conditions apply: there is certainty that the service is not covered or is incorrectly coded AND a written Medicaid policy or coding guideline exists.

Contractor will not use automated review when making coverage and coding determinations, if **no certainty** exists as to whether the service is covered or correctly coded. Contractor must not use automated review when making coverage and coding determinations, if no written **Medicaid policy or coding guideline** exists.

**EXCEPTION:** Contractor identifies a "clinically unbelievable" issue (i.e., a situation where certainty of noncoverage or incorrectly coding exists but no Medicaid policy, or coding guidelines exist), Contractor may seek MDCH IG approval to proceed with automated review. Unless or until MDCH IG approves the issue for automated review, the Contractor must make its determinations through complex review.

### ii. Other Determinations Made Through Automated Review

Contractor RAC may use automated review when making other determinations (e.g. duplicate claims, pricing mistakes) when there is certainty that an overpayment or underpayment exists. Written policies/articles/guidelines often don't exist for these situations.



b. **Complex Review** occurs when Contractor makes a claim determination utilizing human review of the medical record. Contractor may use complex review in situations where the requirements for automated review are not met or the Contractor is unsure whether the requirements for automated review are met. Complex medical review is used in situations where there is a high probability (but not certainty) that the service is not covered or where no Medicaid policy exists. Complex copies of medical records will be needed to provide support for the overpayment.

## **6. Individual Claim Determinations**

The term “individual claim determination” refers to a complex review performed by Contractor in the absence of a written Medicaid policy. When making individual claim determinations, Contractor must utilize appropriate medical literature and apply appropriate clinical judgment. Contractor must consider the broad range of available evidence and evaluate its quality before making individual claim determinations. The extent and quality of supporting evidence is key to defending challenges to individual claim determinations. Individual claim determinations which challenge the standard of practice in a community must be based on sufficient evidence to convincingly refute evidence presented in support of coverage. Contractor must ensure that their Chief Medical Director is actively involved in examining all evidence used in making individual claim determinations and acting as a resource to all reviewers making individual claim determinations.

## **7. Staff Performing Complex Coverage/Coding Reviews**

Whenever performing complex coverage or coding reviews (i.e., reviews involving the medical record), Contractor must ensure that coverage/medical necessity reviews are made by an appropriate professional staff person, such as RNs, therapists or healthcare professional whose expertise is in the field of medicine being reviewed, and that coding determinations are made by certified coders. Contractor must ensure that no nurse, therapist or coder reviews claims from a provider who is or was their past employer. Contractor must maintain and provide documentation upon the provider’s request for the credentials of the individuals making the medical review determinations. If the provider requests to speak to the Chief Medical Director regarding a claim(s) denial, the Contractor must ensure the Chief Medical Director participates in the discussion. Medical necessity determinations involving practitioners must be reviewed by a licensed physician or dentist with a like specialty.

## **8. Timeframes for Completing Complex Coverage/Coding Reviews**

Contractor must complete complex reviews within 60 days from receipt of the medical record documentation. Contractor may request a waiver from MDCH IG if an extended timeframe is needed due to extenuating circumstances. If an extended timeframe for review is granted, Contractor must notify the provider in writing or via a web-based application of the situation that has resulted in the delay and must indicate that the Notification of Findings will be sent once MDCH IG approves the Contractor moving forward with the review.

## **9. Re-openings of Claims Denied Due to Failure to Submit Necessary Medical Documentation**

In cases where the Contractor denies a claim without reviewing the medical record because the requested records were not received or were not received timely and the denial is appealed, the appeals department may send the claim to the Contractor for reopening. If this occurs, the Contractor must conduct a reopening of claims sent by the appeals department within **30 days** of receipt of the forwarded claim and requested documentation by the Contractor. In addition, Contractor must issue a new letter containing the revised denial reason and the information required.

## **G. Activities Following Review**

### **1. Rationale for Determination**

Contractor must document the rationale for the determination. This rationale must list the review findings including a detailed description of the Medicaid policy or regulation that was violated and a statement as to whether the violation resulted in an improper payment. Contractor must make available, upon request by MDCH IG any, requested rationale.

### **a) Storing and making available IMAGED rationale documents**

Contractor must, on the effective date of the Contract, be prepared to store and share imaged medical records. Contractor must:

- Provide a document management system that meets MDCH IG requirements,



- Store rationale documents NOT associated with an overpayment for one year,
- Store rationale documents associated with an overpayment for the duration of the Contract,
- Maintain a log of all requests for rationale documents indicating at least the requester, a description of the medical record being requested, the date the request was received, and the date the request was fulfilled. The Contractor's Coordination System must not be available for this purpose.

b) Contractor must send copies of the imaged rationale documents to MDCH IG or specified contractor by MDCH IG at the end of the Contract.

## **2. Validation Process**

Once Contractor has chosen to pursue a new issue that requires complex or automated review, Contractor must notify MDCH IG Contractor Manager of the issue in a format to be prescribed by MDCH IG. The MDCH IG Contract Manager will notify the Contractor which issues have been selected for claim validation. Contractor must forward any requested information in a format to be prescribed by MDCH IG. The MDCH IG Contract Manager will notify the Contractor if and when they may begin issuing medical record request letters and demand letters on the new issue. Contractor must not issue any demand letters on issues that have not been approved by MDCH IG. Contractor may request up to 10 medical records when developing a test case for MDCH IG to validate. Contractor must not issue medical record requests beyond the 10 test claims without prior MDCH IG Contract Manager approval. MDCH IG may also evaluate the clarity, accuracy, and completeness of Contractor letter to providers.

## **3. Communication with Providers about Improper Payment Cases**

Contractor may send the provider only one review result per claim. For example, Contractor may NOT send the provider a letter on January 10 containing the results of a medical necessity review and send a separate letter on January 20 containing the results of the correct coding review for the same claim. Instead, Contractor must wait until January 20 to inform the provider of the results of both reviews in the same letter. It is acceptable to send one notification letter that contains a list of all the claims denied; however, the reason for each claim denial must be clear to the provider.

### **a) Automated review**

Contractor must communicate to the provider the results of each automated review that results in an overpayment determination. Contractor must inform the provider of which coverage/coding/payment policy or article was violated. Contractor need not communicate to providers the results of automated reviews that do not result in an overpayment determination. Contractor must record the date and format of this communication in the Contractor Coordination System.

### **b) Complex review**

Contractor must communicate to the provider the results of every complex review (i.e., every review where a medical record was obtained), including cases where no improper payment was identified. In cases where an improper payment was identified, Contractor must inform the provider of which coverage/coding/payment policy or article was violated. Contractor must record the date and format of this communication in the Contractor Coordination System.

### **c) Contents of Notification of Contractor Complex Review Findings Letter**

Contractor must send a letter to the provider indicating the results of the review within 60 days of the exit conference (for provider site reviews) or receipt of medical records (for Contractor site reviews). If the Contractor needs more than 60 days, they are to contact the MDCH IG Contract Manager for an extension. Each letter must include:

- Identification of the provider(s) or supplier(s)--name, address, and provider number;
- The reason for conducting the review;
- A narrative description of the overpayment situation: state the specific issues involved which created the improper payment and any pertinent issues as well as any recommended corrective actions the provider should consider taking;
- The findings for each claim in the sample, including a specific explanation of why any services were determined to be non-covered, or incorrectly coded;



- A list of all individual claims including the actual amounts determined to be noncovered, the specific reason for noncoverage, the amounts denied;
- An explanation of Medicaid's right to recover overpayments as well as the procedures for recovery of overpayments and the provider's right to request an extended repayment schedule;
- The provider appeal rights information.

#### 4. Determine the Overpayment Amount

a) **Full denials** - A full denial occurs when the Contractor determines that:

- the submitted service was not reasonable and necessary and no other service (for that type of provider) would have been reasonable and necessary;
- OR
- no service was provided.

The overpayment amount is the total paid amount for the service in question.

b) **Partial denials** - A partial denial occurs when the Contractor determines that:

- the submitted service was not reasonable and necessary, but a lower level service would have been reasonable and necessary;
- OR
- the submitted service was upcoded (and a lower level service was actually performed) or an incorrect code (such as a discharge status code) was submitted that caused a higher payment to be made;
- OR
- failure to apply a payment rule causing an improper payment (e.g. failure to reduce payment on multiple surgery cases).

**Note:** Other situations that are not categorized above should be brought to the MDCH IG Contract Manager's attention before Contractor sends notification to the provider. In these cases, the Contractor must determine the level of service that was reasonable and necessary or represents the correct code for the service described in the medical record. After approval by the MDCH IG Contract Manager, the Contractor must proceed with recovery. Contractor can only collect the difference between the paid amount and the amount that should have been paid.

#### c) **Extrapolation**

Contractor extrapolation methodology must be approved by the MDCH contracted statistician prior to use.

#### d) **Recording the Improper Payment Amount in the Contractor Coordination System**

Contractor must update the Coordination System with:

- The improper payment amount for each claim in question;
- Line level claim detail;
- The date of the original demand/notification letter;
- Appeal status;
- Collection detail and/or adjustments due to errors/appeals;
- Any other pertinent claim level information.

Once an overpayment is identified, Contractor must proceed with the Recovery of Medicaid Overpayments.

#### H. **Potential Fraud**

Contractor must report instances of potential fraud immediately to the MDCH IG Contract Manager (see Task 7 section E on recalled cases).

#### I. **Potential Quality Problems**

Contractor must report potential quality issues immediately to the MDCH IG Contract Manager.



## **J. Contractor Medical Director**

Contractor must hire a minimum of one Full Time Equivalent (FTE) physician Medical Director to oversee the medical record review process; assist nurses, therapists, and certified coders upon request; manage quality assurance procedures; and maintain relationships with provider associations. Contractor must also arrange for an alternate Medical Director when the Medical Director is unavailable for extended periods or if a conflict of interest exists. The FTE must be composed of either a Doctor of Medicine or a Doctor of Osteopathy in good standing with the Michigan State licensing authority and who has relevant work and educational experience.

### Relevant Work Experience

Prior work experience in the health insurance industry, utilization review firm or health care claims processing organization, extensive knowledge of the Michigan Medicaid program particularly the coverage and payment rules and Public relations experience such as working with physician groups, beneficiary organizations or Congressional offices.

### Relevant Educational Experience

Experience practicing medicine as a board certified doctor of medicine or doctor of osteopathy in good standing with the Michigan State licensing authority and who is currently licensed.

Contractor must periodically verify that the license is current. When recruiting Medical Directors, Contractor must give preference to physicians who have patient care experience and are actively involved in the practice of medicine.

Primary duties include:

- Providing the clinical expertise and judgment to understand Medicaid policy, federal and State Rules and Regulations;
- Serving as a readily available source of medical information to provide guidance in questionable claims reviews situations;
- Recommending when provider education, system edits or other corrective actions are needed or must be revised to address;
- Contractor vulnerabilities;
- Briefing and directing personnel on the correct application of policy during claim adjudication, including through written internal claim review guidelines;
- Keeping abreast of medical practice and technology changes that may result in improper billing or program abuse.

Other duties include:

- Interacting with the Medical Directors at other contractors and/or Contractor to share information on potential problem areas;
- Participating in Medical Director clinical workgroups, as appropriate; and
- Participating in Medicaid/Contractor presentations to providers and associations.

To prevent conflict of interest issues, the Medical Director must provide written notification to MDCH IG prior to the appointment, election, or membership effective date if the Medical Director becomes a committee member or is appointed or elected as an officer in any State or national medical societies or other professional organizations. In addition, Medical Directors who are currently in practice must notify MDCH IG Contract Manager of the type and extent of the practice.

## **K. Communication with Other Medicaid Contractors - Referrals from MDCH IG**

At the discretion of MDCH IG, Contractor may receive referrals on potential overpayments from Medicaid. Contractor must work with the appropriate entities concerning formats and transfer arrangements. Contractor must evaluate each referral and advise MDCH IG as to the potential recovery. The expected timeframe for review and decision is 30-45 days from the referral being received.



### Task 3- Underpayments

Contractor must review claims, using automated or complex reviews, to identify potential Medicaid underpayments. Upon identification Contractor must communicate the underpayment finding to the MDCH IG Contract Manager. The mode of communication and the frequency will be agreed upon by both Contractor and MDCH IG. This communication must be separate from the overpayment communications.

After receipt, MDCH IG will validate the underpayment. If necessary, Contractor must share any documentation supporting the underpayment determination with MDCH IG. Once MDCH IG validates the underpayment occurrence and pays the provider, Contractor must include the amount of the actual underpayment on the next payment invoice. Once DHC IG has validated the underpayment, Contractor must issue a written notice to the provider. This Underpayment Notification Letter will include the claim(s) and beneficiary detail. A sample letter must be approved by the MDCH IG Contract Manager before issuing the first letter. For purposes of the RAC program, a Medicaid underpayment is defined as those lines or payment group (e.g. APC, DRG) on a claim that was billed at a low level of payment but should have been billed at a higher level of payment. The Contractor must review each claim line or payment group and consider all possible occurrences of an underpayment in that one line or payment group. If changes to the diagnosis, procedure or order in that line or payment group would create an underpayment, Contractor must identify an underpayment. Service lines or payment groups that a provider failed to include on a claim are **NOT** considered underpayments for the purposes of the program.

### Examples of Underpayments

1. The provider billed for 15 minutes of therapy when the medical record clearly indicates 30 minutes of therapy was provided (this provider type is paid based on a fee schedule that pays more for 30 minutes of therapy than for 15 minutes of therapy).
2. A diagnosis/condition was left off an inpatient hospital claim, but appears in the medical record. Had this diagnosis or condition been listed on the inpatient hospital claim, a higher paying DRG would have been the result.

The following will **NOT** be considered an underpayment:

1. The medical record indicates that the provider performed additional services such as an EKG, but the provider did not bill for the service (this provider type is paid based on a fee schedule that has a separate code and payment amount for EKG).
2. The provider billed for 15 minutes of therapy when the medical record clearly indicates 30 minutes of therapy was provided; however, the additional minutes do not affect the grouper or the pricer (this provider type is paid based on a prospective payment system that does not pay more for this much additional therapy).
3. The medical record indicates that the provider implanted a particular device for which a device APC exists (and is separately payable over and above the service APC), but the provider did not bill for the device APC.

### Reporting of Underpayments

On a monthly basis, Contractor must submit a report to the MDCH IG Contract Manager listing all underpayments identified during the month. The report must include the claim number, the provider number, the claim paid date(s), the original amount paid and the reason for the underpayment.

### Contractor Coordination System

Once approved by the MDCH IG Contract Manager, Contractor must input the underpayment into the Coordination System.

### Provider Inquiries

Contractor must not accept case files from providers for an underpayment case review. If case files are received from providers that were not requested by the Contractor, the Contractor must shred the records. Contractor is under no obligation to respond to the provider.



### Medical Record Requests

Contractor may request medical records for the sole purpose of identifying an underpayment. Medicaid providers are required to provide access to requested medical records by the State or its contractors without charge.

### **Task 4- Recovery of Overpayments**

Contractor must assist MDCH IG in the recoupment of post-appeal Medicaid overpayments that are identified through Task 2. The recovery techniques utilized by Contractor must be legally supportable. The recovery techniques will follow the guidelines of all applicable Medicaid regulations and manuals as well as all federal debt collection standards.

### **Adjustment Process**

#### **A. Written Notification of Overpayment**

After identification and validation, if necessary, the Contractor must send written notification of the overpayment to the provider within 60 calendar days. The written notification must include appeal rights as well as all necessary information for the provider to be able to fully understand the overpayment. The MDCH IG Contract Manager will approve all written notifications to the provider before letters are sent.

#### **B. Recoupment through Claims Adjustments or Current/Future Medicaid Payments**

Medicaid utilizes the claim adjustment process to recover Medicaid provider overpayments. Every effort to recoup overpayments in this fashion must be exhausted before an alternate recoupment process is considered.

If claim adjustment is not possible for some reason, a gross adjustment process may be used to recover Medicaid provider overpayments, if approved by the MDCH IG. This is achieved by reducing present or future Medicaid provider payments and applying the amount withheld to the indebtedness. Once payments are withheld, the withhold remains in place until the debt is satisfied in full or alternative payment arrangements are made. As payments are withheld they are applied against the oldest outstanding overpayment. The debt receiving the payments may or may not have been determined by the RAC.

Contractor will receive a contingency payment for all amounts recovered from withholding of present and/or future payments that are applied to the overpayment amount identified by the Contractor.

#### **C. Repayment Through Installment Agreements**

Contractor may grant a request by the provider to repay the overpayment through an installment plan, following approval by the MDCH IG Contract Manager. This recoupment option will only be approved in rare circumstances.

If an installment plan is approved, Contractor must receive a contingency payment based on the amount of each installment payment. As the provider submits monthly payments, Contractor will receive the applicable contingency payment for the principal amount received.

#### **D. Referral to the Department of Treasury**

If a debt is not fully paid by the debtor or cannot be gross adjusted (i.e., no longer billing Medicaid), Contractor must refer the provider to the State Department of Treasury to recoup the overpayment amount. Contractor is required to cease all recovery efforts once the debt is referred to the State Department of Treasury.

Debts ineligible for referral include:

- Debts in appeal status (pending at any level);
- Debts where the debtor is in bankruptcy;
- Debts under a fraud and abuse investigation if the Contractor has received specific instructions from the MDCH IG Contract Manager not to attempt collection;
- Debts in litigation (“litigation” means litigation which involves the federal government as a party; it does not include litigation between the debtor and some party other than the federal government);
- Debts where there is a pending request for a waiver or compromise.



Contractor must issue a written notification to the debtor with the appropriate intent to refer language within a time frame that allows for the Contractor to issue an appropriate reply to all timely responses to the “intent to refer” letter before the debt is 130 days **delinquent**. All outstanding debts remaining unresolved and not under a non-delinquent installment agreement must be sent to the State Department of Treasury on or before they are 130 days delinquent. Contractor is required to cease all recovery efforts once the debt is referred to the Department of Treasury.

#### **E. Compromise and/or Settlement of Overpayment**

Contractor will not have any authority to compromise and/or settle an identified or possible overpayment. If a debtor presents the Contractor with a compromise request, the Contractor must forward the overpayment case and all applicable supporting documentation to the MDCH IG Contract Manager for direction. Contractor must include its recommendation on the request and justification for such recommendation. If MDCH IG determines that a compromise and/or settlement is in the best interests of Medicaid, Contractor will receive a contingency payment for the portion of overpayment that was recouped, providing that the Contractor initiated recoupment by sending a demand letter prior to the compromise and/or settlement offer being received.

#### **F. Voluntary/Self-Reported Overpayments by the Provider**

If a provider voluntarily self-reports an overpayment after the Contractor issues a demand letter or a request for medical record, Contractor will receive a discounted contingency fee. In order to be eligible for the contingency fee, the type and dates of service for the self-reported overpayment must be in the Contractor’s most recently approved project plan. If the provider self-reports this kind of case to the Contractor, the Contractor must document the case in its files and the Coordination System.

If a provider voluntarily self-reports an overpayment, and the self-reported overpayment does NOT involve the same types of services for which the Contractor had issued a demand letter or a request for medical records, then Contractor is not entitled to a contingency fee amount. If the provider self-reports this kind of case to the Contractor, the Contractor must notify the MDCH IG Contract Manager. Contractor may continue recovery efforts since the overpayment the provider self-reported involved a different provider/service combination.

#### **G. Recoupment During the Appeals Process**

Contractor must ensure that all demand letters initiated as a result of an identified overpayment in Task 2 contain provider appeal rights. If a provider files an appeal, recovery efforts must cease. If a provider instructs the Contractor that it has filed an appeal, recovery efforts must cease, and Contractor must confirm the appeal request with the MDCH IG Contract Manager or its delegate. After the appeal is completed, recovery efforts must resume if the decision was not favorable to the provider.

#### **H. Customer Service**

Contractor must provide a toll free customer service telephone number in all correspondence sent to Medicaid providers or other prospective debtors. The customer service number will be staffed by qualified personnel during normal business hours from 8:00 a.m. to 5:00 p.m. Eastern Standard Time. After normal business hours, a message must indicate the normal business hours for customer service. All messages to be played after normal business hours or while on hold must be approved by the MDCH IG Contractor Manager before use.

Contractor must compile and maintain provider approved addresses and points of contact.

The staff answering the customer service lines must be knowledgeable of the Medicaid recovery audit program. The staff must have access to all identified improper payments and will be knowledgeable of all possible recovery methods and the appeal rights of the provider. If need be, the staff person responsible for that overpayment must return the call within one business day.

Contractor must utilize a Quality Assurance (QA) program to ensure that all customer service representatives are knowledgeable, being respectful to providers and providing timely follow-up calls when necessary.



Contractor must respond to written correspondence within 30 days of receipt. Contractor must provide the MDCH IG Contract Manager with scanned copies by e-mail and mailed hard copy, of all correspondence indicating displeasure with Contractor, in the overpayment identification, or in the recovery methods utilized, within 10 calendar days of receipt of such correspondence (if Contractor is not sure how the correspondence will be interpreted, it should forward the correspondence to the MDCH IG Contract Manager).

Contractor phone system must notify all callers that the call may be monitored for quality assurance purposes.

#### **Task 5- Supporting Identification of Overpayments in the Medicaid Appeal Process.**

Providers are given appeal rights for Medicaid overpayments determined during the post payment review process. If a provider chooses to appeal an overpayment determined by the Contractor, the Contractor, at no additional charge to Medicaid, must assist MDCH IG with support of the overpayment determination throughout all levels of the appeal. This includes providing supporting documentation (including the medical record) and appropriate reference to Medicaid policy, federal and State regulations as well as providing assistance by representing MDCH IG at any hearings associated with the overpayment.

Providers will request an appeal through the MDCH appeals process. If Contractor receives a written appeal request it must forward it to MDCH IG within one business day of receipt. If Contractor receives a verbal request for appeal from a provider, Contractor must give the contact information for the MDCH Appeals area.

#### **Task 6a- Reporting of Identified, Demanded and Collected Medicaid Overpayments and Identified Medicaid Underpayments**

Contractor must, on a monthly basis, provide the MDCH IG Contract Manager with detailed information concerning overpayments and underpayments that have been identified, overpayments that have been demanded and overpayments that have been fully or partially collected. Contractor must have supporting documentation for all line items on the report. This report will be due no later than the fifth business day of the following month. Task 1, C.2 contains additional information required in the monthly Financial Reports.

#### **Task 6b - Contractor Coordination System Reporting and Contractor Invoices**

Contractor Coordination System is an integral participant in the success of the Contract. However, the Coordination System can only be successful if the data input into it by the Contractor is reliable, timely and valid. In order for a Contractor voucher to be paid, all supporting information for the voucher must be in the Coordination System and on the Contractor invoice.

MDCH IG will utilize the following reports from the Coordination System:

1. A report of all collections for the month
2. A report of all adjustments and appeals for the month
3. A report of all underpayments for the month

Payment for a given month will be calculated by applying the overpayment contingency rate to collections for that month plus applying the underpayment contingency rate or set fee to underpayments for that month and subtracting any adjustments or appeals for that month, if any.

MDCH IG requires the information in the Coordination System to be accurate.

#### **Task 7 – Administrative and Miscellaneous Issues**

##### **A. Administrative Functions**

Once the Contractor has identified an overpayment, the Contractor must send the debtor written notification as indicated in Task 4A. This notification must state that claim adjustments will be performed if possible. Otherwise, a gross adjustment will be pursued unless the provider requests an appeal.

##### **B. Payment Methodology**

All payments for overpayments to the Contractor will be paid only on a contingency fee basis and on the amount paid back by or recovered from the provider, post-appeal. Contractor will not receive any payments for the identification of the improper payments.



The contingency fee will be determined by the post-appeal overpayments collected without consideration given to the underpayments identified (i.e. without netting out the underpayments against the overpayments). Underpayments in a claim are counted separately. The only exception to this is that the amount paid to the Contractor must not exceed the net overpayment returned by the provider.

The contingency fee includes recoveries made through a self-disclosure made by a provider as result of a prior Contractor identified request for medical records or demand letter, as long as the self-disclosed service and time period are included in the Contractor's project plan.

### **C. Point of Contact for RAC**

The primary point of contact for the Contractor will be the MDCH IG Contract Manager or his/her delegate.

### **D. Data Accessibility**

MDCH will provide the Contractor with all applicable data files for all claims paid during the specific timeframes of the Contract. The Contractor will receive new data updates as they become available (monthly or quarterly). To access data, the Contractor must, at no cost to the State, comply with all hardware and software items necessary.

Contractor must pay for any charges associated with the transfer of data. This includes, but is not limited to, cartridges, data communications equipment, lines, messenger service, mail, etc. Contractor must pay for all charges associated with the storage and processing of any data necessary to accomplish the demonstration. Contractor must establish and maintain back-up and recovery procedures to meet industry standards. Contractor must comply with all privacy and security requirements. Contractor must provide all personal computers, printers and equipment to accomplish the demonstration throughout the Contract term.

### **E. Recalled Cases**

MDCH IG may determine that a case or a particular uncollectible debt should be handled by MDCH IG staff and may recall the case/debt for that reason. Should MDCH IG recall a case/debt, Contractor must immediately stop all activities on the case/debt identified by MDCH IG for recall and return the case/debt and all related information to MDCH IG within one business day of the recall request. Contractor must receive no payment, except for monies already recouped, for recalled cases.

### **F. Case Record Maintenance**

Contractor must maintain a case file for every improper payment that is identified, including documentation of subsequent recovery efforts. This file must include documentation of all processes followed by the Contractor including a copy of all correspondence, including demand letters, a telephone log for all conversations with the provider or other individuals or on behalf of the provider or other debtor, and all collection activities (including certified/registered mail receipts, extended repayment agreements, etc). The case file may be electronic, paper or a combination of both. For electronic files, the case file must be easily accessible and made available within 48 hours of request. At MDCH IG's request or no later than 15 days after Contract termination, Contractor must return to MDCH IG all case files stored in accordance with MDCH IG instructions. Once an improper payment is determined, all documentation will be kept in the case file. Contractor must not destroy any supporting documentation relating to the identification or recovery process.

### **G. Recovery Deposits**

Contractor issued demand letters must instruct debtors to claim adjust overpaid claims, if at all possible. Otherwise, gross adjustments will be pursued. If MDCH IG approves an alternate payment methodology, the Contractor must instruct debtors to forward refund checks to the MDCH Accounting Office. If the Contractor receives a refund check, Contractor must forward the check to the appropriate address. Before forwarding the check, Contractor must make copies of and otherwise document these payments. A copy must be included in the appropriate overpayment case file.

### **H. Support Federal Office of Inspector General or Other Audits**

Should the Federal Office of Inspector General (OIG), the Centers for Medicare & Medicaid Services (CMS), a CMS authorized contractor or MDCH IG choose to conduct an audit of the Contractor, the Contractor must provide workspace and produce all needed reports and case files within one business day of the request.



## **I. Reporting Requirements**

MDCH IG is required to report on the RAC Program including the effectiveness of the Contractor. Contractor must have a point of contact for this function and Contractor must assign a point of contact in their organization.

## **J. Public Relations & Outreach**

Education and outreach concerning the use of Contractor, including notification to providers of audit policies and procedures, is the responsibility of the Contractor. The Contractor must educate providers on their business, their purpose and their process. MDCH IG will approve all presentations and written information shared with the provider, beneficiary, and/or other debtor communities before use. If requested by MDCH IG, the Contractor's project manager for the Contract, at a minimum, must attend any provider group or debtor group meetings or congressional staff information sessions where the services provided by the recovery audit contractors are the focus.

## **K. Quality Assurance**

1. Contractor must complete a Statement of Auditing Standards No. 70 (SAS 70) Audit. Contractor must contract with an independent and certified public accounting (CPA) firm to perform the audit. The CPA firm must have experience in Medicaid operations and must have experience performing SAS 70 Type II audits. A final report from the CPA firm must be submitted to MDCH IG by the end of each award year. Any corrective action plan must be submitted to MDCH IG within 45 days of the issuance of the final report.
2. At MDCH IG discretion, MDCH IG may perform a Contractor performance evaluation. Advance notice may or may not be given. During the evaluation, MDCH IG reviewers will work from a prescribed audit protocol, review actual cases and issue a final report. Any finding from the review will require a corrective action plan.
3. At MDCH IG discretion, MDCH IG may contract with an independent contractor to perform an accuracy audit on Contractor's identifications. At a minimum, this audit would be performed annually.

## **Task 8 - Final Report**

The final report must include a synopsis of the entire Contract period. This includes identifying all amounts identified and demanded, all amounts collected and all amounts still outstanding at the end of the contract. It must include a brief listing of all identification methods or other new processes utilized and their success or failure.

Contractor should include any final thoughts on the program, as well as any advantages or disadvantages encountered. From a Contractor point of view, the final report should determine if the Contract was a success or a failure and provide support for either opinion. A final report must be delivered to the MDCH IG Contract Manager in electronic format, as one file in Portable Document Format (PDF).

Drafts of all documentation must be provided to MDCH IG approximately six weeks prior to final deliverable due dates unless otherwise agreed to. MDCH IG staff will review materials and provide comments back to the Contractor within three weeks, thereby allowing three additional weeks for the Contractor to make any necessary revisions. All data files and programs created under the Contract will be the sole property of MDCH IG and provided to MDCH IG upon request in the appropriate format. They will not be used for any other purpose other than fulfilling the terms of the Contract without the express permission of MDCH IG.

Contractor must provide the necessary personnel, materials, equipment, support, and supplies to accomplish the tasks shown below in the specified time. Contractor must complete the evaluation and report to MDCH IG its findings. All work done under the Contract must be performed under the general guidance of the MDCH IG Contract Manager subject to approval.

Written documents for this project must be delivered electronically by secure means to the MDCH IG Contract Manager via email, unless otherwise specified. At present, MDCH IG standard is Microsoft Word 2003 and Microsoft Excel 2003. This is subject to change, and the Contractor must be prepared to submit deliverables in any new MDCH IG standard.



### **1.030 Roles and Responsibilities**

#### **1.031 Contractor Staff, Roles, and Responsibilities**

The Contractor must identify staff that will be involved in the project; identifying by name individuals that are to be designated as Key Personnel. See below for minimum list of Key Personnel. Contractor must identify where staff will be physically located during Contract performance.

Key Personnel (all must be properly credentialed and not included on a federal or state sanctioned listing or database):

Chief Medical Director – one full time equivalent; consults with the other key personnel when necessary; reviews medical necessity determinations

RNs, Therapists, Healthcare Professionals – perform medical necessity reviews

Certified Coders – perform coding determinations

Identified Key Personnel:

Kevin McDonald, Accountable Executive and Project Director

Joleen Bond-Livingston, RAC Implementation Director

Dr. David Sand, Chief Medical Officer

Joseph Joy, Information Systems Director

Scott Pettigrew, Security/HIPAA Compliance

Rebekah Ocker, Recovery Audit Development Manager

Michael Hostetler, Data Analytics Director

Brandon Lewis, Director of Operations Fraud, Waste, and Abuse

Julia Baker, Audit Recovery Operations Director

Niki Love, Provider Communications Director

Carrie Casillas, Automated Review Coding Analyst

Lila Holland, Medical Review / Utilization Manager

Erwin Acuna, Pharmacy Audit Director

Gail Whitmore, Long Term Care Audit Director

Tenna Behm, Billing Audit Director

Contractor must provide an organizational chart including any part-time personnel.

### **1.040 Project Plan**

#### **1.041 Project Plan Management**

Contractor must submit a project management plan identifying methods, tools and processes proposed to oversee the project, address issues/changes as they may arise, and keep the appropriate parties apprised of progress. The **project plan** is due within four weeks of Contract award date.

#### **1.042 Reports**

**Progress reports, financial reports, and vulnerability reports** are due on a monthly basis. The **draft final report** is due within four weeks of Contract end date, and the **final report** is due within eight weeks of Contract end date.

### **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:



Deliverable	Due Date (from contract award date)	Acceptance Process and Criteria	Responsible State Staff to Sign-Off if applicable
Initial Meeting	2 weeks	RAC to coordinate with MDCH IG as to date, time, and method of initial meeting	MDCH IG Contract Manager
Project Plan	4 weeks	RAC is to develop a project plan, to be reviewed and approved by MDCH IG Contract Manager	MDCH IG Contract Manager
Monthly Conference Calls	Monthly	RAC to coordinate with MDCH IG as to dates and times of monthly conference calls. The RAC is to provide a toll-free conference number	MDCH IG Contract Manager
Monthly Progress Reports	Monthly	RAC is to develop a template for monthly progress reports, to be reviewed and approved by MDCH IG Contract Manager	MDCH IG Contract Manager
Financial Report	Monthly	RAC is to develop a template for a financial report, to be reviewed and approved by MDCH IG Contract Manager	MDCH IG Contract Manager
Vulnerability Report	Monthly	RAC is to develop a template for a vulnerability report, to be reviewed and approved by MDCH IG Contract Manager	MDCH IG Contract Manager
Training on RAC Coordination System	Within 15 days of the start of Task 2	RAC will provide training to the MDCH IG Contract Manager and any other designated MDCH staff per the MDCH IG Contract Manager	MDCH IG Contract Manager
Case File Transfers	Within 15 days after contract end	RAC is to develop a process for case file transfers, to be reviewed and approved by MDCH IG Contract Manager	MDCH IG Contract Manager
Final Report- Draft	Within 4 weeks of contract end date	RAC is to develop a template for a draft final report, to be reviewed and approved by MDCH IG Contract Manager. The draft final report must be approved prior to the RAC developing a final report.	MDCH IG Contract Manager
Final Report - Final	Within 8 weeks of contract end date	RAC is to develop a template for a final report to be reviewed and approved by MDCH IG Contract Manager	MDCH IG Contract Manager

**1.052 Final Acceptance**

Contractor must be able to perform/provide all services, deliverables, and requirements and continue to do so throughout the entirety of the contract.

**1.060 Proposal Pricing**

**1.061 Proposal Pricing**

For authorized Services and Price List, see Attachment A.

**1.062 Price Term**

Prices quoted are firm for the entire length of the Contract.

**1.063 Tax Excluded from Price**

(a) 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.

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

**1.064 Holdback**

If the Contractor fails to make potential fraud or quality of care referrals to the MDCH IG, the Contractor contingency rate will be reduced by one full percent for the remainder of the contract period.

If the Contractor fails to submit reports by their due dates or fails to update the Contractor Coordination System within a reasonable time period, the Contractor contingency rate will be reduced by one full percent for the remainder of the Contract period.

**1.070 Additional Requirements****1.071 Additional Terms and Conditions specific to this Contract**

From time to time in the RAC program, transitions from one Contractor to another Contractor may need to occur (e.g., when the outgoing Contractor cease work and the new incoming permanent Contractor begin work). It is in the best interest of all parties that these transitions occur smoothly.

The transition plan must include specific dates with regard to requests for medical records, written notification of an overpayment, any written correspondence with providers and phone communication with providers. The transition plan will be communicated to all affected parties (including providers) by MDCH IG within 60 days of its enactment.

Contractor must have written policies and procedures addressing the use of any protected health data (PHI) and information that falls under the Health Insurance Portability and Accountability Act (HIPAA) requirements. The policies and procedures must meet all applicable federal and State requirements including HIPAA requirements. These policies and procedures must include restricted access to the protected health data and information by the Contractor's employees. The Contractor must sign a HIPAA Business Associate Agreement as a part of the Contract.



## **Article 2, Terms and Conditions**

### **2.000 Contract Structure and Term**

#### **2.001 Contract Term**

The Contract is for a period of three years beginning March 12, 2012 through March 11, 2015. 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 two additional one year periods.

#### **2.003 Legal Effect**

Contractor must show acceptance of the Contract by signing two 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**

(a) 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**.

(b) 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 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 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 the Department of Technology, Management and Budget, DTMB-Procurement and Department of Community Health, Office of Inspector General (collectively, including all other relevant State of Michigan departments and agencies, the "State"). DTMB-Procurement is the sole point of contact in the State with regard to all procurement and contractual matters relating to the Contract. DTMB-Procurement **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 DTMB-Procurement for the Contract is:

Brandon Samuel, Buyer Specialist  
Procurement  
Department of Technology Management and Budget  
Mason Bldg., 2nd Floor  
PO Box 30026  
Lansing, MI 48909  
samuelb@michigan.gov  
517-241-1218

### **2.022 Contract Compliance Inspector**

After DTMB-Procurement receives the properly executed Contract, it is anticipated that the Director of DTMB-Procurement, in consultation with Department of Community Health, Office of Inspector General, 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 Procurement.** The CCI for the Contract is:



Laura Kwiecien  
MDCH Grants and Purchasing Division  
320 South Walnut  
Lansing, MI 48823  
KwiecienL@michigan.gov  
Phone: (517) 241-4878  
Fax: (517) 241-2252

### 2.023 Project Manager

The following individual will oversee the project:

Michele Warstler, Program Integrity Director  
Department of Community Health, Office of Inspector General  
PO Box 30479  
Lansing, MI 48909  
[warstler@michigan.gov](mailto:warstler@michigan.gov)  
517-373-3133  
517-241-9087

### 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:

- (a) 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").
- (b) No proposed Change may be performed until the proposed Change has been specified in a duly executed Contract Change Notice issued by the DTMB-Procurement.
- (c) 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**

(a) 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.

(b) 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 entity continues.

(c) 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 the 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 the RFP and Contract are to be released without prior written approval of the State and then only to persons designated.

### **2.032 Contract Distribution**

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

**2.033 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 Vendor 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**

(a) 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.

(b) 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**.



(c) 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.

(d) Payment is based on a contingency rate fee applied to overpayment dollars that are recovered plus either a contingency rate fee or flat fee or some other mechanism, which will be agreed upon prior to contract award, on underpayments identified. In no instance shall the total payment amount to the RAC be greater than the total overpayment dollars recovered. All invoices should reflect actual work done. Specific details of invoices and payments will be agreed upon between the CCI and the Contractor. The specific payment schedule for any Contract(s) entered into, as the State and the Contractor(s) must mutually agree upon. The schedule must show payment amount and must reflect actual work done by the payment dates, less any penalty cost charges accrued by those dates. As a general policy, statements must be forwarded to the designated representative by the 15th day of the following month.

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 CCI, after negotiation. Contractor must show verification of measurable progress at the time of requesting progress payments.

#### **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 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**

(a) The Contractor must provide the CCI with the names of the Key Personnel.

(b) 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.

(c) 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.

(d) 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.

(e) The Contractor must notify the Contract Compliance Inspector 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 anticipated 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 the DTMB-Procurement 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 / Not Applicable**

#### **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 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**

- (a) 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 invoices. If a balance remains after four 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.
- (b) In addition to other available remedies, the difference between the payment received and the correct payment amount is greater than 10%, 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:

- (a) 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.
- (b) 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.
- (c) 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.
- (d) 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.
- (e) The Contract signatory has the power and authority, including any necessary corporate authorizations, necessary to enter into the Contract, on behalf of Contractor.
- (f) It is qualified and registered to transact business in all locations where required.
- (g) Neither the Contractor nor any affiliates, nor any employee of either, has, 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 this Agreement. Contractor must notify the State about the nature of the conflict or appearance of impropriety within two days of learning about it.
- (h) 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 DTMB-Procurement.



**2.122 Warranty of Merchantability – Deleted / Not Applicable**

**2.123 Warranty of Fitness for a Particular Purpose – Deleted / Not Applicable**

**2.124 Warranty of Title – Deleted / Not Applicable**

**2.125 Equipment Warranty – Deleted / Not Applicable**

**2.126 Equipment to be New – Deleted / Not Applicable**

**2.127 Prohibited Products – Deleted / Not Applicable**

**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](http://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: \$1,000,000.00 each occurrence and \$1,000,000.00 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-Procurement, 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 Procurement, 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 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.

(a) 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.

(b) 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.

(c) If Contractor does not deliver a Notice of Election relating to any claim of which it is notified by the State as provided above, the State 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**

(a) 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

(b) 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% more than the prices for the Service/Deliverables provided under the Contract.

(c) 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.

(d) 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 convenience must cease on the effective date of the termination.

### **2.154 Termination for Non-Appropriation**

(a) 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).

(b) 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.

(c) 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% 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**

(a) 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.

(b) 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.

(c) 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 – Deleted**

### **2.161 Termination by Contractor – Deleted / Not Applicable**

### **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 30 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 vendors, 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 vendors. 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 non-proprietary 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:

- (a) Reconciling all accounts between the State and the Contractor;
- (b) 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**

(a) 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 Procurement, DTMB, or designee, for the purpose of attempting to resolve the dispute without the need for formal legal proceedings, as follows:

- (i) 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.

(ii) During the course of negotiations, all reasonable requests made by one 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.

(iii) 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.

(iv) Following the completion of this process within 60 calendar days, the Director of Procurement, 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.

(b) 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**.

(c) 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 / Not Applicable**

#### **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**

- (a) 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.
- (b) 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:



- (i) the ability of Contractor (or a Subcontractor) to continue to perform the Contract according to its terms and conditions, or
- (ii) 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:
  - (a) 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
  - (b) 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.
- (c) Contractor must make the following notifications in writing:
  - (1) 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-Procurement.
  - (2) Contractor must also notify DTMB Procurement 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.
  - (3) Contractor must also notify DTMB Procurement 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:

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

## **2.240 Performance**

### **2.241 Time of Performance**

- (a) 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.
- (b) 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.
- (c) 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 / Not Applicable**

## **2.243 Liquidated Damages – Deleted / Not Applicable**

### **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.

(a) 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.



(b) 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.

(c) 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**

(a) 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.

(b) 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**

(a) 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.

(b) The State's obligation to comply with any State Review Period is conditioned on the timely delivery of Deliverables/Services being reviewed.

(c) 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**.



- (d) 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.
- (e) If, after three (3) opportunities (the original and two 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.
- (f) 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**

(a) 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.

(b) 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**

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 – Deleted / Not Applicable**

#### **2.282 State Employee Purchases – Deleted / Not Applicable**

### **2.290 Environmental Provision**

#### **2.291 Environmental Provision**

Hazardous Materials:

For the purposes of this Section, "Hazardous Materials" is a generic term used to describe asbestos, ACBMs, PCBs, petroleum products, construction materials including paint thinners, solvents, gasoline, oil, and any other material the manufacture, use, treatment, storage, transportation, or disposal of which is regulated by the federal, State, or local laws governing the protection of the public health, natural resources, or the environment. This includes, but is not limited to, materials such as batteries and circuit packs, and other materials that are regulated as (1) "Hazardous Materials" under the Hazardous Materials Transportation Act, (2) "chemical hazards" under the Occupational Safety and Health Administration standards, (3) "chemical substances or mixtures" under the Toxic Substances Control Act, (4) "pesticides" under the Federal Insecticide Fungicide and Rodenticide Act, and (5) "hazardous wastes" as defined or listed under the Resource Conservation and Recovery Act.

(a) The Contractor must use, handle, store, dispose of, process, transport and transfer any material considered a Hazardous Material according to all federal, State, and local laws. The State must provide a safe and suitable environment for performance of Contractor's Work. Before the commencement of Work, the State must advise the Contractor of the presence at the work site of any Hazardous Material to the extent that the State is aware of the Hazardous Material. If the Contractor encounters material reasonably believed to be a Hazardous Material and which may present a substantial danger, the Contractor must immediately stop all affected Work, notify the State in writing about the conditions encountered, and take appropriate health and safety precautions.



(b) Upon receipt of a written notice, the State will investigate the conditions. If (a) the material is a Hazardous Material that may present a substantial danger, and (b) the Hazardous Material was not brought to the site by the Contractor, or does not result in whole or in part from any violation by the Contractor of any laws covering the use, handling, storage, disposal of, processing, transport and transfer of Hazardous Materials, the State must order a suspension of Work in writing. The State must proceed to have the Hazardous Material removed or rendered harmless. In the alternative, the State must terminate the affected Work for the State's convenience.

(c) Once the Hazardous Material has been removed or rendered harmless by the State, the Contractor must resume Work as directed in writing by the State. Any determination by the Michigan Department of Community Health or the Michigan Department of Environmental Quality that the Hazardous Material has either been removed or rendered harmless is binding upon the State and Contractor for the purposes of resuming the Work. If any incident with Hazardous Material results in delay not reasonable anticipatable under the circumstances and which is attributable to the State, the applicable SLAs for the affected Work will not be counted in **Section 2.242** for a time as mutually agreed by the parties.

(d) If the Hazardous Material was brought to the site by the Contractor, or results in whole or in part from any violation by the Contractor of any laws covering the use, handling, storage, disposal of, processing, transport and transfer of Hazardous Material, or from any other act or omission within the control of the Contractor, the Contractor must bear its proportionate share of the delay and costs involved in cleaning up the site and removing and rendering harmless the Hazardous Material according to Applicable Laws to the condition approved by applicable regulatory agency(ies).

Michigan has a Consumer Products Rule pertaining to labeling of certain products containing volatile organic compounds. For specific details visit [http://www.michigan.gov/deq/0,1607,7-135-3310\\_4108-173523--,00.html](http://www.michigan.gov/deq/0,1607,7-135-3310_4108-173523--,00.html)

#### Refrigeration and Air Conditioning:

The Contractor must comply with the applicable requirements of Sections 608 and 609 of the Clean Air Act (42 U.S.C. 7671g and 7671h) as each or both apply to the Contract.

#### Environmental Performance:

Waste Reduction Program: Contractor must establish a program to promote cost-effective waste reduction in all operations and facilities covered by the Contract. The Contractor's programs must comply with applicable Federal, State, and local requirements, specifically including Section 6002 of the Resource Conservation and Recovery Act (42 U.S.C. 6962, et seq.).

### **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, Pricing**

<b>Number</b>	<b>Services</b>	<b>Contingency Fee Rate</b>	<b>Estimated Amount of Collections/Payments</b>	<b>Estimated Amount</b>
A	B	C	D	E
				(C x D)
1	Overpayments Collected	9.40%	\$10,650,000	\$1,001,100
2	Discounted Overpayments - Self-Reported by Provider	7.00%	\$2,100,000	\$147,000
3	Underpayments	7.50%	\$1,000,000	\$75,000
4	Underpayments - Flat Contingency Fee	N/A	N/A	N/A
	One Year Total			\$1,223,100
	Three Year Total			\$3,669,300