

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

June 22, 2009

**CHANGE NOTICE NO. 2**  
**OF**  
**CONTRACT NO. 071B6200359**  
**between**  
**THE STATE OF MICHIGAN**  
**and**

NAME & ADDRESS OF VENDOR		TELEPHONE (866) 763-7211	
<b>First Advantage Occupational Health Services</b> <b>100 Carillon Parkway</b> <b>St. Petersburg, FL 33716</b>  bbroten@fadv.com		<b>Bill Broten</b>	
		BUYER/CA (517) 373-1080 <b>Melissa Castro, CPPB</b>	
Contract Compliance Inspector: Ken Swisher <b>Employee Drug &amp; Alcohol Testing Services – Department of Management and Budget</b>			
CONTRACT PERIOD:		From: <b>August 1, 2006</b> To: <b>July 30, 2009</b>	
TERMS	<b>N/A</b>	SHIPMENT	<b>N/A</b>
F.O.B.	<b>N/A</b>	SHIPPED FROM	<b>N/A</b>
MINIMUM DELIVERY REQUIREMENTS		<b>N/A</b>	

**NATURE OF CHANGE(S):**

Effective immediately, this Contract is hereby **INCREASED** by \$50,000.00.

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

**AUTHORITY/REASON:**

Per agency request (PRF dated 5/29/09), Ad Board approval on 7/21/09, and DMB/Purchasing Operations' approval.

**REVISED CURRENT AUTHORIZED SPEND LIMIT: \$1,349,100.00**

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

June 17, 2009

**CHANGE NOTICE NO. 1  
 OF  
 CONTRACT NO. 071B6200359  
 between  
 THE STATE OF MICHIGAN  
 and**

NAME & ADDRESS OF VENDOR  <b>First Advantage Occupational Health Services 100 Carillon Parkway St. Petersburg, FL 33716</b>		TELEPHONE (866) 763-7211 <b>Bill Broten</b>
		BUYER/CA (517) 373-1080 <b>Melissa Castro, CPPB</b>
Contract Compliance Inspector: Ken Swisher <b>Employee Drug &amp; Alcohol Testing Services – Department of Management and Budget</b>		
CONTRACT PERIOD: From: <b>August 1, 2006</b> To: <b>July 30, 2009</b>		
TERMS <b>N/A</b>	SHIPMENT <b>N/A</b>	
F.O.B. <b>N/A</b>	SHIPPED FROM <b>N/A</b>	
MINIMUM DELIVERY REQUIREMENTS <b>N/A</b>		

**NATURE OF CHANGE(S):**

Effective immediately, this Contract is hereby **INCREASED** by \$25,000.00.

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

**AUTHORITY/REASON:**

Per agency request and DMB/Purchasing Operations' approval.

**REVISED CURRENT AUTHORIZED SPEND LIMIT:                   \$1,299,100.00**

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

July 19, 2006

NOTICE  
OF  
CONTRACT NO. 071B6200359  
between  
THE STATE OF MICHIGAN  
and

NAME & ADDRESS OF VENDOR		TELEPHONE (866) 763-7211	
First Advantage Occupational Health Services 100 Carillon Parkway St. Petersburg, FL 33716  bbroten@fadv.com		Bill Broten	
		BUYER/CA (517) 373-1080 Melissa Castro, CPPB	
Contract Compliance Inspector: Ken Swisher Employee Drug & Alcohol Testing Services – Department of Management and Budget			
CONTRACT PERIOD: From: August 1, 2006 To: July 30, 2009			
TERMS		SHIPMENT	
N/A		N/A	
F.O.B.		SHIPPED FROM	
N/A		N/A	
MINIMUM DELIVERY REQUIREMENTS			
N/A			

Estimated Contract Value: \$1,274,100.00

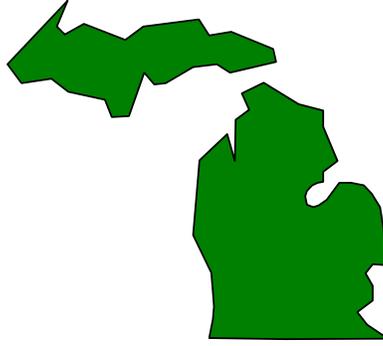
**STATE OF MICHIGAN**  
**DEPARTMENT OF MANAGEMENT AND BUDGET**  
**PURCHASING OPERATIONS**  
**P.O. BOX 30026, LANSING, MI 48909**  
 OR  
**530 W. ALLEGAN, LANSING, MI 48933**

**CONTRACT NO. 071B6200359**  
**between**  
**THE STATE OF MICHIGAN**  
**and**

NAME & ADDRESS OF VENDOR  <p style="text-align: center;"><b>First Advantage Occupational Health Services</b>  <b>100 Carillon Parkway</b>  <b>St. Petersburg, FL 33716</b></p> <p style="text-align: right;">bbroten@fadv.com</p>	TELEPHONE (866) 763-7211 <b>Bill Broten</b>  BUYER/CA (517) 373-1080 <b>Melissa Castro, CPPB</b>
Contract Compliance Inspector: Ken Swisher <p style="text-align: center;"><b>Employee Drug &amp; Alcohol Testing Services – Department of Management and Budget</b></p>	
CONTRACT PERIOD: From: <b>August 1, 2006</b> To: <b>July 30, 2009</b>	
TERMS <p style="text-align: center;"><b>N/A</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>
MINIMUM DELIVERY REQUIREMENTS <p style="text-align: center;"><b>N/A</b></p>	
MISCELLANEOUS INFORMATION:          <p><b>Estimated Contract Value:        \$1,274,100.00</b></p>	

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<p><b>FOR THE VENDOR:</b></p> <p><b>First Advantage Occupational Health Services</b>          _____          Firm Name</p> <p>_____          Authorized Agent Signature</p> <p>_____          Authorized Agent (Print or Type)</p> <p>_____          Date</p>	<p><b>FOR THE STATE:</b></p> <p>_____          Signature  <b>Melissa G. Castro, CPPB, Buyer Manager</b>          _____          Name  <b>Services Division, Purchasing Operations</b>          _____          Title</p> <p>_____          Date</p>
---	--



**STATE OF MICHIGAN  
Department of Management and Budget  
Purchasing Operations**

Employee Drug and Alcohol Third Party Administrator Services

Buyer Name: Melissa Castro  
Telephone Number: 517-373-1080  
E-Mail Address: [castrom@michigan.gov](mailto:castrom@michigan.gov)



**Table of Contents**

Article 1 – Statement of Work (SOW) ..... 7

    1.0 Project Identification ..... 7

        1.001 PROJECT REQUEST ..... 7

        1.002 BACKGROUND ..... 7

    1.1 Scope of Work and Deliverables ..... 7

        1.101 IN SCOPE ..... 7

        1.102 OUT OF SCOPE ..... 8

        1.103 ENVIRONMENT ..... 8

        1.104 WORK AND DELIVERABLE ..... 8

    1.2 Roles and Responsibilities ..... 26

        1.201 CONTRACTOR STAFF, ROLES, AND RESPONSIBILITIES ..... 26

        1.202 STATE STAFF, ROLES, AND RESPONSIBILITIES ..... 26

        1.203 Reserved ..... 26

    1.3 Project Plan ..... 26

        1.301 PROJECT PLAN MANAGEMENT ..... 26

        1.302 REPORTS ..... 27

    1.4 Project Management ..... 27

        1.401 ISSUE MANAGEMENT ..... 27

        1.402 RESERVED ..... 29

        1.403 CHANGE MANAGEMENT ..... 29

    1.5 Acceptance ..... 29

        1.501 CRITERIA ..... 29

        1.502 FINAL ACCEPTANCE ..... 29

    1.6 Compensation and Payment ..... 29

        1.601 COMPENSATION AND PAYMENT ..... 29

    1.7 Additional Terms and Conditions Specific to this SOW ..... 30

        1.701 ADDITIONAL TERMS AND CONDITIONS ..... 30

        Article 1, Attachment A ..... 32

        Article 1, Attachment B ..... 33

        Article 1, Attachment C ..... 34

Article 2 – General Terms and Conditions ..... 36

    2.010 Contract Structure and Administration ..... 37

        2.011 Definitions ..... 37

        2.012 Attachments and Exhibits ..... 37

        2.013 Statements of Work ..... 37

        2.014 Issuing Office ..... 38

        2.015 Contract Compliance Inspector ..... 38

    2.020 Contract Objectives/Scope/Background ..... 39

        2.021 Background ..... 39

        2.022 Purpose ..... 39

        2.023 Objectives and Scope ..... 39

        2.024 Interpretation ..... 39

        2.025 Form, Function and Utility ..... 39

    2.030 Legal Effect and Term ..... 39

        2.031 Legal Effect ..... 39

        2.032 Contract Term ..... 39

    2.040 Contractor Personnel ..... 40

        2.041 Contractor Personnel ..... 40

        2.042 Contractor Identification ..... 41

        2.043 Cooperation with Third Parties ..... 41

        2.044 Subcontracting by Contractor ..... 42

        2.045 Contractor Responsibility for Personnel ..... 42

    2.050 State Standards ..... 42

        2.051 Existing Technology Standards ..... 42

        2.052 Reserved ..... 42

        2.053 Adherence to Portal Technology Tools ..... 42

        2.054 Acceptable Use Policy ..... 43



2.060 Deliverables ..... 43

    2.061 Ordering ..... 43

    2.062 Reserved ..... 43

    2.063 Reserved ..... 43

    2.064 Reserved ..... 43

2.070 Performance ..... 43

    2.071 Performance, In General ..... 43

    2.072 Time of Performance ..... 43

    2.073 Reserved ..... 44

    2.074 Bankruptcy ..... 44

    2.075 Reserved ..... 44

2.080 Delivery and Acceptance of Deliverables ..... 45

    2.081 Delivery Responsibilities ..... 45

    2.082 Delivery of Deliverables ..... 45

    2.083 Testing ..... 46

    2.084 Approval of Deliverables, In General ..... 46

    2.085 Process For Approval of Written Deliverables ..... 47

    2.086 Process for Approval of Services ..... 47

    2.087 Process for Approval of Physical Deliverables ..... 47

    2.088 Final Acceptance ..... 48

2.080 Reserved ..... 48

2.090 Financial ..... 48

    2.091 Pricing ..... 48

    2.092 Invoicing and Payment Procedures and Terms ..... 48

    2.093 State Funding Obligation ..... 49

    2.094 Reserved ..... 49

    2.095 Electronic Payment Availability ..... 49

2.100 Contract Management ..... 49

    2.101 Contract Management Responsibility ..... 49

    2.102 Problem and Contract Management Procedures ..... 50

    2.104 System Changes ..... 50

    2.105 Reserved ..... 50

    2.106 Change Requests ..... 50

2.110 Records and Inspections ..... 52

    2.111 Records and Inspections ..... 52

    2.112 Errors ..... 52

2.120 State Responsibilities ..... 52

    2.121 State Performance Obligations ..... 52

2.130 Security ..... 53

    2.131 Background Checks ..... 53

2.140 Reserved ..... 53

2.150 Confidentiality ..... 53

    2.151 Freedom of Information ..... 53

    2.152 Confidentiality ..... 53

    2.153 Protection of Confidential Information ..... 53

    2.154 Exclusions ..... 54

    2.155 No Implied Rights ..... 54

    2.156 Remedies ..... 54

    2.157 Security Breach Notification ..... 54

    2.158 Survival ..... 54

    2.159 Destruction of Confidential Information ..... 55

2.160 Reserved ..... 55

2.170 Warranties And Representations ..... 55

    2.171 Warranties and Representations ..... 55

    2.176 Consequences For Breach ..... 56

2.180 Insurance ..... 56

    2.181 Liability Insurance ..... 56



2.190 Indemnification..... 58

    2.191 Indemnification ..... 58

    2.192 Continuation of Indemnification Obligations ..... 59

    2.193 Indemnification Procedures ..... 59

2.200 Limits of Liability and Excusable Failure..... 60

    2.201 Limits of Liability ..... 60

    2.202 Excusable Failure..... 60

    2.203 Disaster Recovery..... 61

2.210 Termination/Cancellation by the State..... 61

    2.211 Termination for Cause..... 61

    2.212 Termination for Convenience..... 62

    2.213 Non-Appropriation ..... 62

    2.214 Criminal Conviction ..... 62

    2.216 Rights and Obligations Upon Termination ..... 63

    2.217 Reservation of Rights..... 63

    2.218 Contractor Transition Responsibilities ..... 63

    2.219 State Transition Responsibilities ..... 64

2.220 Termination by Contractor ..... 64

    2.221 Termination by Contractor ..... 64

2.230 Stop Work ..... 64

    2.231 Stop Work Orders ..... 64

    2.232 Cancellation or Expiration of Stop Work Order..... 65

    2.233 Allowance of Contractor Costs..... 65

2.240 Reserved..... 65

2.250 Dispute Resolution..... 65

    2.251 In General ..... 65

    2.252 Informal Dispute Resolution..... 65

    2.253 Injunctive Relief..... 66

    2.254 Continued Performance ..... 66

2.260 Federal and State Contract Requirements ..... 66

    2.261 Nondiscrimination..... 66

    2.262 Unfair Labor Practices..... 66

    2.263 Workplace Safety and Discriminatory Harassment ..... 66

2.270 Litigation..... 67

    2.271 Disclosure of Litigation..... 67

    2.272 Governing Law ..... 67

    2.273 Compliance with Laws ..... 67

    2.274 Jurisdiction ..... 68

2.280 Environmental Provision ..... 68

    2.281 Reserved..... 68

2.290 General ..... 68

    2.291 Amendments..... 68

    2.292 Assignment ..... 68

    2.293 Entire Contract; Order of Precedence..... 68

    2.294 Headings ..... 68

    2.295 Relationship of the Parties (Independent Contractor Relationship)..... 69

    2.296 Notices ..... 69

    2.297 Media Releases and Contract Distribution..... 69

    2.298 Reformation and Severability ..... 69

    2.299 Consents and Approvals ..... 70

    2.300 No Waiver of Default ..... 70

    2.301 Survival ..... 70

    2.302 Covenant of Good Faith..... 70

    2.303 Permits ..... 70

    2.304 Website Incorporation ..... 70

    2.305 Taxes..... 70

    2.306 Reserved..... 70

    2.307 Call Center Disclosure ..... 70

    2.308 Future Bidding Preclusion ..... 71



2.310 Reserved..... 71  
2.320 Extended Purchasing..... 71  
    2.321 MiDEAL ..... 71  
2.330 Possible Bond Requirements ..... 71

**ATTACHMENTS:**

- EXHIBIT A Definition of Terms
- EXHIBIT B Estimates (Employees by County)
- EXHIBIT C Estimates (Employees by Department)
- EXHIBIT E Links



## **Article 1 – Statement of Work (SOW)**

### 1.0 Project Identification

#### **1.001 PROJECT REQUEST**

The purpose of this Contract is to provide administrative services for a full range of drug and alcohol testing programs for the State of Michigan. The Office of the State Employer-Employee Health Management Division (OSE/EHM) requires a Third Party Administration (TPA) firm to provide the administrative functions of a full service drug and alcohol testing program for State employees. "Full range" shall be construed to mean all elements and requirements of the federal U.S. DOT's Omnibus Transportation Employee Testing Act of 1991 (OTETA), DHHS guidelines, all applicable federal and state laws, the State of Michigan Policies requiring DOT and NON-DOT employee drug and alcohol testing, and any Collective Bargaining Agreements.

This Contract is a per unit price contract. The price will be per test, per training session, per service provided, etc., on an as needed, as-requested basis.

#### **1.002 BACKGROUND**

This program must meet all federal requirements pertaining to drug and alcohol testing under the Department of Health and Human Services (DHHS), and the Department of Transportation's (DOT) FHWA, FAA, and USCG Regulations. The Drug and Alcohol Testing Program must also be conducted according to the State of Michigan's Policy and Procedures pertaining to it's CDL Driver, Civil Service Rule 2-7 (NON-DOT), and applicable Collective Bargaining Agreements (Links A-F, Exhibit E). The testing programs must include pre-employment and pre-appointment\* drug testing, monthly Random Drug and Alcohol Testing for subject employees (Safety Sensitive or Test Designated Positions), Reasonable Suspicion, Return to Duty/Follow-up and Post Accident testing for all appropriately designated individuals. Quality Assurance (Blind Sample) Testing must also be provided on request.

The following information is provided relating to the demographics of the State's programs (Exhibits B&C). There are 10 departments and approximately 1,300 employees occupying "Safety Sensitive" positions in the US DOT Program. The Annual Random Test completion rate for alcohol tests is 10 percent. For drugs the Annual Random Test completion rate is 50 percent.

There are 20 departments and an estimated 55,000 employees subject to testing under the State's NON-DOT Testing Program, pursuant to Civil Service Rule 2-7 and selected bargaining unit agreements. This program is based on DHHS guidelines for drug testing and DOT guidelines for alcohol testing. Of this number, there are approximately 19,000 employees occupying test-designated positions (TDP) that are subject to Random and Post-Accident Drug and/or Alcohol Testing. The Annual Random Test completion rate for both alcohol and drugs is 10 percent. Virtually all employees are subject to Reasonable Suspicion testing. The State of Michigan also conducts Pre-appointment\* drug testing of selected employees when they are promoted into a Test Designated Position (TDP). The State of Michigan conducts an average of 5,000 Pre-employment drug tests annually. The actual number of Pre-employment tests conducted in any given year is unknown and no minimum number of tests is guaranteed.

\*Pre-appointment testing: a test for drugs only, which is conducted when a current employee in a non-test designated position has been conditionally selected for a test-designated position.

### 1.1 Scope of Work and Deliverables

#### **1.101 IN SCOPE**

1. Administration and Management of all State of Michigan drug and/or alcohol testing programs and related components, in concert with the State's Drug and Alcohol Testing Program Administrator/Coordinator.
2. Development and Maintenance of a Statewide Clinic/Provider Network
3. Breath Alcohol testing, Split-Specimen Urine Drug Collection, Testing and Shipping Services
4. Assignment of a dedicated Account Representative



5. Record Keeping Services
6. Random Testing Services
7. Certified Laboratory Testing and Result Reporting Services
8. Medical Review Officer (MRO) and Substance Abuse Professional (SAP) referral Services
9. Training, Training Materials, and/or Information
10. Litigation support and Expert Witness testimony as requested
11. Research and Information regarding federal regulations: changes, additions, etc., applicable to drug and alcohol testing program

Additionally, while it is not anticipated that supervisory or employee training sessions will be conducted by the Contractor, there is a possibility that some training may be requested by the State to be accomplished by the Contractor.

Supervisor Training Sessions: It is possible that the State may request the Contractor to conduct 10-15 sessions statewide (20-30 individuals per session).

Employee Training Sessions: It is possible that the State may request the Contractor to conduct 10-15 sessions statewide (40-60 individuals per session).

#### 1.102 OUT OF SCOPE

Services that are not related to the administration, documentation, record keeping, collection and lab services, or reporting of drug and alcohol related matters are considered outside the scope.

#### 1.103 ENVIRONMENT

The Contractor will be responsible for:

- providing secured access to results 24 hours a day, seven days a week, by either voice response, fax on demand, automated fax, direct download or via the Internet
- providing Internet capability to identify Out-of-State clinic sites
- ensuring that an interactive system is compatible with the State of Michigan computer system and includes Microsoft Office

#### 1.104 WORK AND DELIVERABLE

Contractor shall provide Deliverables/Services and staff, and otherwise do all things necessary for or incidental to the performance of work, as set forth below. It is expected that the services will be provided in a timely manner:

1. Administration and Management of all State of Michigan drug and/or alcohol testing programs and related components, in concert with the State's Drug and Alcohol Testing Program Administrator/Coordinator

Provide drug and/or alcohol testing program administration, informational materials, testing forms, (Pre-printed DOT/NON-DOT Chain of Custody and breath alcohol forms), sample procedures, and any supplies upon request.

**Contractor Response to Task:**

First Advantage is able to comply. First Advantage currently manages and administers all State of Michigan drug and alcohol testing programs as well as related components, in concert with the State's Drug and Alcohol Testing Program Administrator/Coordinator. We have been providing Drug Screening/MRO Services for over 15 years. Among the top national service providers, First Advantage is one of the only ones that employ full-time physicians to provide the Medical Review Officer Service, and we are one of only a handful of providers that offer everything necessary to comply with DOT drug and alcohol testing regulations.

First Advantage offers a full suite of Third-Party Administration services, expert Medical Review Officer (MRO) services, and cutting-edge technology to help the State of Michigan reduce overall cost and the administrative burden typically associated with DOT-regulated and unregulated substance abuse testing. Thus we agree to continue to manage the entire screening process: from laboratory selection, forms distribution and tracking, to laboratory monitoring and problem resolution.

**2. Development of a Statewide Clinic/Provider Network**

- a) The Contractor is to guarantee a sufficient number of clinics/providers capable of providing both breath alcohol testing and split-specimen urine drug collection. In each Michigan County this will be dependent upon county size and state employee population. These sites must be within 25 miles or a reasonable distance from state facilities as determined by the State.

**Contractor Response to Task:**

First Advantage currently manages a complete network of collection sites for State of Michigan Drug and Alcohol testing. Identifying acceptable collection sites for our customers is a relatively easy task. We maintain a database of over 18,000 collection sites that we partner with for screening services. These sites include laboratory owned Patient Service Centers that offer specimen collection as well as healthcare facilities (occupational health clinics, group practices, hospitals, physician offices, etc.) and small independent specimen collection providers. First Advantage has national contracts with the two largest occupational healthcare providers (Concentra [250 locations] and U.S. Healthworks [150 locations]). Occupational healthcare providers are usually preferred because they offer walk-in service and also provide physical examinations and work-related injury care. Additionally, there are over 3,000 clinics in our preferred provider network. In addition to identifying "fixed" sites (sites located near customer facilities), we also identify sites for one-time use (post-accident and remote job applicant tests). Furthermore, First Advantage can locate an alternative site for collection of specimens at any time should the State of Michigan become unsatisfied with the service of a current location.

- b) The Contractor must develop, maintain, update and distribute on a quarterly basis or as necessary, a statewide, State of Michigan clinic/provider network listing that all departments can reference in scheduling appointments and services. The list should include counties and be sorted alphabetically by city.

**Contractor Response to Task:**

First Advantage is able to comply. First Advantage will continue to update and distribute this list at least quarterly.

- c) It is the State's intent that this clinic listing can be downloaded electronically to the drug and alcohol departmental analyst on a quarterly basis.

**Contractor Response to Task:**

First Advantage is able to comply. The State of Michigan clinic listing will be available for download via the First Advantage web retrieval system. This system allows clients to retrieve and review results 24/7/365 from any computer with Internet capabilities. There are security levels built into the system starting with an individual login and password for each user that defines the user's rights to view various reports and or other information. Through this technology, First Advantage will also electronically transmit the updated clinic listing to the State of Michigan drug and alcohol department each quarter.

- d) It is the sole responsibility of the Contractor to enter into an agreement for services with each clinic/provider listed. This contract agreement will establish testing responsibilities, billing and payment procedures, handling, packaging, and shipping of specimens protocol, and any other provider responsibilities such as laboratory interaction, and properly forwarding reports for record keeping purposes. Payment to clinic/providers by the Contractor is expected within 30-35 days of receipt of invoice.

**Contractor Response to Task:**

First Advantage will comply. First Advantage requires that each clinic has written procedures concerning sample accession, chain of custody quality control and result certification, as well as that they follow the guidelines prescribed by DHHS and/or DOT. Services will be rendered as specified in the DOT Code of Federal Regulations Part 40(CFR Part 40).

- e) The State of Michigan reserves the right to request the vendor to add or remove a clinic(s) from the statewide clinic list.

**Contractor Response to Task:**

First Advantage will comply. With over 18,000 collection sites and over 3,000 preferred provider sites in the First Advantage network, we can locate alternative sites for collection of specimens at any time upon request by the State of Michigan.

- f) The Contractor shall have the capabilities of establishing out-of state/country testing providers that can handle any employment related drug and/or alcohol testing for the State of Michigan, through the Contractor's associated laboratory at no additional charge. It is expected that clinic locations for out of state/country testing be provided within 24-48 hours of receipt.

**Contractor Response to Task:**

First Advantage will comply. For an additional charge, First Advantage offers a scheduling service called ScheduleDirect for substance abuse testing services. ScheduleDirect personnel coordinate with the applicant to find the easiest and most convenient locations and times for drug tests. Using the applicant's zip code to find collection sites that are easily accessible, ScheduleDirect personnel ensure appointments are confirmed with the collection sites and then provide the applicant with the site address, contact, phone number, appointment time, and instructions of what to bring to the appointment (CCF, physical exam form, photo ID, etc.). HR personnel need only provide the applicant with ScheduleDirect's toll-free number to call to make their screening arrangements, and First Advantage takes care of the rest, including providing necessary forms to the donor or to the medical facility/collection site. ScheduleDirect services encompass the entire nation and make testing for a remote applicant a seamless experience.

- g) It is the responsibility of the Contractor to interact with and resolve any, or all clinics/providers concerning problems in servicing the State of Michigan's drug and alcohol testing programs.

**Contractor Response to Task:**

First Advantage will comply. First Advantage agrees to manage the entire screening process from laboratory monitoring to problem resolution.

- h) The Contractor's provider network shall guarantee 7 day, 24 hour drug and alcohol testing services within each county. This requirement will vary depending on state employee populations, types of state facilities, hours of operation, and services being provided in a given county.

**Contractor Response to Task:**

First Advantage will comply. First Advantage can provide both onsite collection as well as collection sites which are available on a 24 hour basis. We have staff on call 24/7 to handle after hour collection and testing due to post accident or reasonable cause testing.

**3. Breath Alcohol Testing, Split Specimen Urine Drug, Testing and Shipping Services**

- a) The Contractor shall be able to provide on-site Breath Alcohol Testing, and Split Specimen Urine Drug Collection services for 24 hour department operations as requested by the State Administrator, Coordinator, or department DATC/DER.

**Contractor Response to Task:**

First Advantage will comply. First Advantage can provide both onsite collection as well as collection sites which are available on a 24 hour basis for both Breath Alcohol Testing and Split Specimen Urine Drug collection services.

The State Administrator, Coordinator or department DATC/DER would simply contact First Advantage through a 1-800 number to request an on-site test. For post accident testing, the goal is to accomplish the post accident drug and alcohol test as soon as practical following an accident, including the 2 hour limit imposed by DOT regulations for a post accident alcohol test. However, an alcohol test can be performed up to 8 hours following the accident and drug tests can be performed up to 32 hours after the accident.

- b) The Contractor and/or their associated laboratory are required to provide all test kits, supplies and necessary testing forms. It is expected that forms will be delivered within 5-10 days of receipt of the order. Orders should be confirmed upon receipt with tracking numbers.

**Contractor Response to Task:**

First Advantage will comply. First Advantage will ensure that each collection site has the necessary collection supplies (collection kit, alcohol testing equipment and forms, etc.). Pre-printed custody and control forms (CCFs) will be pre-prepared and available during collection. If additional forms are required, First Advantage can make them available through expedited shipping that can be confirmed with a tracking number.

- c) The Contractor shall provide to each clinic/provider, and the State, a procedures-responsibilities protocol that will ensure testing efficiencies aimed at minimizing difficulties or problems for the departments and employee/applicants.

**Contractor Response to Task:**

First Advantage will comply. All clinics/providers used by First Advantage have written procedures concerning sample accession, chain of custody quality control, and result certification, and they follow the guidelines prescribed by DHHS and/or DOT. Our laboratory partners have been certified by the Substance Abuse and Mental Health Services Administration (SAMHSA) to meet governmental requirements and First Advantage's own high-quality standards. We manage the entire process: from laboratory selection, forms distribution and tracking, to laboratory monitoring and problem resolution.

- d) The Contractor shall provide shipping and handling of all specimen collections to the laboratory. It is the State's intent there be no more than a 48-72 hour turnaround time on the reporting of results to departments.

**Contractor Response to Task:**

First Advantage will comply. We will arrange for courier services to deliver applicant specimens to the testing laboratory. There are no additional costs for these services.

First Advantage receives results 24 hours a day 7 days a week, via direct computer linkage, from several of its major laboratory providers. First Advantage has the ability to transmit pure negative results within two hours of receipt from the laboratories. Because of this direct computer link and constant downloads, we believe this to be the most competitive time frame available in the industry today. On the same day the results are received, the Medical Review Officer initiates the verification process for non-negative results. The donor interview is conducted to determine if there is a valid medical reason for the non-negative test. The results from a non-negative test are generally submitted in 48-72 hours after receipt of the laboratory findings.

- e) The Contractor shall arrange for and provide "Blind Samples" to the laboratory for use in quality control testing. Copies of "blind specimen" certification results are to be provided to the State of Michigan as requested.

**Contractor Response to Task:**

First Advantage will comply. Each batch of specimens includes up to 47 donor specimens, one blind quality control specimen. When the aliquots are received in the Screening laboratory the first and last available positions in the batch are empty. Prior to the batch being loaded into the analyzer, a positive (125% of cutoff) and negative open control is placed into these two positions, respectively. In addition, an above cutoff control (125% of cutoff) and a below cutoff control (70% of cutoff) are analyzed at the end of each batch. The control sequence is for each drug tested. The result is a batch of 47 donor samples and associated controls (4 open and 1 blind control) -- a quality control challenge of more than the "minimum" 10%.

- f) The Contractor shall be responsible for monitoring all testing services, and ensuring that copies of all testing forms are being distributed properly.

**Contractor Response to Task:**

First Advantage will comply. First Advantage will prepare for the drug screen by ensuring that the collection site has the necessary collection supplies (collection kit, alcohol testing equipment and forms, etc.). Pre-printed custody and control forms (CCFs) will be prepared and available during collection. Once the candidate's specimen has been collected and processed, the collection coordinator will fax copies of the completed CCF to the designated client contact. This serves as notification that the candidate's drug screen has taken place. After receipt of the test result from the laboratory and review by First Advantage, the test result is then reported to the client via the chosen reporting method(s). All test results will also be entered and retained in the First Advantage database.

- g) Pre-employment drug testing shall be documented by either name, date of birth, social security number or a combination of these.

**Contractor Response to Task:**

First Advantage will comply. Currently, test results are reported to the State of Michigan by employee ID numbers for all tests except pre-employment. Also, while a system is in place to transmit information via the internet, the State of Michigan has opted to receive the majority of results via fax.

**4. Contractor's Account Representative**

- a) The Contractor shall assign a specific dedicated Account Representative to handle the State of Michigan's drug and alcohol testing program administration. The State reserves the right to require the removal of any account representative for reasonable causes as determined by the State.

**Contractor Response to Task:**

First Advantage has complied. Lea Frigo, is the State of Michigan's dedicated Major Account Coordinator (MAC) and assists with the ongoing servicing of the State of Michigan account. Her role includes reviewing current procedures, consulting with you and your team, delivering quarterly report analysis, and making on-going recommendations for the success of the program.

- b) The Account Representative shall be extremely knowledgeable regarding the State's drug and alcohol program, and be available to the State's Program Coordinator or Administrator on a daily basis (Monday through Friday), during normal business, via various media links.

**Contractor Response to Task:**

Lea Frigo has worked with the State of Michigan's drug and alcohol program as the Major Account Coordinator for over 8 years. Ms. Frigo began her career with First Advantage over 10 years ago as a Result Coordinator for SAMI, a First Advantage Company. Soon Lea became an Account Manager in charge of implementing and managing client accounts for SAMI. Ms. Frigo was then moved into a Senior Account Manager position where, in addition to managing her current client accounts, she managed a team of four Account Managers. In her current position of Major Account Coordinator, Lea assists the State of Michigan with all aspects of your drug and alcohol program. She is also available by phone, fax or e-mail, Monday through Friday, during normal business hours.

- c) The Account Representative shall have the responsibility, on behalf of the Contractor, to handle the day-to-day operations of the State of Michigan's drug and alcohol testing program. In this person's absence, a capable individual shall be assigned to take over the daily coordination of the State's account.

**Contractor Response to Task:**

As the Major Account Coordinator (MAC), Lea Frigo serves as the single point of contact for all of the State of Michigan's general everyday program needs. Ms. Frigo's responsibilities include:

- Proactive day-to-day contact for all issues
- Performing needs analysis and consulting
- Defining and supporting clients' overall employment screening requirements
- Contract management
- Resolving invoicing issues

Additionally, a secondary MAC will be assigned as a backup to assist the State of Michigan should your primary MAC be out of the office.

- d) The Account Representative shall be the Contractor's lead in resolving conflicts with clinics/providers, investigating billing and payment concerns, providing quarterly statistical and summary reports on both testing programs, establishment and maintenance of statewide clinic/provider lists, and providing the random selections each month to the State of Michigan.

**Contractor Response to Task:**

First Advantage will comply. Ms. Frigo consults with the State of Michigan to ensure effective program design, directs the implementation process, and maintains ultimate responsibility for ongoing service delivery. She is supported by a strong team of professionals, continues to hold the primary relationship with the State of Michigan and serves as the State of Michigan's chief advocate within First Advantage.



## 5. Employment Record Establishment

- a) The Contractor shall establish and maintain hard copy as well as electronic means for all testing records that are generated as a result of State of Michigan drug an/or alcohol testing activities. This information must capture the name of the individual tested as well as the individual's bargaining unit and employing department.

### Contractor Response to Task:

First Advantage will comply. Once the candidate's specimen has been collected and processed, the collection site will fax copies of the completed CCF to First Advantage and to the designated client contact. First Advantage maintains hard copies of all testing records and all pre-employment test results are retained in the First Advantage database.

- b) The Contractor shall, at a minimum, provide overall statistical and summary reporting on DOT, NON-DOT, and selected client testing programs, to the State on a quarterly basis. These reports must provide information by type of test, result, bargaining unit, state department and employee name as needed.

### Contractor Response to Task:

First Advantage will comply. Quarterly Business Reviews with the State of Michigan are provided as feedback on specific turnaround time, accuracy and any issues which developed and were resolved. Additionally, these reviews include summary reports on DOT, Non-DOT and selected client testing programs as requested by the State of Michigan.

- c) At the request of the State's Program Administrator or Coordinator, the Contractor shall produce and generate "Special Management Reports" within 15 working days.

### Contractor Response to Task:

First Advantage is able to comply. Your assigned MAC, Lea Frigo, will generate State of Michigan requested Special Management Reports within 15 working days of a request.

- d) Test results shall be available to the program administrator for electronic lookup and verification, by the last business day of the month following the test(s).

### Contractor Response to Task:

First Advantage will comply. All test results are available to the State of Michigan program administrator for electronic lookup via the First Advantage web-based reporting tool. Requests may be received and results may be retrieved 24 hours per day, 7 days per week. Users may choose to view new, pending, previously viewed, archived, or all reports. The report list may be sorted by status, result, applicant name, SSN, report type, account, request, package, or order date. Our advanced search options allow you to quickly find a particular report.

- e) Record keeping must meet the requirements set forth in the US DOT Regulations.

### Contractor Response to Task:

First Advantage will comply. All drug screen analyses and reporting is conducted according to the Department of Transportation (DOT) testing as specified in 49 CFR Part 40. Non-regulated samples are processed utilizing similar protocols.

## 6. Random Testing Services

- a) The selection process shall be a scientifically developed and statistically reliable program. The process must be purely random and be capable of providing the selectees from multiple state employee or selected client databases. The random selection methodology shall be provided to and accepted by the State.

**Contractor Response to Task:**

First Advantage is able to comply. For DOT mandated random testing, the percentages selected for drug and alcohol testing are determined annually by the DOT agency. If the State of Michigan elects to conduct random testing of non-DOT regulated employees, First Advantage will set up the random selection process according to the parameters established by the State of Michigan.

Once each of the overall pools is selected, we assign a unique identifier to each member of the pool. This identifier is based on a randomization principle that factors in the Julian date as a numerical value, the current time (down to the millisecond) and then a random multiplier value (the actual machine-code level randomization principles are encapsulated within functionality developed by Microsoft for the Visual FoxPro development environment). Each member will carry this unique number, which carries to 10 decimal places. The members are then placed in order according to this random unique value.

Having assigned this value, we will begin selecting members as we scan through the pool, moving through as many records as are necessary to select in the current period the quantity of members we've previously calculated as being necessary to hit the current period's targets, with the goal being this pool's (or the federal government's) yearly quota.

If we are selecting members for a pool that also requires breath alcohol testing as part of the regimen, we will then scan through the subset of members that have been selected, and mark a certain percentage (designated by pool) of those members for breath alcohol testing.

- b) The Contractor shall list what equipment will be used, and document the process and method(s) that will be utilized in conducting the monthly Random Test Selections. The random process must be audited by an outside organization (other than the Contractor) to assure random integrity of the program.

**Contractor Response to Task:**

First Advantage is able to comply. The data is entered into First Advantage's random selection software program, and on a monthly basis a random selection of the agreed upon percentage or number of employees is conducted. Additionally, the random process will be continually audited by an outside organization.

- c) The Random test selection database must be confined to those subject to Random testing with selection by employee ID numbers at specified percentage rates. Each bargaining unit must be subject to a separate random selection process. Reporting capabilities must include matching and sorting employees by employee ID numbers to bargaining units and departments. Employee ID numbers consist of seven digits.

**Contractor Response to Task:**

First Advantage is able to comply. Each facility is treated individually as a pool from which members may be drawn. The total number of qualifying employees (those that meet the local criteria for eligibility based on union contracts, state laws, etc.) is calculated by identifying the employees associated with a given facility. This identification is made based on data provided by the client to indicate which employee works at which facility, and in what capacity.

For facility-based selections, it could indicate that a minimum number of selections have been mandated by the client for a given period, and the available pool of eligible members is so small as to increase the probability that a member could be selected more frequently than one would expect in a larger pool. This would happen, for example, more frequently in facilities with very small numbers of employees, or where the client-mandated percentage to be tested results in a very small pool.

- d) The Contractor shall explain how the employee databases and the random selections will be transferred between the offices of the State's Administrator or Coordinator.

**Contractor Response to Task:**

The designated State of Michigan manager receives the list of employees selected for random testing. The random selection list can be provided to a single State of Michigan manager, or each location that has employees selected can receive the list of employees selected for their location via password protected e-mail.

- e) The Contractor shall explain and demonstrate their system of data collection and storage, how reports are generated from this and how testing information will be transmitted back to the State of Michigan.

**Contractor Response to Task:**

Every test result is reported by the laboratory to First Advantage's MRO Department. Each laboratory result is reviewed to ensure that the custody and control form is adequate and attests to the validity of the test result, and the proper identification of the test result with the applicant or employee.

As required by Federal regulations, the First Advantage MRO department must review a copy of the custody and control form, signed by the laboratory's certifying scientist for every test result that is a non-negative report (positive, adulterated, substituted, invalid) prior to initiating the interview with the donor. If the donor states that he/she was prescribed a medication that explains the positive result, the MRO will require documentation of the prescription. The MRO will review the documentation and may contact the prescribing physician and/or dispensing pharmacist to verify that the prescription is legitimate. If acceptable validation of authorized medical use is obtained, the result is reported as negative. If there is no acceptable medical explanation for the positive result, the MRO will verify the test as positive. The MRO will call the State of Michigan contact person immediately following the result determination. A written, signed test result will be transmitted to the State of Michigan following the verbal report.

Upon receipt of negative test results from the laboratory, a match of Employee ID Number and/or Account Number (i.e., location code) in the First Advantage database with the reported result is made. When the Custody and Control Form is received from the collection site, it is reviewed for completeness and the information is entered into the First Advantage database. This data is matched by Employee ID Number, Specimen ID Number, and the client account number to ensure the correct reporting and recording of the test result. Negative test results are reviewed by MRO staff personnel, and are generally available for reporting to the client contact person(s) within two hours of receipt from the laboratory.

All testing results may be retrieved electronically via First Advantage's customized web-based communication system. Results may be retrieved 24 hours per day, 7 days per week. The system has been designed for customers with a highly decentralized user environments. Multiple user defined access levels aid in controlling access and dissemination of adverse results. To review testing results, State of Michigan users would simply sign on and click the Reports option. In the Reports List view, users may choose to view new, pending, previously viewed, archived, or all reports. The report list may be sorted by status, result, applicant name, employee ID or order date. Our advanced search options allow you to quickly find a particular report. Archived results are available online indefinitely.

- f) The Contractor shall indicate what type(s) of equipment or supplies are used in their testing programs, and how it will be provided to allow for all types of testing being conducted by the State of Michigan.

**Contractor Response to Task:**

First Advantage mandates that all collection sites and laboratory partners follow guidelines as specified in the DOT Code of Federal Regulations Part 40(CFR Part 40).

Written procedures are in place to ensure that facilities have all the collection supplies necessary to conduct both DOT and Non-DOT drug and alcohol testing (collection kit and custody and control forms, alcohol testing equipment and forms, etc.). All necessary equipment must be approved and is numerically listed by the Department of Transportation. A full list of this equipment is provided by the DOT in their regulatory guidelines.



To meet requirements, collection facilities have the following:

- Toilet-bluing agents have been placed in the toilet bowls so the reservoir of water always remains blue
- Inspections to assure that donors have no access to water sources, soap dispensers or other materials inside the collection area that could be used to alter specimens
- Necessary materials to complete both DOT and Non-DOT collections including:
  - ✓ Split specimen collection kits and shipping containers;
  - ✓ Pre-printed CCFs; and
  - ✓ Ball point pens for use in filling out the CCFs.

Initial testing of urine specimens is performed using FDA-approved immunoassays. An assay has been developed for each class of drug. The antibodies used in the assays have been developed from both monoclonal and polyclonal lines to optimize specificity towards particular compounds.

The testing strategy for initial tests begins with validation of the equipment. This process includes performing routine scheduled equipment maintenance followed by instrument calibration using calibration standards of known concentrations. Calibration of the instrument(s) is validated using a series of control materials that are fortified with the drug of interest at concentrations above and below the cutoff concentrations. The calibration of each instrument is applied to each batch of donor specimens.

When the rack of aliquot tubes enters the analyzer, the barcode scanner detects the specimen identification number, and schedules the appropriate test profile, based on the information set up in the account. Thus, the drug analyses and the specific adulterant/dilution tests, which are ordered, are conducted during the transit of the aliquot tube on the automatic analyzer.

At the completion of the analysis, results for samples are automatically entered into the laboratory database by the analyzer's data management system. Data review of the analyses is performed and requires certain, clearly defined criteria to be satisfied. Further, the aliquot chain-of-custody and data files are reviewed by an individual trained in data review. After these reviews, specimens that do not satisfy criteria are flagged and the screening analysis is repeated with appropriate quality control samples.

- g) The Contractor shall outline the processes that are to be followed in the event someone requests testing of a "Split Sample".

**Contractor Response to Task:**

All DOT-regulated testing requires the use of a split sample. First Advantage mandates that all collection sites and laboratory partners follow guidelines as specified in the DOT Code of Federal Regulations Part 40(CFR Part 40), thus collection facilities will have split sample collection kits for all donors who report for a DOT regulated test.

***SPLIT SPECIMEN COLLECTION PROCESS:***

The collector unwraps the collection container in the donor's presence, and the split specimen bottles remain wrapped or sealed. The donor is not allowed to take specimen bottles into the toilet enclosure.

The donor presents the specimen to the collector, and the collector keeps the specimen in view of the donor at all times until it is labeled and sealed in the specimen bottles. The donor is allowed to wash his or her hands so long as the specimen remains in both the donor's and collector's sight.



The collector inspects the specimen for unusual color, odor, and physical properties; records the specimen temperature within four minutes; and ensures there is sufficient specimen volume (at least 45mL).

The collector opens the sealed or wrapped specimen bottles and divides the sample between the two bottles – at least 30mL in bottle A and at least 15mL in bottle B. The collector then discards any remaining urine and the collection cup. The collector places a tamper-evident seal on each bottle, dates each seal, and directs the donor to initial the seal on each bottle.

- h) Pre-employment applicants will utilize Social Security numbers as an identifier.

**Contractor Response to Task:**

First Advantage is able to comply. We currently use social security numbers as identifiers for the majority of our clients. The State of Michigan uses employee ID numbers on all testing except pre-employment screening. Also, the primary delivery method for testing results is via fax.

**7. Laboratory Services**

- a) The Contractor shall utilize Department of Health and Human Services (DHHS) and/or a Substance Abuse and Mental Health Services Administration (SAMHSA) Certified Laboratories for urine specimen testing and reporting services. The Contractor shall be held responsible for the services provided by any laboratories selected by the Contractor for use on this Contract.

**Contractor Response to Task:**

First Advantage will comply. The analysis of samples will be performed by laboratories that are certified by the Substance Abuse and Mental Health Services Administration (SAMHSA). The laboratories used by First Advantage have written procedures concerning sample accession, chain of custody quality control, and result certification, and they follow the guidelines prescribed by DHHS and/or DOT. SAMHSA regulations also require the laboratory to perform confirmation testing using gas chromatography/mass spectrometry (GC/MS) to positively identify a drug or drug metabolite. GC/MS is a more sensitive and specific analytical procedure. Analysis by GC/MS is necessary to obtain positive identification of drugs detected. When testing under DOT requirements, substances that must be tested for and cutoff levels are specified in the Code of Federal Regulations Part 40(CFR Part 40).

First Advantage primarily utilizes LabCorp laboratories for analysis of State of Michigan specimens. However, should the State of Michigan prefer to use other specific laboratories, First Advantage will contract with those laboratories in order to meet your requirements.

- b) The laboratory shall provide specimen testing and result reporting to the Contractor of all urine drug specimens collected. (Pre-employment, Pre-appointment, Random, Reasonable Suspicion, Post-accident, Return to Duty and Follow-up Testing).

**Contractor Response to Task:**

First Advantage will comply. Once a specimen is collected, the collector gives a copy of the CCF to the donor. The collector then faxes a copy of the CCF to the Medical Review Officer (MRO) a copy of the CCF is retained by the collector for at least thirty days. The final copy of the CCF is forwarded to the designated employer representative, by fax, if possible, and serves as a record that a sample was taken.

Test results are reported to the First Advantage MRO Department in an electronic download from the laboratory. As required by Federal regulations, the First Advantage MRO must review a copy of the custody and control form, signed by the laboratory's certifying scientist for every test result that is a non-negative report (positive, adulterated, substituted, invalid) prior to initiating the interview with the donor.



Drug testing results are then made available 24 hours a day through the First Advantage web-based fulfillment tool. Custom reports, as well as easy-to-read consolidated invoices, are also available. Additionally, through the web tool, the status of a report is available at all times.

- c) The Contractor in cooperation with the selected laboratory, shall provide for shipping and receiving of specimens, proper storage, testing, reporting of results, and payments for both primary and split specimens.

**Contractor Response to Task:**

First Advantage will comply. First Advantage will provide daily courier service for delivery of specimens from the collection facility to the designated laboratory. First Advantage will also deliver test results as requested by the State of Michigan (via Fax, Web, E-mail or other). We manage the entire process: from forms distribution and tracking, to laboratory monitoring, payments and problem resolution.

- d) The laboratory shall immediately report all drug test results (Negative and Positive) to the Contractor's MRO for confirmation, as required by the federal regulations.

**Contractor Response to Task:**

First Advantage receives results 24 hours a day 7 days a week, via direct and secure computer linkage, from several of its major laboratory providers. First Advantage has the ability to transmit pure negative results within two hours of receipt from the laboratories. Because of this direct computer link and constant downloads, we believe this to be the most competitive time frame available in the industry today.

On the same day the results are received, the Medical Review Officer initiates the verification process for non-negative results. The donor interview is conducted to determine if there is a valid medical reason for the non-negative test. Drug testing results are then made available 24 hours a day through our Web-based fulfillment tool. Custom reports, as well as easy-to-read consolidated invoices, are also available. Through the use of our Web-based tool, First Advantage can meet the required reporting times requested by the State of Michigan. Additionally, through the web tool, the status of a report is available at all times.

Negative test results are typically available within 24 to 48 hours while the results from a non-negative test are generally submitted to the customer in 48-72 hours after receipt of the laboratory findings.

- e) Pre-employment testing services for selected state applicants may require testing standards different from those recommended by OTETA and DHHS guidelines (i.e. 6 panel, 9 panel, etc.).

**Contractor Response to Task:**

First Advantage is able to comply. The SAMHSA certified laboratories that First Advantage uses for urinalysis offer multiple drug panels. The "standard" federal panel includes 5 classes of drugs; marijuana, cocaine, amphetamines, opiates, and phencyclidine. In addition to the 5-drug panel, the laboratories offer 6, 9, 10 and 13 drug panels that typically include barbiturates, benzodiazepines, propoxyphene, methadone, hydromorphone, or hydrocodone.

**8. Medical Review Officer (MRO) and Substance Abuse Professional (SAP) Services**

- a) Medical Review Officers (MRO) shall be licensed Physicians (M.D. or D.O.) with certification in, and extensive knowledge of Pharmacology and Toxicology. Physicians shall maintain current board certification in a specific medical specialty during the Contract period.

**Contractor Response to Task:**

First Advantage is able to comply. All First Advantage MROs fully meet all the qualification standards for MROs as detailed in the DOT rule, 49 CFR Part 40, Section 40.121, including completion of 12 continuing medical education units every 3 years. In addition to their MRO certifications, all First Advantage MROs are board certified in a medical specialty or sub-specialty.

- b) The MROs shall be certified by the Medical Review Officers Certification Council, and may also be certified by the American Association of Medical Review Officers.

**Contractor Response to Task:**

First Advantage is able to comply. All First Advantage MROs are board certified in a medical specialty and are certified as MRO's by the American Association of Medical Review Officers or the Medical Review Officer Certification Council.

- c) The MRO shall be a full-time MRO, employed full-time by the selected vendor.

**Contractor Response to Task:**

Among the top national service providers, First Advantage is one of the only that employ full-time physicians to provide the Medical Review Officer Service, and we are one of only a handful of providers that offer everything necessary to comply with DOT drug and alcohol testing regulations. First Advantage MROs are full-time employees of the company. They do not engage in any other medical practice or medical consultation, which allows them to expeditiously process drug test results.

- d) The MROs shall be able to respond to inquiries from state staff 24 hours a day, seven days per week.

**Contractor Response to Task:**

First Advantage is able to comply. Medical Review Officers are generally available from 8:00 a.m. to 6:30 p.m. Eastern Time, Monday through Friday, but an MRO is always on call 24/7 for emergency assistance. First Advantage also provides post-accident, emergency or "for cause" testing assistance for its clients 24 hours, seven days per week.

- e) The MROs shall receive reported drug test results from the laboratory for confirmation of Negative or Positive Test Results.

**Contractor Response to Task:**

First Advantage is able to comply. Every test result is reported by the laboratory to First Advantage's MRO Department. Each laboratory result is reviewed to ensure that the custody and control form is adequate and attests to the validity of the test result, and the proper identification of the test result with the applicant or employee.

- f) The MROs shall personally contact the individual employee and conduct the interview process for review of medical information prior to making a test confirmation.

**Contractor Response to Task:**

First Advantage's MRO department conducts screening in accordance with all requirements as detailed in the DOT rule, 49 CFR Part 40, Section 40.121.

Every test result is reported by the laboratory to First Advantage's MRO Department. Each laboratory result is reviewed to ensure that the custody and control form is adequate and attests to the validity of the test result, and the proper identification of the test result with the applicant or employee. When the donor is contacted, the interviewer will identify himself/herself and insure he/she is speaking with the correct donor. The interviewer will explain the laboratory findings and ask the donor about illicit drug use, medications, and medical procedures within the recent past. If the donor admits to illicit drug use or cannot provide documentation of authorized medical use of the drug, the MRO verifies the test as positive.



For opiate positive results, the MRO must establish collaborative evidence of illegal opiate use unless the laboratory finding is specific for a heroin metabolite (6 MAM) or the quantitative levels for morphine or codeine exceed 15,000 ng/mL. The MRO may require the individual to undergo a medical examination by a qualified physician. If the laboratory reported that the specimen was adulterated or substituted, or the test was invalid, First Advantage will interview the donor to offer the individual the opportunity to present any medical documentation that may explain the laboratory findings.

- g) The MROs shall document all drug test results as required by applicable rules and regulations. The results shall be communicated to the employer via a secure and legally acceptable means.

**Contractor Response to Task:**

First Advantage is able to comply. All drug screen analyses is conducted according to the Department of Transportation (DOT) testing as specified in 49 CFR Part 40. Non-regulated samples are processed utilizing similar protocols.

- h) The MROs shall be available via telephone for questions and discussion with department DATC/DER's as well as state program coordinators on an as needed basis.

**Contractor Response to Task:**

First Advantage is able to comply. Our Medical Review Officers are generally available from 8:00 a.m. to 6:30 p.m. Eastern Time, Monday through Friday, but an MRO is always on call 24/7 for emergency assistance.

- i) The Contractor shall provide, or have available, referrals for statewide Substance Abuse Professional (SAP) services in Michigan as required by law. (The Contractor shall provide a list of these substance abuse providers and identify the means for scheduling an employee for treatment).

**Contractor Response to Task:**

First Advantage is able to comply. First Advantage Workplace Services provides companies with a comprehensive suite of services, including the management of services required by regulated governing bodies such as the Department of Transportation. First Advantage has established a nationwide network of qualified SAPs that can be accessed by employees and applicants through a toll-free 800 number (SAP Services). All employees and applicants who call the SAP Services toll free line will be given the name of two SAP counselors located in their area.

- j) Substance Abuse Professionals shall be a licensed Medical Doctor (M.D. or D.O.), licensed and certified Psychologist, Social Worker, Employee Assistance Professional, or Addiction Counselor. These professionals must have knowledge of, and clinical experience in, the diagnosis and treatment of drug and/or alcohol-related disorders.

**Contractor Response to Task:**

First Advantage is able to comply. First Advantage SAP Referral Service is a team of highly trained and experienced occupational health professionals. The personnel have an in-depth understanding of the communications industry and the issues that affect the health of your employees and your customers. The overall team includes physicians and other medical professionals, registered nurses, laboratories, couriers, medical and pharmaceutical suppliers, healthcare administrators, medical records managers and medical technicians. This team will be available on call twenty-four hours a day, seven days a week to provide medical support at any location in the U.S. and provide international consulting services. The network includes SAPs who have met all the educational and testing requirements required by Department of Transportation 49 CFR Part 40 Subpart O.

- k) The Contractor shall provide an explanation of their system for ensuring monitoring, follow-up, and confidentiality of SAP services.



Contractor Response to Task:

First Advantage is able to comply. First Advantage offers a comprehensive program, which provides intensive case management and monitoring. This program is called Back on Track and has been positively received by our First Advantage client companies. The management of individual cases for employees who are going through the Back on Track process can be divided into four distinct phases: Referral, Assessment, Treatment, and Aftercare. First Advantage will provide consultation and support to managers throughout the Back on Track process. First Advantage's experience with companies that have this program is that 6 out of 10 employees are able to remain clean and sober for the first year upon return to work. The national recovery rate is 4 out of 10 users are clean and sober after the first year of treatment.

9. Training, Training Materials, and/or Information

- a) The Contractor shall develop, or have developed a training program that meets the requirements of the applicable federal regulations including DHHS and DOT guidelines.

Contractor Response to Task:

First Advantage is able to comply. First Advantage provides supervisory training materials and facilitated training sessions as part of its Drug Free Workplace Policy programs. First Advantage education and training staff members conduct on-site training sessions with curriculum that is developed and customized specifically for our clients' supervisors. Types of instruction include client seminars/meetings, classroom instruction, self-paced instruction, and "train-the-trainer" programs.

Client seminars/meetings consist of Drug Free Workplace Policy (DFWP) educational seminars for clients that are offered at least annually in a major U.S. city or via webinar. In addition, regional seminars are offered throughout the year. The meetings are open to supervisory and management personnel. The First Advantage Education and Training Department provides classroom instruction for Drug Free Workplace Policy supervisory training, employee substance abuse awareness education, and management training in DFWP implementation and administration. These training sessions are conducted at the client's work site or at training facilities selected by the client. Self-paced instructional curriculum is also available for supervisory training. The curriculum includes a videotape and the signs and the symptoms of drug and alcohol abuse, and a supervisor's resource manual for reasonable suspicion and "for cause" testing. First Advantage also has a self-paced instructional curriculum for specimen collectors. The multi-media curriculum meets the training requirements of 49 CFR Part 40 for specimen collection personnel. Train-the-trainer sessions for supervisors, managers, and collection sites are offered in a classroom setting, generally at a training location identified by the client.

First Advantage training materials include:

- ***SUPERVISOR'S GUIDE TO WORKPLACE DRUG TESTING***  
A 31-page guide for supervisors designed to provide basic content material on workplace drug abuse prevention and control programs, especially the supervisor's role in workplace drug testing.
- ***SUPERVISOR'S GUIDE TO WORKPLACE ALCOHOL TESTING***  
A 43-page guide for supervisors designed to provide basic content material on workplace alcohol misuse, prevention, and control programs, especially the supervisor's role in workplace alcohol testing.
- ***MANAGER'S IMPLEMENTATION MANUAL FOR SUBSTANCE ABUSE TESTING***  
A resource manual for managers that provides information on all aspects of drug free workplace programs, with specific focus on employee testing programs.



First Advantage provides training programs for employers to assist managers and employees with workplace and life issues through a variety of training programs that are offered on site and by webinar. First Advantage also provides training seminars for Workers' Compensation claims professionals. First Advantage's expert presentation staff is CEU-approved to offer and conduct educational investigation seminars for claims professionals. Our most popular program is "*Claimants, Lies, and Videotape*". This seminar teaches clients how the correct use of surveillance can have a powerful impact on problem claims. The seminar provides claims professionals with relevant information on how to increase their efficiency and effectiveness on the job, and to help claims professionals more effectively determine which claims should or should not be investigated. This significantly increases the organization's return on investigation from their surveillance efforts with respect to claims investigation.

- b) The Contractor shall have qualified individuals on staff to conduct, upon the State's request, one to two hour training programs applicable to the above regulations for managers/supervisors, employee groups, or administrators.

**Contractor Response to Task:**

First Advantage is able to comply. First Advantage education and training staff members conduct on-site training sessions with curriculum that is developed and customized specifically for our clients' supervisors. Types of instruction include client seminars/meetings, classroom instruction, self-paced instruction, and "train-the-trainer" programs.

For additional guidance, the State of Michigan will be supported by the First Advantage Compliance Department led by Josephine Kenney. Ms. Kenney, our Vice President of Compliance came to First Advantage from a leading competitor where she maintained a similar role responsible for their regulatory management. She has significant experience in the occupation health market, founding in 1989 Professional Testing Services, which later was acquired and merged into a top competitor. Josephine Kenney is a regularly invited Speaker at DATIA, SAPAA and AAMRO conferences and has made a number of state law related presentations at Industry Meetings. She previously served on the Board of Directors for DATIA and on the Board of SAPAA. She currently serves as counsel for the Board of SAPAA. Her position in the industry generally poses her as one of the front runners educating the Industry on changes. She has written the White Paper on HIPAA for DATIA and did a Presentation on Drug Testing as A Homeland Security Support Tool at DATIA.

- c) The Contractor may be asked to assist department personnel in preparing for, and conducting training and informational programs.

**Contractor Response to Task:**

First Advantage is able to comply. The First Advantage Education and Training Department provides classroom instruction for Drug Free Workplace Policy supervisory training, employee substance abuse awareness education, and management training in DFWP implementation and administration. These training sessions are conducted at the client's work site or at training facilities selected by the client.

- d) The Contractor shall provide upon request, other materials such as brochures, pamphlets, manuals, handouts, videos that can be used in training programs.

**Contractor Response to Task:**

First Advantage will comply. Our curriculum includes a videotapes, manuals, brochures, pamphlets and customized material.



10. Additional Requirements for Contractor

- a) The Contractor shall provide legal representation and audit preparation assistance as requested.

Contractor Response to Task:

First Advantage is able to comply. First Advantage has implemented our convenient online reporting and management tool for DOT management. The First Advantage Qualification system is a real time reporting tool. Summary view and drill-down allow management to quickly and easily spot problems and creates a corporate "scorecard" for division safety management. Color-coding makes identification of non-compliance easy to identify. Real-time statistics offer comparisons by location; division or branch and all statistical results can be graphed to easily identify trends. The systems sophisticated audit trail ensures that all actions are documented and preserved. As such, results are measurable so that you can easily track compliance improvements over time.

Also when required, the State of Michigan will have the option to contact First Advantage's expert MROs by telephone for expert advice as needed to assist in preparing for trial or to simply answer questions regarding drug testing procedures, test result interpretation, or compliance issues. A First Advantage MRO is always on call 24/7 for emergency assistance.

- b) The Contractor shall prepare and provide Litigation Packages to departments upon written request.

Contractor Response to Task:

First Advantage is able to comply. First Advantage supplies full support to clients for litigation arising from disputed drug test results. Support is offered in the following methods:

- Telephonic Testimony – First Advantage MROs will provide deposition testimony via telephone.
- Video Deposition – First Advantage MROs will provide video deposition support to assist clients with disputed drug test results. These video depositions can take place at our office, or other locations specified by the court or plaintiff
- Full Testimony at trial – First Advantage MROs provide full trial testimony to support the findings of the drug tests they reviewed.
- Expert Advice via telephone – First Advantage MROs are available by telephone to provide expert advice as needed to assist in the preparation for trial or to simply answer legal questions which have arisen.

Expert Testimony at trial – First Advantage MROs can provide expert testimony to assist clients with support for drug test results.

- c) The Contractor shall provide "Expert Witness" testimony, which may include, but is not limited to litigation assistance, and depositions.

Contractor Response to Task:

First Advantage is able to comply. First Advantage offers its clients full litigation support for legal actions arising from disputed drug test results. Our Medical Review Officers are available to clients during proceedings for advice, depositions, and testimony:

***EXPERT ADVICE AND DISPOSITION TESTIMONY***

MROs are available by telephone to provide expert advice as needed to assist in preparing for trial or to simply answer questions regarding drug testing procedures, test result interpretation, or compliance issues. MROs can also provide deposition testimony via telephone or video from our offices. **(No additional charge)**

***Trial Testimony***

First Advantage MROs can provide full trial testimony to support the findings of the drug test results they reviewed. In addition, MROs are fully qualified and available to provide expert testimony. ***(Additional charges will be assessed to cover time and travel.)***

- d) The Contractor shall keep the State of Michigan up to date on relevant issues relating to drug and alcohol.

**Contractor Response to Task:**

First Advantage will comply. As a value-added service, First Advantage has a Compliance Department dedicated to ensuring that First Advantage and our customers are advised of all changes to mandates and guidelines. In addition, First Advantage has on-site legal counsel who assists our Compliance Department by analyzing the extent of regulatory changes and their effect on First Advantage's operations. The Compliance Department determines if any new procedures or procedural changes are required, and if so, communicates the necessary changes to the affected First Advantage departments. These changes are implemented as soon as the new regulations become effective. When regulatory changes arise, First Advantage will notify its clients through a variety of methods including: the First Advantage client newsletter (for new regulations that haven't taken effect), system messages through the Internet (for regulations with immediate mandatory action), mailed informational bulletins, and/or contact from Major Account Coordinators, National Account Managers, National Sales Executives or Customer Service Representatives. First Advantage monitors various issues that may arise involving employment screening and consumer reporting agencies through various research tools, publications and newsletters related to the industry. Furthermore, First Advantage maintains contact with compliance and legal departments at other consumer reporting agencies and credit bureaus.

- e) The Contractor shall provide expert consultation services in the area of policy and procedure development, specific problem issue resolution, and legal advice relating to the State's drug and alcohol program.

**Contractor Response to Task:**

First Advantage will comply. First Advantage leverages the expertise of our professional team to help our clients understand and comply with regulatory changes. We employ full time licensed physicians to perform the important tasks of the medical review of test results. All First Advantage Medical Review Officers (MROs) are certified by the American Association of Medical Review Officers and/or the Medical Review Officer Certification Council of the American College of Occupational and Environmental Medicine, and are board certified in a medical specialty. They meet the qualification training standards specified in the DOT regulations.

Josephine Kenney, our Vice President of Compliance came to First Advantage from a leading competitor where she maintained a similar role responsible for their regulatory management. She has significant experience in the occupation health market, founding in 1989 Professional Testing Services, which later was acquired and merged into a top competitor.

Josephine Kenney is a regularly invited Speaker at DATIA, SAPAA and AAMRO conferences and has made a number of state law related presentations at Industry Meetings. She previously served on the Board of Directors for DATIA and on the Board of SAPAA. She currently serves as counsel for the Board of SAPAA. Her position in the industry generally poses her as one of the front runners educating the Industry on changes. She has written the White Paper on HIPAA for DATIA and did a Presentation on Drug Testing as A Homeland Security Support Tool at DATIA.



- f) The Contractor shall provide research and information regarding federal regulations: changes, additions, etc., applicable to drug and alcohol testing programs.

**Contractor Response to Task:**

First Advantage will comply. First Advantage has on-site legal counsel who assists our Compliance Department by analyzing the extent of regulatory changes and their effect on First Advantage and our clients. The Compliance Department determines if any new procedures or procedural changes are required, and if so, communicates the necessary changes to the affected First Advantage departments. These changes are implemented as soon as the new regulations become effective. Our Compliance Department maintains information on our website regarding state laws that are more restrictive than the federal FCRA regulations.

1.2 Roles and Responsibilities

**1.201 CONTRACTOR STAFF, ROLES, AND RESPONSIBILITIES**

For purposes of this Contract, the following Contractor roles are considered "Key Personnel":

- Account Representative /Coordinator
- Account Executive
- Data Systems Manager
- Medical Review Officers

**1.202 STATE STAFF, ROLES, AND RESPONSIBILITIES**

The State staff responsible for this Contract includes:

- Contract Administrator
- Office of State Employer Departmental Analyst/Coordinator
- DATC/DER departmental representatives

A list of DATC/DER departmental representatives will be provided and updated as necessary with phone, fax, and email addresses. Civil Services Rules and Regulations as well as the labor agreements dealing with drug and alcohol policy have been provided and will be updated as necessary

**1.203 Reserved**

1.3 Project Plan

**1.301 PROJECT PLAN MANAGEMENT**

- The Contractor shall carry out this project under the direction and control of the Contract Administrator, Employee Health Management, and Office of the State Employer.
- Although there shall be continuous liaison with the Contractor team, the client agency's project director will meet as necessary, with the Contractor's project manager for the purpose of reviewing progress and providing necessary guidance to the Contractor in solving problems which arise.
- As agreed upon by the respective contract administrators, the Contractor shall submit brief written summaries of progress which outline the work accomplished during the reporting period; work to be accomplished during the subsequent reporting; problems, real or anticipated, which should be brought to the attention of the client agency's project director; and notification of any significant deviation from previously agreed-upon work plans.
- Within thirty (30) working days of the award of the Contract, the Contractor shall submit a work plan to the Employee Health Management project director for final approval. This final implementation plan must in agreement with Section IV-C, as proposed by the bidder and accepted by the State for Contract, and must include the following:



1. The Contractor's project organizational structure.
2. The Contractor's staffing table with names and title of key personnel assigned to the project as well as other necessary staff. This shall be in agreement with staffing of accepted proposal. Necessary substitutions due to change of employment status and other unforeseen circumstances may only be made with prior approval of the State.
3. The project breakdown showing sub-projects, activities and tasks, and resources required and allocated to each for implementation and start-up. Implementation tasks should include marketing, statewide seminars, promotional material, and staffing for all presentations.

### 1.302 REPORTS

The following reports will be required:

- a. The monthly employee database pools used in the Random Selection Process shall be sent via disk or electronic transmission to the Contractor by the 20th of each month. The Contractor shall conduct the Random Selection Process on each individual database submitted, and provide the audited department selections back to the State's contract administrator's office no later than the first day of the month that randoms are to be run.
- b. Drug test results shall be provided directly to the department's named Drug and Alcohol Testing Coordinator (DATC) within 48-72 hours upon receipt from lab. This may be accomplished through the use of a confidential fax, or secure encrypted e-mail transmission over the Internet. NOTE: In some cases another designated departmental person is named to handle the pre-employment testing program for the department. Contractors should have the capability of both automatic fax capabilities and secure encrypted e-mail. This will be determined at the discretion of the State.
- c. The Contractor shall provide to Employee Health Management a DOT, and NON-DOT Drug and/or Alcohol Test Statistical Report, and a Test Summary Report. A copy will be made available to each department as applicable, on a quarterly basis. The State's administrator shall receive an overall Summation Report. These reports, preferably in a Department of Transportation Management Information System format, (DOT MIS sample attached in Exhibit D), shall detail the specific quarterly, as well as the Calendar Year to Date test activities, and be able to be broken down (grouped) by Bargaining Unit with each Department.
- d. Record management should be consistent with DHHS and DOT guidelines. It is the responsibility of the TPA to ensure that subcontractors remain compliant with the requirements set forth in these guidelines.
- e. The Contractor shall provide periodic "special" reports as requested by the State's contract administrator. These reports shall be provided within 15 calendar days from the request.
- f. The Contractor shall provide special reports at no extra cost to assist investigation of problems involving delivery of services outlined within this contract.

Contractor Response:

First Advantage will comply. First Advantage follows testing timeframes as mandated by DOT guidelines specified in the DOT Code of Federal Regulations Part 40 (CFR Part 40).

## 1.4 Project Management

### 1.401 ISSUE MANAGEMENT

All issues will be addressed between the contractor's account manager and the contract administrator. Steps will be identified in the contract to elevate issues to the highest level of senior management.

**Contractor Response:**

In cases where problems or service complaints require escalation, First Advantage's complaint and resolution procedure is a five-step process that results in continuous process improvements.

1. The problem/complaint is documented and reviewed by the Account Manager.
2. The Account Manager coordinates the appropriate First Advantage resources needed to resolve the problem/complaint.
3. The problem/complaint is then reviewed with the Director of Operations to assure documentation of the resolution, and the documentation is then added to the First Advantage central repository of complaints and resolutions.
4. The documented resolution is then provided back to the client.
5. An appropriate follow up schedule is developed in order to ensure that the issue remains resolved and meets the client's expectations. The client is also provided access to the Director of Operations and the Director of Client Services for complaints that they do not wish to share with your Account Manager directly. All customer problems/complaints are responded to within twenty-four (24) hours, and the information is shared at weekly staff meetings with all Account Managers when appropriate.

The Director of Client Services has direct responsibilities for the maintenance of the repository of customer complaints and resolutions.

For issues that are reported via the First Advantage 1-800 help line, the First Advantage Customer Service Representatives complete a transaction report which documents each call and the process followed. Following is the approved First Advantage call transaction process:

- STEP 1: Receive warm transfer of escalated call
- STEP 2: Determine needs
- STEP 3: Attempt to resolve issues
- STEP 4: Resolve issue or offer
- STEP 5: Access W:\NCRTraining Call Escalation Log
- STEP 6: Log client information, reason for call and resolution  
If unable to resolve, expedite and schedule follow up call
- STEP 7: Set expectations and schedule call
- STEP 8: Access W:\NCRTraining Call Escalation Log
- STEP 9: Log client information, reason for call and follow up date
- STEP 10: Once resolved, contact client
- STEP 11: Close out escalation log
- STEP 12: On Monday of every week, tally the escalated calls into the weekly log by reason of call
- STEP 13: Share results at Tuesday Operations meeting

In addition, calls are randomly monitored by supervisory and team lead staff members to ensure quality.

**1.402 RESERVED****1.403 CHANGE MANAGEMENT**

Necessary change for the effective administration of the contract will be recommended by either the contract administrator or the contractor account manager. Both parties must agree to these changes.

If a proposed contract change is approved by the Contract Compliance Inspector, the Contract Compliance Inspector will submit a request for change to the Department of Management and Budget, Purchasing Operations Buyer, who will make recommendations to the Director of Purchasing Operations regarding ultimate approval/disapproval of change request. If the DMB Purchasing Operations Director agrees with the proposed modification, and all required approvals are obtained (including State Administrative Board), the Purchasing Operations Buyer will issue an addendum to the Contract, via a Contract Change Notice. **Vendors who provide products or services prior to the issuance of a Contract Change Notice by DMB Purchasing Operations, risk non-payment for the out-of-scope/pricing products and/or services.**

1.5 Acceptance**1.501 CRITERIA**

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

It is expected that the vendor will bill each department for drug and/or alcohol tests completed by a clinic. The department will verify employees were sent for testing and issue payment to the vendor.

**1.502 FINAL ACCEPTANCE**

Acceptance is tied to adequate performance of required Services as described in section 1.104 and meet the Performance Guarantees.

1.6 Compensation and Payment**1.601 COMPENSATION AND PAYMENT**

The State shall pay Contractor a per test amount that is provided in this Contract for the performance of all activities necessary for or incidental to the performance of work as set forth in this Contract. This per test amount should include, at a minimum:

- Specimen Collection and Testing (per sample):
  - ✓ MRO Services
  - ✓ Record Keeping
  - ✓ Reports
  - ✓ SAP Referral Services
  - ✓ Data Management
  - ✓ Pre-printed forms
  
- Breath Alcohol Testing (per test):
  - ✓ Data Management
  - ✓ Reports
  - ✓ Record Keeping
  - ✓ Pre-printed forms



- Additional services to be quoted by bidder:
  - ✓ Education and Training (per session)
  - ✓ Legal and Expert Witness Services (per hour)
  - ✓ Supervisor Training Books/Materials
  - ✓ Employee Information Books/Materials
  - ✓ Special Projects/Reports
  - ✓ Blind Specimen Testing and Record Maintenance

See Article 1, Attachment A for pricing list.

1.7 Additional Terms and Conditions Specific to this SOW

**1.701 ADDITIONAL TERMS AND CONDITIONS**

Act Number 431 of the Public Acts of 1984 permits the State of Michigan, Department of Management and Budget, to provide purchasing services to any city, village, county, township, school district, intermediate school district, non-profit hospital, institution of higher education, community, or junior college. The bidder is requested to complete the attached "Non-State Agency Statement" to indicate a willingness to supply commodities to these authorized local units of government, school districts, etc. as well as the state departments and agencies. Should a contract result, a listing of approved program members will be included.

Inasmuch as these are non-state agencies, all invoices will be submitted to and payment remitted by the local unit of government on a direct and individual basis. Orders received from non-approved local units of government shall not be considered unless DMB Purchasing Operations grants prior approval.

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



NON-STATE AGENCY STATEMENT

Act Number 431 of the Public Acts of 1984 permits the State of Michigan, Department of Management and Budget, to provide purchasing services to As a result of the enactment of this legislation, the MIDEAL Program has been developed. This program extends the use of state contracts to program members. The governmental agency must enter into an agreement with the State of Michigan to become authorized to participate, thus ensuring that local units of government secure a greater return for the expenditure of public funds. It is the policy of Purchasing Operations, Department of Management and Budget, that the final approval to utilize any such contract in this manner must come from the contract vendor.

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

Therefore, it is required that all bidders indicate, by checking the appropriate box below, whether they will (first box) or will not (second box) honor orders on any contract resulting from this Request for Quotation from State of Michigan authorized MIDEAL members. It is the responsibility of the contractor to ensure the non-state agency is an authorized MIDEAL member prior to extending the state contract price.

BIDDER MUST CHECK ONE BOX BELOW

- Commodities and/or services on this Request for Quotation will be supplied to State of Michigan departments and agencies, and authorized MIDEAL Program members in accordance with the terms and prices quoted. A complete listing of eligible participants in the MIDEAL Program will be provided if this option is selected.
- Commodities and/or services on the Request for Quotation will not be supplied to State of Michigan authorized MIDEAL members. We will supply to State of Michigan departments and agencies only.

\_\_\_\_\_  
First Advantage Enterprise Screening Corporation

Vendor Name

\_\_\_\_\_  
David R. Wirta, Executive Vice President

Authorized Agent Name (print or type)



**Article 1, Attachment A**  
Pricing

**Collection and Testing Services:**

**2004 Estimates: Approximately 8,700 Drug Tests and 2,300 Alcohol Tests**

Quantity	Price	Est. Annual	Unit	Total
<b>Specimen Collection &amp; Testing (per Sample):</b>		8700	X	\$38.50 = \$334,950.00
Includes:				
<ul style="list-style-type: none"> <li>• MRO Services</li> <li>• Data management/Reports</li> <li>• S.A.P. Services</li> <li>• DOT &amp; Non-DOT Custody and Control</li> </ul>				
Forms (Pre-printed with Department, Address, phone number, DATC/DER)				
<ul style="list-style-type: none"> <li>• All testing kits, materials, supplies, shipping</li> </ul>				
And handling				
<b>Breath Alcohol Testing (per Test):</b>		2300	X	\$27.50 = \$63,250.00
Includes:				
<ul style="list-style-type: none"> <li>• Data management/reports</li> <li>• DOT &amp; Non-DOT Custody and Control</li> </ul>				
Forms (Pre-printed with Department, Address, phone number, DATC/DER)				
<ul style="list-style-type: none"> <li>• All testing kits, materials &amp; supplies</li> </ul>				
<b>Blind Specimens (per Test):</b>		TBD	X	\$38.50 = unknown

Note: The State of Michigan would not be required\_

**Optional Other Services:**

**COST**

Education / Training (per Session)	\$250.00 per session plus travel
Legal and Expert Witness Services (per Hour)	\$250.00 per hour (MRO)
Supervisor Training Guides (per Unit)	\$9.50 each
Employee Information Books (per Unit)	\$1.00 each

**Note: All quantities listed are estimates only. The State does not commit to procuring these or any other amounts.**



**Article 1, Attachment B**  
Key Personnel

Bill Broten, Executive Vice President of Sales, and Dawn Nicols, National Account Manager have been assigned to oversee the State of Michigan account. They will assist Lea Frigo (Major Account Coordinator) with the ongoing servicing of the account. Bill and Dawn's role will include reviewing current procedures, consulting with you and your team, delivering quarterly report analysis, and making on-going recommendations for the success of the program.

As the Major Account Coordinator (MAC), Lea Frigo serves as the single point of contact for all of the State of Michigan's general everyday program needs. Ms. Frigo consults with the State of Michigan to ensure effective program design, directs the implementation process, and maintains ultimate responsibility for ongoing service delivery. She is supported by a strong team of professionals, continues to hold the primary relationship with the State of Michigan and serves as the State of Michigan's chief advocate within First Advantage. Ms. Frigo's responsibilities include:

- Proactive day-to-day contact for all issues
- Performing needs analysis and consulting
- Defining and supporting clients' overall employment screening requirements
- Contract management
- Pricing
- Resolving invoicing issues

Lea Frigo began her career with First Advantage over 10 years ago as a Result Coordinator for SAMI, a First Advantage Company. Soon Lea became an Account Manager in charge of implementing and managing client accounts for SAMI. Ms. Frigo was then moved into a Senior Account Manager position where, in addition to managing her current client accounts, she managed a team of four Account Managers. In her current position of Major Account Coordinator, Lea assists her clients with all aspects of their drug and alcohol programs.



**Article 1, Attachment C**  
Reserved



**Article 1, Attachment D  
Service Level Agreements (SLAs) / Performance Guarantees**

The vendor will be willing to report on and track the following measures/standards in order to measure compliance with performance. Vendor based performance audits may be verified through external audit activity. The contract administrator must agree to allow third party audits to measure performance standards.

SLAs / performance guarantees will be evaluated by the State's Contract Compliance Inspector and vendor's Account Manager. The State's Contract Compliance Inspector's decision will be final.

<b>Performance Category</b>	<b>Performance Criteria</b>	<b>Standard of Performance</b>	<b>Penalty for Non-compliance</b>
Payment to clinics	Within 30-40 days of receipt	95%	\$4000 annual maximum penalty
Locate and make arrangements for an out of state clinic as needed	Within 24-72 hours	95%	\$100 per each failure to meet deadline
Return calls to any company representative	Within 24 hours	95%	\$4000 annual maximum penalty
Random Selections	Returned by the first of the month that randoms will be run	95%	\$100 per each failure to meet deadline
Quarterly Reports	Submitted to the State for initial review within 4 weeks and must be corrected within 2 weeks after the State provides correction request to contractor	95%	\$100 per each failure to meet deadline
Yearly Reports	Within 6 weeks	90%	\$100 per each failure to meet deadline (all reports)
Custody and Council Form Delivery	Within 15 business days of a written request	95%	\$750 annual maximum penalty (all locations)
Reporting Accuracy		95%	\$750 annual maximum penalty (all reports)
Problem Resolution	Within 1 month (initial investigative data available within 1 week and weekly progress reports until resolution)	95%	\$1500 annual maximum penalty



**The following provisions apply to the above performance guarantees:**

**Payments to Clinics:**

Payment made within the 30 to 45 day window represents payment of accurate, non-disputed, invoices.

**Out of State Clinic Identification:**

Requests need to be submitted in writing (e-mail requests are acceptable) and the request needs to include the City, State and Zip Code where the collection site need exists. Requests are to be submitted to Client Services with a copy Lea Frigo.

**Return Calls:**

If the State of Michigan Account Manager's voice mail indicates that he/she is not available, the caller will need to contact the Account Manager backup. The backup's contact information will be provided to the State of Michigan.

**Random Selections:**

In order to provide lists of individuals selected for random testing, the State of Michigan will need to submit current lists of random pool participants ten (10) business days prior to the end of the month proceeding the start of a new random testing period. These lists must be submitted in an Excel Spread Sheet or an acceptable equivalent.

**Reporting Accuracy:**

Penalties are based on inaccuracies that are directly attributable to the Contractor. For example, social security number and donor name discrepancies are frequently attributable to questionable penmanship of test subjects or other non-Contractor personnel who are completing chain of custody documents. Another common error is the entry of a wrong reason for a test. It is also important to request that inaccuracies be reported to Contractor within 15 days of discovery to allow Contractor to correct inaccuracies that could affect future reports.

**Miscellaneous:**

Are measurements quarterly or annually? How is settlement to be made (credit, check, etc.)?



## Article 2 – General Terms and Conditions

### 2.010 Contract Structure and Administration

#### **2.011 Definitions**

Capitalized terms used in this Contract (including its Exhibits) shall have the meanings given below, unless the context requires otherwise:

- (a) “Days” means calendar days unless otherwise specified.
- (b) “24x7x365” means 24 hours a day, seven days a week, and 365 days a year (including the 366th day in a leap year).
- (c) “Additional Service” means any Services/Deliverables within the scope of the Contract, but not specifically provided under any Statement of Work, that once added will result in the need to provide the Contractor with additional consideration. “Additional Service” does not include New Work.
- (d) “Amendment Labor Rates” means the schedule of fully-loaded hourly labor rates attached as **Article 1, Attachment C**.
- (e) “Audit Period” has the meaning given in **Section 2.111**.
- (f) “Business Day,” whether capitalized or not, shall mean any day other than a Saturday, Sunday or State-recognized legal holiday (as identified in the Collective Bargaining Agreement for State employees) from 8:00am EST through 5:00pm EST unless otherwise stated.
- (g) “Incident” means any interruption in Services.
- (h) “Business Critical” means any function identified in any Statement of Work as Business Critical.
- (i) “Deliverable” means physical goods and/or commodities as required or identified by a Statement of Work
- (j) “Key Personnel” means any Personnel designated in **Article 1, Section 1.201 and/or Attachment B**, as Key Personnel.
- (k) “New Work” means any Services/Deliverables outside the scope of the Contract and not specifically provided under any Statement of Work, that once added will result in the need to provide the Contractor with additional consideration. “New Work” does not include Additional Service.
- (l) “Services” means any function performed for the benefit of the State.
- (m) “State Location” means any physical location where the State performs work. State Location may include state-owned, leased, or rented space.
- (n) “Subcontractor” means a company Contractor delegates performance of a portion of the Services to, but does not include independent contractors engaged by Contractor solely in a staff augmentation role.
- (o) “Work in Process” means a Deliverable that has been partially prepared, but has not been presented to the State for Approval.

#### **2.012 Attachments and Exhibits**

All Attachments and/or Exhibits attached to any, and all Statement(s) of Work, attached to, or referencing this Contract, are incorporated in their entirety into, and form part of, this Contract.

#### **2.013 Statements of Work**

- (a) The parties agree that the Services/Deliverables to be rendered by Contractor pursuant to this Contract (and any future amendments of it) will be defined and described in detail in Statements of Work or Purchase Orders (PO) executed under this Contract. Contractor shall not be obliged or authorized to commence any work to implement a Statement of Work until authorized via a PO issued against this Contract, or an amendment to this Contract (see 2.106). Contractor shall perform in accordance with this Contract, including the Statements of Work/Purchase Orders executed under it.



(b) Unless otherwise agreed by the parties, each Statement of Work (as defined in Article 1) will include, or incorporate by reference to the appropriate Contract Article 1 Attachment containing, the following information:

- a description of the Services to be performed by Contractor under the Statement of Work;
- a project schedule (including the commencement and completion dates for all tasks, subtasks (for all projects of sufficient duration and complexity to warrant sub task breakdown), and Deliverables;
- a list of the Deliverables to be provided, if any, including any particular specifications and acceptance criteria for such Deliverables, and the dates on which the Deliverables are scheduled to be completed and delivered to the State;
- all Deliverable price schedules and other charges associated with the Statement of Work, the overall fixed price for such Statement of Work and any other appropriate pricing and payment terms;
- a specification of Contractor's and the State's respective performance responsibilities with respect to the performance or completion of all tasks, subtasks and Deliverables;
- a listing of any Key Personnel of Contractor and/or its Subcontractors for that Statement of Work and any future Statements of Work;
- any other information or provisions the parties agree to include.

(c) Reserved.

(d) The initial Statements of Work, as of the Effective Date, are attached to this Contract.

#### 2.014 Issuing Office

This Contract is issued by the Department of Management and Budget, Purchasing Operations and Office of State Employer, Employee Health Management Division (collectively, including all other relevant State of Michigan departments and agencies, the "State"). PURCHASING OPERATIONS is the sole point of contact in the State with regard to all procurement and contractual matters relating to the Contract. **PURCHASING OPERATIONS is the only State office authorized to change, modify, amend, alter or clarify the prices, specifications, terms and conditions of this Contract.** The Contractor Administrator within Purchasing Operations for this Contract is:

Melissa Castro  
Purchasing Operations  
Department of Management and Budget  
Mason Bldg, 2nd Floor  
PO Box 30026  
Lansing, MI 48909  
castrom@michigan.gov  
Phone: 517-373-1080

#### 2.015 Contract Compliance Inspector

Upon receipt at PURCHASING OPERATIONS of the properly executed Contract, it is anticipated that the Director of DMB Purchasing Operations, in consultation with (insert the end using agency), will direct that the person named below, or any other person so designated, be authorized to monitor and coordinate the activities for the Contract on a day-to-day basis during its term. However, monitoring of this Contract implies **no authority to change, modify, clarify, amend, or otherwise alter the prices, terms, conditions and specifications of such Contract as that authority is retained by Purchasing Operations.** The Contract Compliance Inspector for this Contract is:

Kenneth R. Swisher  
Employee Health Management Division  
Office of the State Employer  
Capital Commons Center  
400 S. Pine St, 4th Floor  
Lansing, MI 48933  
[swisherk@michigan.gov](mailto:swisherk@michigan.gov)  
517-241-9090



2.020 Contract Objectives/Scope/Background

**2.021 Background**

This program must meet all federal requirements pertaining to drug and alcohol testing under the Department of Health and Human Services (DHHS), and the Department of Transportation's (DOT) FHWA, FAA, and USCG Regulations. The Drug and Alcohol Testing Program must also be conducted according to the State of Michigan's Policy and Procedures pertaining to it's CDL Driver, Civil Service Rule 2-7 (NON-DOT), and applicable Collective Bargaining Agreements.

**2.022 Purpose**

The purpose of this Contract is to provide administrative services for a full range of drug and alcohol testing programs for the State of Michigan.

**2.023 Objectives and Scope**

See Section 1.101.

**2.024 Interpretation**

Sections 2.021 through 2.023 are intended to provide background and context for this Contract and are not intended to expand the scope of the obligations under this Contract or to alter the plain meaning of the terms and conditions of this Contract. However, to the extent the terms and conditions of this Contract are unclear or otherwise ambiguous, such terms and conditions are to be interpreted and construed in light of the provisions of this Section.

**2.025 Form, Function and 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.

2.030 Legal Effect and Term

**2.031 Legal Effect**

Except as otherwise agreed in writing by the parties, the State assumes no liability for costs incurred by Contractor or payment under this Contract, until Contractor is notified in writing that this 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.

**2.032 Contract Term**

This Contract is for a period of three (3) years from June 1, 2006 through May 31, 2009. All outstanding Purchase Orders shall also expire upon the termination (cancellation for any of the reasons listed in 2.210) of the Contract, unless otherwise extended pursuant to 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.



### 2.033 Renewal(s)

This Contract may be renewed in writing by mutual agreement of the parties not less than thirty (30) days before its expiration. The Contract may be renewed for up to three (3) additional one (1) year periods. Successful completion of negotiations surrounding the terms of the extension, will be a pre-requisite for the exercise of any option year.

#### 2.040 Contractor Personnel

### 2.041 Contractor Personnel

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

(b) **Key Personnel**

(i) In discharging its obligations under this Contract, Contractor shall provide the named Key Personnel on the terms indicated. **Article 1, Attachment B** provides an organization chart showing the roles of certain Key Personnel, if any.

(ii) Key Personnel shall be dedicated as defined in **Article 1, Attachment B** 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.

(iii) The State will have 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 will notify the State of the proposed assignment, will introduce the individual to the appropriate State representatives, and will 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 will provide a written explanation including reasonable detail outlining the reasons for the rejection. Additionally, the State's request shall be based on legitimate, good-faith reasons. Proposed alternative for the individual denied, shall be fully qualified for the position.

(iv) Contractor shall not remove any Key Personnel from their assigned roles or the Contract without the prior written consent of the State. If the Contractor does remove Key Personnel without the prior written consent of the State, it shall be considered an unauthorized removal ("Unauthorized Removal"). It shall not be considered an Unauthorized Removal if Key Personnel must be replaced 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. It shall not be considered an Unauthorized Removal if Key Personnel must be replaced 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 thirty (30) days of shadowing unless parties agree to a different time period. The Contractor with the State shall review any Key Personnel replacements, and appropriate transition planning will 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 rights under **Section 2.210**.

(v) It is acknowledged that an Unauthorized Removal will interfere with the timely and proper completion of the Contract, to the loss and damage of the State, and that it would be impracticable and extremely difficult to fix the actual damage sustained by the State as a result of any Unauthorized Removal. Therefore, Contractor and the State agree that in the case of any Unauthorized Removal in respect of which the State does not elect to exercise its rights under **Section 2.210**, the State may assess liquidated damages against Contractor as specified below.

The State and the contractor agree that, at a minimum, the following personnel are Key Personnel for purposes of this contract:

- Account Representative/Coordinator
- Account Executive
- Data Systems Manager
- Medical Review Officers



(c) Re-assignment of non-Key Personnel. Prior to re-deploying to other projects, at the completion of their assigned tasks on the Project, teams of its non-Key Personnel who are performing Services on-site at State facilities or who are otherwise dedicated primarily to the Project, Contractor will give the State at least ten (10) Business Days notice of the proposed re-deployment to give the State an opportunity to object to the re-deployment if the State reasonably believes such team's Contract responsibilities are not likely to be completed and approved by the State prior to the proposed date of re-deployment.

(d) 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 shall be written with reasonable detail outlining the reasons for the removal request. Additionally, the State's request shall be based on legitimate, good-faith reasons. Replacement personnel for the removed person shall 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 such incident with removed personnel results in delay not reasonable anticipatable under the circumstances and which is attributable to the State, the applicable SLAs for the affected Service will not be counted in **Section 2.076** for a time as agreed to by the parties.

(e) Staffing Levels.

(i) All staff requirements not specified in the applicable Statement of Work or State-approved project plan as State personnel will be supplied by Contractor. This includes secretarial, clerical and Contract administration support staff necessary for Contractor to perform its obligations hereunder.

(ii) Contractor shall provide sufficient personnel resources for the completion of Contract tasks indicated in Contractor's project plan approved by the State. If the level of personnel resources is insufficient to complete any Contractor Contract tasks in accordance with the Contract time schedule as demonstrated by Contractor's failure to meet mutually agreed to time schedules, Contractor shall promptly add additional qualified personnel resources to the performance of the affected tasks, at no additional charge to the State, in an amount sufficient to complete performance of Contractor's tasks in accordance with the Contract time schedule.

(f) Personnel Turnover. The Parties agree that it is in their best interests to keep the turnover rate of employees of Contractor and its Subcontractors who are performing the Services to a reasonable minimum. Accordingly, if the State determines that the turnover rate of such employees is excessive and so notifies Contractor, Contractor will meet with the State to discuss the reasons for the turnover rate and otherwise use commercially reasonable efforts to minimize such turnover rate. If requested to do so by the State, Contractor will submit to the State its proposals for reducing the turnover rate to an acceptable level. In any event, notwithstanding the turnover of personnel, Contractor remains obligated to perform the Services without degradation and in accordance with the State-approved Contract schedule.

(g) Location. All staff assigned by Contractor to work on the Contract will perform their duties either primarily at Contractor's offices and facilities or at State facilities. Without limiting the generality of the foregoing, Key Personnel will, 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.

#### **2.042 Contractor Identification**

Contractor employees shall 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.

#### **2.043 Cooperation with Third Parties**

Contractor agrees to 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, and, as reasonably requested by the State, to provide to the State's agents and other contractors with reasonable access to Contractor's Project personnel, systems and facilities to the extent they relate to activities specifically associated with this Contract and will not interfere or jeopardize the safety or operation of the systems or facilities and provided Contractor receives reasonable prior written notice of such request. The State acknowledges that Contractor's time schedule for the Contract is very specific and agrees not to unnecessarily or unreasonably interfere with, delay or otherwise impeded Contractor's performance under this Contract with such requests for access.



#### **2.044 Subcontracting by Contractor**

(a) Contractor shall have 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 this Contract, including payment of any and all charges for Services and Deliverables.

(b) Contractor shall not delegate any duties under this Contract to a Subcontractor unless the Department of Management and Budget, Purchasing Operations has given written consent to such delegation. The State shall have 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 shall be written with reasonable detail outlining the reasons for the removal request. Additionally, the State's request shall be based on legitimate, good-faith reasons. Replacement Subcontractor(s) for the removed Subcontractor shall 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 SLAs for the affected Work will not be counted in **Section 2.076** for a time agreed upon by the parties.

(c) In any subcontracts entered into by Contractor for the performance of the Services, Contractor shall require the Subcontractor, to the extent of the Services to be performed by the Subcontractor, to be bound to Contractor by the terms of this Contract and to assume toward Contractor all of the obligations and responsibilities that Contractor, by this 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 will be the responsibility of Contractor, and Contractor shall remain responsible for the performance of its Subcontractors to the same extent as if Contractor had not subcontracted such performance. Contractor shall 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 this Contract shall not relieve Contractor of any obligations or performance required under this Contract. Attached is a list of the Subcontractors, if any, approved by the State as of the execution of this Contract, together with a copy of the applicable subcontract.

(d) Except where specifically approved in writing by the State on a case-by-case basis, Contractor shall flow down the obligations in **Sections 2.040, 2.110, 2.150, 2.160, 2.171(c), 2.172(b), 2.180, 2.260, 2.276, 2.297** in all of its agreements with any Subcontractors.

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

#### **2.045 Contractor Responsibility for Personnel**

Contractor shall be responsible for all acts and omissions of its employees, as well as the acts and omissions of any other personnel furnished by Contractor to perform the Services.

##### 2.050 State Standards

#### **2.051 Existing Technology Standards**

The Contractor will adhere to all existing standards as described within the comprehensive listing of the State's existing technology standards at [http://www.michigan.gov/dit/0,1607,7-139-30639\\_30655---,00.html](http://www.michigan.gov/dit/0,1607,7-139-30639_30655---,00.html).

#### **2.052 Reserved**

#### **2.053 Adherence to Portal Technology Tools**

The State has adopted the following tools for its Portal Technology development efforts:



- Vignette Content Management and personalization Tool
- Inktomi Search Engine
- E-Pay Payment Processing Module
- Websphere Commerce Suite for e-Store applications

Unless otherwise stated, Contractor must use the Portal Technology Tools to implement web content management and deployment efforts. Tools used for web-based application development must work in conjunction with Vignette and Inktomi. The interaction with Vignette and Inktomi must be coordinated with DIT, Enterprise Application Services Office, e-Michigan Web Development team.

Contractors that are compelled to use alternate tools must have received an exception from DIT, Enterprise Application Services Office, e-Michigan Web Development team, before this Contract is effective.

#### **2.054 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/0,1607,7-179-25781-73760--,00.html>. 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.

#### 2.060 Deliverables

#### **2.061 Ordering**

Any Services/Deliverables to be furnished under this Contract shall be ordered by issuance of written Purchase Orders/Blanket Purchase Order by the State after approval by the Contract Administrator or his/her designee. All orders are subject to the terms and conditions of this Contract. In the event of conflict between an order and this Contract, the Contract shall take precedence as stated in **Section 2.293**. In no event shall any additional terms and conditions contained on a Purchase Order/Blanket Purchase Order be applicable, unless specifically contained in that Purchase Order/Blanket Purchase Order's accompanying Statement of Work.

#### **2.062 Reserved**

#### **2.063 Reserved**

#### **2.064 Reserved**

#### 2.070 Performance

#### **2.071 Performance, In General**

The State engages Contractor to execute the Contract and perform the Services/provide the Deliverables, and Contractor undertakes to execute and complete the Contract in its entirety in accordance with the terms and conditions of this Contract and with the participation of State representatives as specified in this Contract.

#### **2.072 Time of Performance**

(a) Contractor shall use commercially reasonable efforts to provide the resources necessary to complete all Services and Deliverables in accordance with 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 2.072(a)**, Contractor shall 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, in such event, shall inform the State of the projected actual delivery date.

(c) If Contractor believes that a delay in performance by the State has caused or will cause Contractor to be unable to perform its obligations in accordance with specified Contract time periods, Contractor shall notify the State in a timely manner and shall use commercially reasonable efforts to perform its obligations in accordance with such Contract time periods notwithstanding the State's failure. Contractor will not be in default for a delay in performance to the extent such delay is caused by the State.

### **2.073 Reserved**

### **2.074 Bankruptcy**

If Contractor shall file for protection under the bankruptcy laws, or if an involuntary petition shall be filed against Contractor and not removed within thirty (30) days, or if the Contractor becomes insolvent, be adjudicated bankrupt, or if it should make a general assignment for the benefit of creditors, or if a receiver shall be appointed due to its insolvency, and Contractor and/or its affiliates are unable to provide reasonable assurances that Contractor and/or its affiliates can deliver the services provided herein, the State may, without prejudice to any other right or remedy, terminate this Contract, in whole or in part, and, at its option, may take possession of the "Work in Process" and finish such Works in Process by whatever appropriate method the State may deem expedient. Contractor will fix appropriate notices or labels on the Work in Process to indicate ownership by the State. To the extent reasonably possible, materials and Work in Process shall be stored separately from other stock and marked conspicuously with labels indicating ownership by the State.

To secure the State's progress payments before the delivery of any services or materials required for the execution of Contractor's obligations hereunder, and any work which Contractor may subcontract in the support of the performance of its obligations hereunder, title shall vest in the State to the extent the State has made progress payments hereunder.

### **2.075 Reserved**

### **2.076 Service Level Agreements (SLAs)**

(a) SLAs will be completed with the following operational considerations:

- (i) SLAs will not be calculated for individual Incidents where any event of Excusable Failure has occurred as defined in **Section 2.202**,
- (ii) SLAs will not be calculated for individual Incidents where loss of service is planned and where the State has received prior notification and/or coordination.
- (iii) SLAs will not apply if the applicable Incident could have been prevented through planning proposed by Contractor and not implemented at the request of the State. In order to invoke this consideration, complete documentation relevant to the denied planning proposal must be presented to substantiate the proposal.
- (iv) Time period measurements will be based on the time Incidents are received by the Contractor and the time that the State receives notification of resolution based on 24x7x365 time period, except that the time period measurement will be suspended based on the following ("Stop-Clock Conditions"):
  - 1. Time period(s) will not apply where Contractor does not have access to a physical State Location and where access to the State Location is necessary for problem identification and resolution.
  - 2. Time period(s) will not apply where Contractor needs to obtain timely and accurate information or appropriate feedback and is unable to obtain timely and accurate information or appropriate feedback from the State.



(b) Chronic Failure for any Service(s) will be defined as three (3) unscheduled outage(s) or interruption(s) on any individual Service under the direct control of the Contractor for the same reason or cause or if the same reason or cause was reasonably discoverable in the first instance over a rolling thirty (30) day period. Chronic Failure will result in the State's option to terminate the effected individual Service(s) and procure them from a different vendor for the chronic location(s) with Contractor to pay the difference in charges for up to three (3) additional months. The termination of the Service will not affect any tiered pricing levels.

(c) Root Cause Analysis will be performed on any Business Critical outage(s) or outage(s) on Services when requested by the Contract Administrator. Contractor will provide its analysis within two (2) weeks of outage(s) and provide a recommendation for resolution.

(d) All decimals shall be rounded to two decimal places with 5 and greater rounding up and 4 and less rounding down unless otherwise specified.

### 2.080 Delivery and Acceptance of Deliverables

#### **2.081 Delivery Responsibilities**

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

(a) Shipment responsibilities - Services performed/Deliverables provided under this Contract shall be delivered "F.O.B. Destination, within Government Premises." The Contractor shall have complete responsibility for providing all Services/Deliverables to all site(s) unless otherwise stated. Actual delivery dates will be specified on the individual purchase order.

(b) Delivery locations - Services will be performed/Deliverables will 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 shall examine all packages. The quantity of packages delivered shall be recorded and any obvious visible or suspected damage shall be noted at time of delivery using the shipper's delivery document(s) and appropriate procedures to record such.

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 fourteen (14) days of receipt. Any damage must be reported to the Contractor within five (5) days of inspection. If this inspection does not occur and damages not reported within thirty (30) days of receipt, the cure for such damaged deliveries shall transfer to the delivery signing party.

#### **2.082 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 shall be completed and delivered for State review and written approval and, where applicable, installed in accordance with the State-approved delivery schedule and any other applicable terms and conditions of the Contract.



### 2.083 Testing

(a) Prior to delivering any of the above-mentioned Statement of Work Physical Deliverables or Services to the State, Contractor will first perform all required quality assurance activities to verify that the Physical Deliverable or Service is complete and in conformance with its specifications listed in the applicable Statement of Work or Purchase Order. Before delivering a Physical Deliverable or Service to the State, Contractor shall certify to the State that (1) it has performed such quality assurance activities, (2) it has performed any applicable testing, (3) it has corrected all material deficiencies discovered during such 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 shall (1) perform any applicable testing, (2) correct all material deficiencies discovered during such 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 shall be entitled to observe or otherwise participate in testing.

### 2.084 Approval of Deliverables, In General

(a) All Deliverables (Physical Deliverables and Written Deliverables) and Services require formal written approval by the State, in accordance with the following procedures. Formal approval by the State requires that the Deliverable be confirmed in writing by the State to meet its specifications, which will include the successful completion of Testing as applicable in **Section 2.083**, to be led by the State with the support and assistance of Contractor. The parties acknowledge that the approval process set forth herein will be facilitated by ongoing consultation between the parties, visibility 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) Prior to 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 in accordance with **Section 2.083(a)**.

(d) The State will approve in writing a Deliverable/Service upon confirming that it conforms to and, performs in accordance with, its specifications without material deficiency. The State may, but shall 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), Contractor is unable to correct all deficiencies preventing Final Acceptance of a Deliverable/Service, the State may: (i) demand that Contractor cure the failure and give Contractor additional time to cure the failure at the sole expense of Contractor; or (ii) keep the Contract in force and do, either itself or through other parties, whatever Contractor has failed to do, in which event Contractor shall bear any excess expenditure incurred by the State in so doing beyond the Contract price for such Deliverable/Service and will pay the State an additional sum equal to ten percent (10%) of such excess expenditure to cover the State's general expenses provided the State can furnish proof of such 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 such breach. Notwithstanding the foregoing, the State shall not 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 such process reveals deficiencies in or problems with a Deliverable/Service in a sufficient quantity or of a sufficient severity as to make the continuation of such process unproductive or unworkable. In such case, the State may stop using the Service or return the applicable Deliverable to Contractor for correction and re-delivery prior to resuming the testing or approval process.

#### **2.085 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 (failing which the State Review Period, by default, shall be five (5) Business Days for Written Deliverables of one hundred (100) pages or less and ten (10) Business Days for Written Deliverables of more than one hundred (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 prior to 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 prior to approval of the Deliverable (or at the State's election, subsequent to approval of the Deliverable). If the State delivers to Contractor a notice of deficiencies, Contractor will correct the described deficiencies and within thirty (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 will be made at no additional charge. Upon receipt of a corrected Deliverable from Contractor, the State will 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.

#### **2.086 Process for Approval of Services**

The State Review Period for approval of Services is governed by the applicable Statement of Work (failing which the State Review Period, by default, shall be thirty (30) Business Days for Services). The State agrees to notify Contractor in writing by the end of the State Review Period either stating that the Service is approved in the form delivered by Contractor or describing any deficiencies that must be corrected prior to approval of the Services (or at the State's election, subsequent to approval of the Service). If the State delivers to Contractor a notice of deficiencies, Contractor will correct the described deficiencies and within thirty (30) Business Days resubmit the Service in a form that shows all revisions made to the original version delivered to the State. Contractor's correction efforts will be made at no additional charge. Upon implementation of a corrected Service from Contractor, the State will 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.

#### **2.087 Process for Approval of Physical Deliverables**

The State Review Period for approval of Physical Deliverables is governed by the applicable Statement of Work (failing which the State Review Period, by default, shall be thirty (30) continuous Business Days for a Physical Deliverable). 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 prior to approval of the Deliverable (or at the State's election, subsequent to approval of the Deliverable). If the State delivers to Contractor a notice of deficiencies, Contractor will correct the described deficiencies and within thirty (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 will be made at no additional charge. Upon receipt of a corrected Deliverable from Contractor, the State will 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.



## 2.088 Final Acceptance

Unless otherwise stated in the Statement of Work or Purchase Order, "Final Acceptance" of each Deliverable shall occur when each Deliverable/Service has been approved by the State following the State Review Periods identified in **Sections 2.080-2.087**. 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.

2.080 *Reserved*

2.090 *Financial*

## 2.091 Pricing

### (a) Fixed Prices for Services/Deliverables

Each Statement of Work/PO issued under this Contract shall 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. To the extent the parties agree that certain specific Services will be provided on a time and materials basis, such Services shall be provided at the Amendment Labor Rates (**Article 1, Attachment C**). 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.

### (b) Adjustments for Reductions in Scope of Services/Deliverables

If the scope of the Services/Deliverables under any Statement of Work issued under this Contract is subsequently reduced by the State, the parties shall negotiate an equitable reduction in Contractor's charges under such Statement of Work commensurate with the reduction in scope, using the rates in **Article 1, Attachment C**. Unless specifically identified in an applicable Statement of Work.

### (c) Services/Deliverables Covered

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

### (d) Labor Rates

All time and material charges will be at the rates specified in **Article 1, Attachment C**.

## 2.092 Invoicing and Payment Procedures and Terms

### (a) Invoicing and Payment – In General

(i) Each Statement of Work issued under this Contract shall 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.

(ii) Each Contractor invoice will show details as to charges by Service/Deliverable component and location at a level of detail reasonably necessary to satisfy the State's accounting and charge-back requirements. The charges for Services billed on a time and materials basis shall be determined based on the actual number of hours of Services performed, at the applicable Labor Rates specified in **Article 1, Attachment C**. Invoices for Services performed on a time and materials basis will show, for each individual, the number of hours of Services performed during the billing period, the billable skill/labor category for such person and the applicable hourly billing rate. Prompt payment by the State is contingent on the Contractor's invoices showing the amount owed by the State minus any holdback amount to be retained by the State in accordance with **Section 2.094**.

(iii) Correct invoices will be due and payable by the State, in accordance with the State's standard payment procedure as specified in 1984 Public Act No. 279, MCL 17.51 et seq., within forty-five (45) days after receipt, provided the State determines that the invoice was properly rendered.



(b) Taxes (See Section 2.305 and Article 3, Section 3.022-3.024 for additional )

The State is exempt from Federal Excise Tax, State and Local Sales Taxes, and Use Tax with respect to the sale to and use by it of tangible personal property. Such taxes shall not be included in Contract prices as long as the State maintains such exemptions. Copies of all tax exemption certificates shall be supplied to Contractor, if requested.

(c) Out-of-Pocket Expenses

Contractor acknowledges that the out-of-pocket expenses that Contractor expects to incur in performing the Services/ providing the Deliverables (such as, but not limited to, travel and lodging, document reproduction and shipping, and long distance telephone) are included in Contractor's fixed price for each Statement of Work. Accordingly, Contractor's out-of-pocket expenses are not separately reimbursable by the State unless, on a case-by-case basis for unusual expenses, the State has agreed in advance and in writing to reimburse Contractor for such an expense at the State's current travel reimbursement rates. See [http://www.mi.gov/dmb/0,1607,7-150-9141\\_13132---,00.html](http://www.mi.gov/dmb/0,1607,7-150-9141_13132---,00.html) for current rates.

(d) Pro-ration

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

(e) 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 this 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 this Contract shall constitute a waiver of all claims by Contractor against the State for payment under this Contract, other than those claims previously filed in writing on a timely basis and still unsettled.

## 2.093 State Funding Obligation

The State's obligation under this Contract is payable only and solely from funds appropriated for the purpose of this Contract. Contractor acknowledges and agrees that all funds for payments after the end of the current fiscal year are subject to the availability of a legislative appropriation for the purpose of this Contract. Events of non-appropriation are addressed further in **Section 2.210** of this Contract.

## 2.094 Reserved

## 2.095 Electronic Payment Availability

Public Act 533 of 2004 requires that payments under this contract be processed by electronic funds transfer (EFT). Contractor is required to register to receive payments by EFT at the Contract & Payment Express website ([www.cpexpress.state.mi.us](http://www.cpexpress.state.mi.us)).

### 2.100 Contract Management

## 2.101 Contract Management Responsibility

(a) Contractor shall have overall responsibility for managing and successfully performing and completing the Services/Deliverables, subject to the overall direction and supervision of the State and with the participation and support of the State as specified in this Contract. Contractor's duties will include monitoring and reporting the State's performance of its participation and support responsibilities (as well as Contractor's own responsibilities) and providing timely notice to the State in Contractor's reasonable opinion if the State's failure to perform its responsibilities in accordance with **Article 1, Attachment E** (Project Plan) is likely to delay the timely achievement of any Contract tasks.



(b) The Services/Deliverables will be provided by the Contractor either directly or through its affiliates, subsidiaries, subcontractors or resellers. Regardless of the entity providing the Service/Deliverable, the Contractor will act as a single point of contact coordinating these entities to meet the State's need for Services/Deliverables. Nothing in this Contract, however, shall be construed to authorize or require any party to violate any applicable law or regulation in its performance of this Contract.

### **2.102 Problem and Contract Management Procedures**

Problem Management and Contract Management procedures will be governed by the Contract and the applicable Statements of Work.

### **2.103 Reports and Meetings**

#### **(a) Reports.**

Within thirty (30) days after the Effective Date, the parties shall determine an appropriate set of periodic reports to be issued by Contractor to the State. Such reports may include:

- (i) separately address Contractor's performance in each area of the Services;
- (ii) for each area of the Services, assess the degree to which Contractor has attained or failed to attain the pertinent objectives in that area, including on-time completion and delivery of Deliverables;
- (iii) explain the reasons for any failure to achieve on-time completion and delivery of Deliverables and include a plan for corrective action where appropriate;
- (iv) describe any circumstances that Contractor anticipates will impair or prevent on-time completion and delivery of Deliverables in upcoming reporting periods;
- (v) include plans for corrective action or risk mitigation where appropriate and describe the status of ongoing problem resolution efforts;
- (vi) provide reports setting forth a comparison of actual hours spent by Contractor (including its augmented personnel and Subcontractors) in performing the Project versus hours budgeted by Contractor.
- (vii) set forth a record of the material personnel changes that pertain to the Services and describe planned changes during the upcoming month that may affect the Services.
- (viii) include such documentation and other information may be mutually agreed to verify compliance with, and meeting the objectives of, this Contract.
- (ix) set forth an updated schedule that provides information on the status of upcoming Deliverables, expected dates of delivery (or redelivery) of such Deliverables and estimates on timing for completion of the Project.

#### **(b) Meetings.**

Within thirty (30) days after the Effective Date, the parties shall determine an appropriate set of meetings to be held between representatives of the State and Contractor. Contractor shall prepare and circulate an agenda sufficiently in advance of each such meeting to give participants an opportunity to prepare for the meeting. Contractor shall incorporate into such agenda items that the State desires to discuss. At the State's request, Contractor shall prepare and circulate minutes promptly after a meeting.

### **2.104 System Changes**

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

### **2.105 Reserved**

### **2.106 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 State requests or directs the Contractor to perform any Services/Deliverables that are outside the scope of the Contractor's responsibilities under the Contract ("New Work"), the Contractor must notify the State promptly, and before commencing performance of the requested activities, that it believes the requested activities are New Work. If the Contractor fails to notify the State before commencing performance of the requested activities, any such activities performed before notice is given by the Contractor shall be conclusively considered to be in-scope Services/Deliverables, not New Work.

If the State requests or directs the Contractor to perform any services or provide deliverables that are consistent with and similar to the Services/Deliverables being provided by the Contractor under the Contract, but which the Contractor reasonably and in good faith believes are not included within the Statements of Work, then before performing such services or providing such deliverables, the Contractor shall notify the State in writing that it considers the services or deliverables to be an Additional Service/Deliverable for which the Contractor should receive additional compensation. If the Contractor does not so notify the State, the Contractor shall have no right to claim thereafter that it is entitled to additional compensation for performing that service or providing that deliverable. If the Contractor does so notify the State, then such a service or deliverable shall be governed by the Change Request procedure in this Section.

In the event prices or service levels are not acceptable to the State, the Additional Services or New Work shall be subject to competitive bidding based upon the specifications.

(a) Change Requests

(i) State Requests

If the State should require Contractor to perform New Work, Additional Services or make changes to the Services that would affect the Contract completion schedule or the amount of compensation due Contractor (a "Change"), the State shall submit a written request for Contractor to furnish a proposal for carrying out the requested Change (a "Change Request").

(ii) Contractor Recommendations

Contractor shall be entitled to propose a Change to the State, on its own initiative, should it be of the opinion that this would benefit the Contract.

(iii) Upon receipt of a Change Request or on its own initiative, Contractor shall examine the implications of the requested Change on the technical specifications, Contract schedule and price of the Deliverables and Services and shall submit to the State without undue delay a written proposal for carrying out the Change. Contractor's proposal will include any associated changes in the technical specifications, Contract schedule and price and method of pricing of the Services. If the Change is to be performed on a time and materials basis, the Amendment Labor Rates shall apply to the provision of such Services. If Contractor provides a written proposal and should Contractor be of the opinion that a requested Change is not to be recommended, it shall communicate its opinion to the State but shall nevertheless carry out the Change as specified in the written proposal if the State directs it to do so.

(iv) By giving Contractor written notice within a reasonable time, the State shall 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 shall be prepared and issued under this Contract, describing the Change and its effects on the Services and any affected components of this Contract (a "Contract Change Notice").

(v) No proposed Change shall be performed until the proposed Change has been specified in a duly executed Contract Change Notice issued by the Department of Management and Budget, Purchasing Operations.

(vi) If the State requests or directs Contractor to perform any activities that Contractor believes constitute a Change, Contractor must notify the State that it believes the requested activities are a Change prior to commencing performance of the requested activities. If Contractor fails to so notify the State prior to commencing performance of the requested activities, such activities shall be considered to be performed gratuitously by Contractor, and Contractor shall not have any right thereafter to assert any claim for additional compensation or time for the performance of such activities. If Contractor commences performance of gratuitous services outside the scope of this Contract and subsequently elects to stop performing such out-of-scope services, Contractor must, at the request of the State, back out or reverse any changes resulting from such performance that would adversely affect the Contract.

**2.107 Reserved**2.110 Records and Inspections**2.111 Records and Inspections**

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

**2.112 Errors**

(a) If the audit demonstrates any errors in the statements provided to the State, then the amount in error shall be reflected as a credit or debit on the next invoice and in subsequent invoices until the amount is paid or refunded in full. However, a credit or debit may not be carried for more than four (4) quarterly statements. If a balance remains after four (4) quarterly statements, then the remaining amount will be due as a payment or refund within forty-five (45) days of the last quarterly statement 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 ten percent (10%), then the Contractor shall pay all of the reasonable costs of the audit.

2.120 State Responsibilities**2.121 State Performance Obligations**

(a) **Equipment and Other Resources.** To facilitate Contractor's performance of the Services/Deliverables, the State shall provide to Contractor such equipment and resources as identified in the Statements of Work or other Contract Exhibits as items to be provided by the State.

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

(c) **Return.** Contractor shall be responsible for returning 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.

(d) Except as otherwise provided in **Section 2.220**, the State's failure to perform its responsibilities as set forth in this Contract shall not be deemed to be grounds for termination by Contractor. However, Contractor will not be liable for any default or delay in the performance of its obligations under this Contract to the extent such default or delay is caused by nonperformance of the State's obligations under this Contract, provided Contractor provides the State with reasonable written notice of such nonperformance and Contractor uses commercially reasonable efforts to perform notwithstanding the State's failure to perform. In addition, if the State's nonperformance of its responsibilities under this Contract materially increases the time required for Contractor's performance or Contractor's cost of performance, Contractor shall be entitled to seek an equitable extension via the Change Request process described in **Section 2.106**.

2.130 Security**2.131 Background Checks**

The Contractor shall authorize the investigation of its personnel proposed to have access to State facilities and systems on a case by case basis. 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. Such 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 will also be expected to comply with the State's security and acceptable use policies for State IT equipment and resources. See <http://www.michigan.gov/ditservice/0,1607,7-179-25781-73760--,00.html>. Furthermore, Contractor personnel will be expected to 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. It is expected the Contractor will present these documents to the prospective employee before the Contractor presents the individual to the State as a proposed resource. Contractor staff will be expected to comply with all Physical Security procedures in place within the facilities where they are working.

2.140 Reserved2.150 Confidentiality**2.151 Freedom of Information**

All information in any proposal submitted to the State by Contractor and this Contract is subject to the provisions of the Michigan Freedom of Information Act, 1976 Public Act No. 442, as amended, MCL 15.231, et seq (the "FOIA").

**2.152 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 shall 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 shall mean any information which is retained in confidence by the State (or otherwise required to be held in confidence by the State pursuant to applicable federal, state and local laws and regulations) or which, in the case of tangible materials provided to Contractor by the State pursuant to its performance under this Contract, is marked as confidential, proprietary or with a similar designation by the State. In the case of information of either Contractor or the State "Confidential Information" shall exclude any information (including this Contract) that is publicly available pursuant to the Michigan FOIA.

**2.153 Protection of Confidential Information**

The State and Contractor will 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 this 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 will limit disclosure of the other party's Confidential Information to employees and Subcontractors who must have access in order to fulfill the purposes of this Contract. Disclosure to, and use by, a Subcontractor is permissible where (A) use of a Subcontractor is authorized under this Contract,



(B) such disclosure is necessary or otherwise naturally occurs in connection with work that is within such 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 such Confidential Information from unauthorized use or disclosure.

#### **2.154 Exclusions**

Notwithstanding the foregoing, the provisions of this Section 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 such 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 this Section will not apply to any particular Confidential Information to the extent the receiving party is required by law to disclose such 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 such disclosure as reasonably requested by the furnishing party.

#### **2.155 No Implied Rights**

Nothing contained in this Section shall 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.

#### **2.156 Remedies**

Each party acknowledges that, if it breaches (or attempts or threatens to breach) its obligations under this Section, the other party may be irreparably harmed. Accordingly, if a court of competent jurisdiction should find that a party has breached (or attempted or threatened to breach) any such obligations, the non-breaching party shall be entitled to seek an injunction preventing such breach (or attempted or threatened breach).

#### **2.157 Security Breach Notification**

In the event of a breach of this Section, Contractor shall take (i) prompt corrective action to cure any such deficiencies and (ii) any action pertaining to such unauthorized disclosure required by applicable federal and state laws and regulations. Contractor and the State will cooperate to mitigate, to the extent practicable, the effects of any breach, intrusion, or unauthorized use or disclosure. Contractor shall 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 ten (10) days of becoming aware of such use or disclosure or such shorter time period as is reasonable under the circumstances.

#### **2.158 Survival**

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



## 2.159 Destruction of Confidential Information

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

2.160 Reserved

2.170 Warranties And Representations

## 2.171 Warranties and Representations

The Contractor represents and warrants:

- (a) It is capable in all respects of fulfilling and shall fulfill all of its obligations under this Contract. The performance of all obligations under this Contract shall be provided in a timely, professional, and workman-like manner and shall meet the performance and operational standards required under this 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 this Contract, and Contractor has all of the rights necessary to convey to the State the ownership rights or licensed use, as applicable, of any and all Deliverables. None of the Deliverables provided by Contractor to the State under this 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 this 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 such items in this Contract, Contractor shall 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 this 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, shall have, or shall 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 this Contract or otherwise create an appearance of impropriety with respect to the award or performance of this Agreement. Contractor shall notify the State within two (2) days of any such interest that may be incompatible with the interests of the State.
- (h) Neither Contractor nor any Affiliates, nor any employee of either has accepted or shall accept anything of value based on an understanding that the actions of the Contractor or Affiliates or employee on behalf of the State would be influenced. Contractor shall not attempt to influence any State employee by the direct or indirect offer of anything of value.
- (i) Neither Contractor nor any Affiliates, nor any employee of either has paid or agreed to pay any person, other than bona fide employees and consultants working solely for Contractor or such Affiliate, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or making of this Contract.
- (j) The prices proposed by Contractor were arrived at independently, without consultation, communication, or agreement with any other bidder for the purpose of restricting competition; the prices quoted were not knowingly disclosed by Contractor to any other bidder; and no attempt was made by Contractor to induce any other person to submit or not submit a proposal for the purpose of restricting competition.



(k) All financial statements, reports, and other information furnished by Contractor to the State as part of its response to the RFP or otherwise in connection with the award of this Contract fairly and accurately represent the business, properties, financial condition, and results of operations of Contractor as of the respective dates, or for the respective periods, covered by such financial statements, reports, other information. Since the respective dates or periods covered by such financial statements, reports, or other information, there have been no material adverse change in the business, properties, financial condition, or results of operations of Contractor.

(m) All written information furnished to the State by or behalf of Contractor in connection with this Contract, including its bid, is true, accurate, and complete, and contains no untrue statement of material fact or omits any material fact necessary to make such information not misleading.

(n) It is not in material default or breach of any other contract or agreement that it may have with the State or any of its departments, commissions, boards, or agencies. Contractor further represents and warrants that it has not been a party to any contract with the State or any of its departments that was terminated by the State or such department within the previous five (5) years for the reason that Contractor failed to perform or otherwise breached an obligation of such contract.

#### **2.172 Reserved**

#### **2.173 Reserved**

#### **2.174 Reserved**

#### **2.176 Consequences For Breach**

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

#### 2.180 Insurance

#### **2.181 Liability Insurance**

##### (a) Liability Insurance

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

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

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

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

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

See [http://www.mi.gov/cis/0,1607,7-154-10555\\_22535---,00.html](http://www.mi.gov/cis/0,1607,7-154-10555_22535---,00.html).

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



Before the Contract is signed by both parties or before the purchase order is issued by the State, the Contractor must furnish to the Director of Purchasing Operations, certificate(s) of insurance verifying insurance coverage ("Certificates"). The Certificate must be on the standard "accord" form or equivalent. **THE CONTRACT OR PURCHASE ORDER NO. MUST BE SHOWN ON THE CERTIFICATE OF INSURANCE TO ASSURE CORRECT FILING.** All Certificate(s) are to be prepared and submitted by the Insurance Provider. All Certificate(s) shall contain a provision indicating that coverages afforded under the policies WILL NOT BE CANCELLED, MATERIALLY CHANGED, OR NOT RENEWED without THIRTY (30) days prior written notice, except for ten (10) days for non-payment of premium, having been given to the Director of Purchasing Operations, Department of Management and Budget. The notice must include the Contract or Purchase Order number affected and be mailed to: Director, Purchasing Operations, Department of Management and Budget, P.O. Box 30026, Lansing, Michigan 48909. Failure to provide evidence of coverage, may, at the State's sole option, result in this Contract's termination.

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

1. Commercial General Liability with the following minimum coverage:
- \$2,000,000 General Aggregate Limit other than Products/Completed Operations
  - \$2,000,000 Products/Completed Operations Aggregate Limit
  - \$1,000,000 Personal & Advertising Injury Limit
  - \$1,000,000 Each Occurrence Limit
  - \$500,000 Fire Damage Limit (any one fire)

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

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

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

3. Workers' compensation coverage must be provided in accordance with applicable laws governing the employees and employers work activities in the state of the Contractor's domicile. If 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 shall not be applicable where prohibited or limited by the laws of the jurisdiction in which the work is to be performed.

4. Employers liability insurance with the following minimum limits:
- \$100,000 each accident
  - \$100,000 each employee by disease
  - \$500,000 aggregate disease

5. Employee Fidelity, including Computer Crimes, insurance naming the State as a loss payee, providing coverage for direct loss to the State and any legal liability of the State arising out of or related to fraudulent or dishonest acts committed by the employees of Contractor or its Subcontractors, acting alone or in collusion with others, in a minimum amount of one million dollars (\$1,000,000.00) with a maximum deductible of fifty thousand dollars (\$50,000.00).

6. Umbrella or Excess Liability Insurance in a minimum amount of ten million dollars (\$10,000,000.00), which shall apply, at a minimum, to the insurance required in Subsection 1 (Commercial General Liability) above.



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

(b) Subcontractors

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

(c) Certificates of Insurance and Other Requirements

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

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

2.190 Indemnification

**2.191 Indemnification**

(a) General Indemnification

To the extent permitted by law, the Contractor shall 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 this 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.

(b) Code Indemnification

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



(c) Employee Indemnification

In any and all 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 shall not be limited in any way by the amount or type of damages, compensation or benefits payable by or for the Contractor or any of its subcontractors under worker's disability compensation acts, disability 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.

(d) Patent/Copyright Infringement Indemnification

To the extent permitted by law, the Contractor shall 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 such action or proceeding is based on a claim that any piece of equipment, software, commodity or service supplied by the Contractor or its subcontractors, or the operation of such equipment, software, commodity or service, or the use or reproduction of any documentation provided with such equipment, software, commodity or service infringes any United States 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 shall at the Contractor's sole expense (i) procure for the State the right to continue using the equipment, software, commodity or service or, if such option is not reasonably available to the Contractor, (ii) replace or modify 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 such option is not reasonably available to Contractor, (iii) accept its return by the State with appropriate credits to the State against the Contractor's charges and reimburse the State for any losses or costs incurred as a consequence of the State ceasing its use and returning it.

Notwithstanding the foregoing, the Contractor shall have 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; or (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 this Contract.

## 2.192 Continuation of Indemnification Obligations

The Contractor's duty to indemnify pursuant to 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 prior to expiration or cancellation.

## 2.193 Indemnification Procedures

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

(a) After receipt by the State of notice of the action or proceeding involving a claim in respect of which it will seek indemnification, the State shall promptly notify Contractor of such claim in writing and take or assist Contractor in taking, as the case may be, any reasonable action to avoid the imposition of a default judgment against Contractor. No failure to notify Contractor shall relieve Contractor of its indemnification obligations except to the extent that Contractor can demonstrate damages attributable to such failure. Within ten (10) days following receipt of written notice from the State relating to any claim, Contractor shall notify the State in writing whether Contractor agrees to assume control of the defense and settlement of that claim (a "Notice of Election"). After notifying Contractor of a claim and prior to the State receiving Contractor's Notice of Election, the State shall be entitled to defend against the claim, at Contractor's expense, and Contractor will be responsible for any reasonable costs incurred by the State in defending against the claim during such period.



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

(c) If Contractor does not deliver a Notice of Election relating to any claim of which it is notified by the State as provided above, the State shall have the right to defend the claim in such manner as it may deem appropriate, at the cost and expense of Contractor. If it is determined that the claim was one against which Contractor was required to indemnify the State, upon request of the State, Contractor shall promptly reimburse the State for all such reasonable costs and expenses.

## 2.200 Limits of Liability and Excusable Failure

### **2.201 Limits of Liability**

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

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

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

### **2.202 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 such default, damage or delay is caused by government regulations or requirements (executive, legislative, judicial, military or otherwise), power failure, electrical surges or current fluctuations, 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 such party; provided the non-performing party and its Subcontractors are without fault in causing such default or delay, and such default or delay could not have been prevented by reasonable precautions and cannot reasonably be circumvented by the non-performing party through the use of alternate sources, workaround plans or other means, including disaster recovery plans.



If in such event, the non-performing party will be excused from any further performance or observance of the obligation(s) so affected for as long as such circumstances prevail and such party continues to use its commercially reasonable efforts to recommence performance or observance whenever and to whatever extent possible without delay and provided further that such party promptly notifies the other party in writing of the inception of the excusable failure occurrence, and also of its abatement or cessation.

If any of the above-enumerated circumstances substantially prevent, hinder, or delay Contractor's performance of the Services/provision of Deliverables for more than ten (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 shall not be liable for payment for the unperformed Services/ Deliverables not provided under the Contract for so long as the delay in performance shall continue; (b) the State may terminate any portion of the Contract so affected and the charges payable there under shall 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 Contractor, except to the extent that the State shall pay for Services/Deliverables provided through the date of termination.

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, workarounds plans or other means.

### **2.203 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 this Contract will provide the State with priority service for repair and work around in the event of a natural or manmade disaster.

#### 2.210 Termination/Cancellation by the State

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

### **2.211 Termination for Cause**

(a) In the event that Contractor breaches any of its material duties or obligations under this Contract (including a Chronic Failure to meet any particular SLA as defined in **Section 2.076**), which are either not capable of or subject to being cured, or are not cured within the time period specified in the written notice of breach provided by the State (such time period not to be less than thirty (30) days), or pose a serious and imminent threat to the health and safety of any person, or the imminent loss, damage or destruction of any real or tangible personal property, the State may, having provided written notice of termination to Contractor, terminate this Contract in whole or in part, for cause, as of the date specified in the notice of termination.

(b) In the event that this Contract is terminated for cause, in addition to any legal remedies otherwise available to the State by law or equity, Contractor shall be responsible for all costs incurred by the State in terminating this 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 this Contract from other sources. Re-procurement costs shall not be considered by the parties to be consequential, indirect or incidental damages, and shall not be excluded by any other terms otherwise included in this Contract, provided such costs are not in excess of fifty percent (50%) more than the prices for such Service/Deliverables provided under this Contract.

(c) In the event the State chooses to partially terminate this Contract for cause, charges payable under this Contract will be equitably adjusted to reflect those Services/Deliverables that are terminated and the State shall pay for all Services/Deliverables for which Final Acceptance has been granted provided up to the termination date. Services and related provisions of this Contract that are terminated for cause shall cease on the effective date of the termination.



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

### **2.212 Termination for Convenience**

The State may terminate this Contract for its convenience, in whole or part, if the State determines that such a termination is in the State's best interest. Reasons for such termination shall 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 this Contract for its convenience, in whole or in part, by giving Contractor written notice at least thirty (30) days prior to the date of termination. If the State chooses to terminate this Contract in part, the charges payable under this Contract shall be equitably adjusted to reflect those Services/Deliverables that are terminated. Services and related provisions of this Contract that are terminated for cause shall cease on the effective date of the termination.

### **2.213 Non-Appropriation**

(a) Contractor acknowledges that, if this Contract extends for several fiscal years, continuation of this Contract is subject to appropriation or availability of funds for this Contract. If funds to enable the State to effect continued payment under this Contract are not appropriated or otherwise made available, the State shall have the right to terminate this 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 shall give Contractor at least thirty (30) days advance written notice of termination for non-appropriation or unavailability (or such time as is available if the State receives notice of the final decision less than thirty (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 made available, the State may, upon thirty (30) days written notice to Contractor, reduce the level of the Services or the change the production of Deliverables in such manner and for such periods of time as the State may elect. The charges payable under this Contract will be equitably adjusted to reflect any equipment, services or commodities not provided by reason of such reduction.

(c) In the event the State terminates this Contract, eliminates certain Deliverables, or reduces the level of Services to be provided by Contractor pursuant to this Section, the State shall 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. For the avoidance of doubt, this Section will not preclude Contractor from reducing or stopping Services/Deliverables and/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.

### **2.214 Criminal Conviction**

The State may terminate this 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 incident to the application for, or performance of, a State, public or private Contract or subcontract; convicted of a criminal offense, including any of the following: embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, attempting to influence a public employee to breach the ethical conduct standards for State of Michigan employees; convicted under State or federal antitrust statutes; or convicted of any other criminal offense which in the sole discretion of the State reflects upon Contractor's business integrity.



## 2.215 Approvals Rescinded

The State may terminate this Contract without further liability or penalty in the event any final administrative or judicial decision or adjudication disapproves a previously approved request for purchase of personal services pursuant to Constitution 1963, Article 11, § 5, and Civil Service Rule 7-1. Termination may be in whole or in part and may be immediate as of the date of the written notice to Contractor or may be effective as of the date stated in such written notice.

## 2.216 Rights and Obligations Upon Termination

(a) If this Contract is terminated by the State for any reason, Contractor shall (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 this 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) in the event that the Contractor maintains title in Deliverables that is intended to be transferred to the State at the termination of the Contract, Contractor will 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 shall be provided to the State on an "As-Is" basis except to the extent the amounts paid by the State in respect of such items included compensation to Contractor for the provision of warranty services in respect of such 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) In the event the State terminates this Contract prior to its expiration for its own convenience, the State shall pay Contractor for all charges due for Services provided prior to the date of termination and, if applicable, as a separate item of payment pursuant to this 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 pursuant to this Contract shall, at the option of the State, become the State's property, and Contractor shall be entitled to receive equitable fair compensation for such Deliverables. Regardless of the basis for the termination, the State shall not be 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 shall have the right to assume, at its option, any and all subcontracts and agreements for services and deliverables provided under this Contract, and may further pursue completion of the Services/Deliverables under this Contract by replacement contract or otherwise as the State may in its sole judgment deem expedient.

## 2.217 Reservation of Rights

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

## 2.218 Contractor Transition Responsibilities

In the event this contract is terminated, for convenience or cause, dissolved, voided, rescinded, nullified, expires or is otherwise 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. In the event of termination or the expiration of this Contract, 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 ninety (90) days. These efforts shall include, but are not limited to, the following:

(a) Personnel - The Contractor shall 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 shall 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 this 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 will notify all of Contractor's subcontractors of procedures to be followed during transition.



(b) Information - 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 this Contract. The Contractor will provide the State with asset management data generated from the inception of this Contract through the date on which this Contractor is terminated in a comma-delineated format unless otherwise requested by the State. The Contractor will deliver to the State any remaining owed reports and documentation still in Contractor's possession subject to appropriate payment by the State.

(d) Software. - The Contractor shall reasonably assist the State in the acquisition of any Contractor software required to perform the Services/use the Deliverables under this Contract. This shall include any documentation being used by the Contractor to perform the Services under this Contract. If the State transfers any software licenses to the Contractor, those licenses shall, 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.

(e) Payment - If the transition results from a termination for any reason, reimbursement shall be governed by the termination provisions of this 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 specified by **Article 1, Attachment C**. The Contractor will prepare an accurate accounting from which the State and Contractor may reconcile all outstanding accounts.

### **2.219 State Transition Responsibilities**

In the event that this 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.

#### 2.220 Termination by Contractor

### **2.221 Termination by Contractor**

If the State materially breaches its obligation to pay Contractor undisputed amounts due and owing under this Contract in accordance with **Section 2.090**, or if the State breaches its other obligations under this Contract to an extent that makes it impossible or commercially impractical for Contractor to perform the Services, and if the State does not cure the breach within the time period specified in a written notice of breach provided to the State by Contractor (such time period not to be less than thirty (30) days), then Contractor may terminate this Contract, in whole or in part based on Statement of Work for cause, as of the date specified in the notice of termination; provided, however, that Contractor must discharge its obligations under **Section 2.250** before any such termination.

#### 2.230 Stop Work

### **2.231 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 ninety (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 shall be specifically identified as such and shall indicate that it is issued under this **Section 2.230**. Upon receipt of the stop work order, Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of 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 shall either: (a) cancel the stop work order; or (b) terminate the work covered by the stop work order as provided in **Section 2.210**.



### 2.232 Cancellation or Expiration of Stop Work Order

If a stop work order issued under this **Section 2.230** is canceled or the period of the stop work order or any extension thereof expires, Contractor shall resume work. The parties shall agree upon an equitable adjustment in the delivery schedule, the Contract price, or both, and the Contract shall 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 thirty (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 will conform to the requirements of **Section 2.106**.

### 2.233 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, such termination shall be deemed to be a termination for convenience under **Section 2.212**, and the State shall allow reasonable costs resulting from the stop work order in arriving at the termination settlement. For the avoidance of doubt, the State shall not be liable to Contractor for loss of profits because of a stop work order issued under this **Section 2.230**.

2.240 Reserved

2.250 Dispute Resolution

### 2.251 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 shall 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 shall submit a letter executed by Contractor's Contract Administrator or his 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 supporting data provided with such an affidavit are current and complete to Contractor's best knowledge and belief.

### 2.252 Informal Dispute Resolution

(a) All operational disputes between the parties shall be resolved under the Contract Management procedures developed pursuant to **Section 2.100**. If the parties are unable to resolve any disputes after compliance with such processes, the parties shall meet with the Director of Purchasing Operations, DMB, or designee, for the purpose of attempting to resolve such dispute without the need for formal legal proceedings, as follows:

(i) The representatives of Contractor and the State shall meet as often as the parties reasonably deem necessary in order 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 shall 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 will 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 sixty (60) calendar days, the Director of Purchasing Operations, DMB, or designee, shall issue a written opinion regarding the issue(s) in dispute within thirty (30) calendar days. The opinion regarding the dispute shall be considered the State's final action and the exhaustion of administrative remedies.



(b) This **Section 2.250** will 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 pursuant to **Section 2.253**.

(c) The State will not mediate disputes between the Contractor and any other entity, except state agencies, concerning responsibility for performance of work pursuant to the Contract.

### **2.253 Injunctive Relief**

The only circumstance in which disputes between the State and Contractor will not be subject to the provisions of **Section 2.252** is where a party makes a good faith determination that a breach of the terms of the Contract by the other party is such that the damages to such 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.

### **2.254 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 shall not be deemed to preclude performance) and without limiting either party's right to terminate the Contract as provided in **Section 2.210** and **2.220**, as the case may be.

#### 2.260 Federal and State Contract Requirements

### **2.261 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, physical or mental disability. Contractor further agrees that every subcontract entered into for the performance of this Contract or any purchase order resulting from this Contract will contain a provision requiring non-discrimination in employment, as specified here, binding upon each Subcontractor. This covenant is required pursuant to 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.

### **2.262 Unfair Labor Practices**

Pursuant to 1980 PA 278, MCL 423.231, *et seq.*, the State shall 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 pursuant to 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, shall not enter into a contract with a Subcontractor, manufacturer, or supplier whose name appears in this register. Pursuant to section 4 of 1980 PA 278, MCL 423.324, the State may void any Contract if, subsequent to 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.

### **2.263 Workplace Safety and Discriminatory Harassment**

In performing Services for the State, the Contractor shall 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 shall 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>.

2.270 Litigation**2.271 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 thereto, to which Contractor (or, to the extent Contractor is aware, any Subcontractor hereunder) 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 hereunder; or (ii) a claim or written allegation of fraud against Contractor or, to the extent Contractor is aware, any Subcontractor hereunder by a governmental or public entity arising out of their business dealings with governmental or public entities. Any such litigation, investigation, arbitration or other proceeding (collectively, "Proceeding") must be disclosed in a written statement to the Contract Administrator within thirty (30) days of its occurrence. Details of settlements which are prevented from disclosure by the terms of the settlement may be annotated as such. 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. In the event that any such Proceeding disclosed to the State pursuant to this Section, or of which the State otherwise becomes aware, during the term of this Contract would cause a reasonable party to be concerned about:

- (i) the ability of Contractor (or a Subcontractor hereunder) to continue to perform this Contract in accordance with its terms and conditions, or
- (ii) whether Contractor (or a Subcontractor hereunder) in performing Services for the State is engaged in conduct which is similar in nature to conduct alleged in such Proceeding, which conduct would constitute a breach of this Contract or a violation of Michigan law, regulations or public policy, then Contractor shall be required to provide the State all reasonable assurances requested by the State to demonstrate that:
  - (A) Contractor and/or its Subcontractors hereunder will be able to continue to perform this Contract and any Statements of Work in accordance with its terms and conditions, and
  - (B) Contractor and/or its Subcontractors hereunder have not and will not engage in conduct in performing the Services which is similar in nature to the conduct alleged in such Proceeding.

(c) Contractor shall make the following notifications in writing:

- (1) Within thirty (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 shall notify Purchasing Operations.
- (2) Contractor shall also notify Purchasing Operations within thirty (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 shall also notify Purchasing Operations within thirty (30) days whenever changes to company affiliations occur.

**2.272 Governing Law**

The Contract shall in all respects be governed by, and construed in accordance with, 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.

**2.273 Compliance with Laws**

Contractor shall comply with all applicable state, federal, and local laws and ordinances ("Applicable Laws") in providing the Services/Deliverables.



### 2.274 Jurisdiction

Any dispute arising from the Contract shall 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 such jurisdiction on the grounds of lack of personal jurisdiction of such court or the laying of venue of such 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.

#### 2.280 Environmental Provision

### 2.281 Reserved

#### 2.290 General

### 2.291 Amendments

The Contract may not be modified, amended, extended, or augmented, except by a writing executed by the parties.

### 2.292 Assignment

(a) Neither party shall have the right to assign the Contract, or to 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 such affiliate is adequately capitalized and can provide adequate assurances that such affiliate can perform the Contract. Any purported assignment in violation of this Section shall be null and void. It is the policy of the State of Michigan to withhold consent from proposed assignments, subcontracts, or novations when such 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. In the event of any such permitted assignment, Contractor shall not be relieved of its responsibility to perform any duty imposed upon it herein, and the requirement under the Contract that all payments shall be made to one entity shall continue.

### 2.293 Entire Contract; 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 such subject matter and as additional terms and conditions on the purchase order shall apply as limited by **Section 2.061**.

(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 **Sections 2.110 through 2.220** of the Contract, which may be modified or amended only by a formal Contract amendment.

### 2.294 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.

**2.295 Relationship of the Parties (Independent Contractor Relationship)**

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 shall be or shall be deemed to be an employee, agent or servant of the State for any reason. Contractor will be solely and entirely responsible for its acts and the acts of its agents, employees, servants and Subcontractors during the performance of the Contract.

**2.296 Notices**

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

State:

State of Michigan  
Purchasing Operations  
Attention:  
PO Box 30026  
530 West Allegan  
Lansing, Michigan 48909

Contractor:

First Advantage Occupational Health Services  
100 Carillon Parkway  
St. Petersburg, FL 33716

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

(b) Binding Commitments

Representatives of Contractor identified in **Article 1, Attachment B** shall have the authority to make binding commitments on Contractor's behalf within the bounds set forth in such table. Contractor may change such representatives from time to time upon written notice.

**2.297 Media Releases and Contract Distribution**

(a) Media Releases

Neither Contractor nor the State will make any news releases, public announcements or public disclosures, nor will they have any conversations with representatives of the news media, pertaining to the Contract, the Services or the Contract without the prior written approval of the other party, and then only in accordance with explicit written instructions provided by that party. In addition, neither Contractor nor the State will use the name, trademarks or other proprietary identifying symbol of the other party or its affiliates without such party's prior written consent. Prior written consent of the Contractor must be obtained from authorized representatives.

(b) Contract Distribution

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

**2.298 Reformation and Severability**

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

**2.299 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, such consent or approval shall be in writing and shall not be unreasonably withheld or delayed.

**2.300 No Waiver of Default**

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

**2.301 Survival**

Any provisions of the Contract that impose continuing obligations on the parties including the parties' respective warranty, indemnity and confidentiality obligations, shall 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.

**2.302 Covenant of Good Faith**

Each party agrees that, in its dealings with the other party or in connection with the Contract, it shall act reasonably and in good faith. Unless stated otherwise in the Contract, the parties will 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.

**2.303 Permits**

Contractor shall 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 shall pay for all costs and expenses incurred in obtaining and maintaining any necessary easements or right of way.

**2.304 Website Incorporation**

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

**2.305 Taxes**

Vendors are expected to collect and pay all applicable federal, state, and local employment taxes, including the taxes defined in Section 3.022 for all persons involved in the resulting Contract.

The State may refuse to award a contract to any Vendor who has failed to pay any applicable State taxes. The State may refuse to accept Vendor's bid, if Vendor has any outstanding debt with the State. Prior to any award, the State will verify whether Vendor has any outstanding debt with the State.

**2.306 Reserved****2.307 Call Center Disclosure**

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

**2.308 Future Bidding Preclusion**

Contractor acknowledges that, to the extent this 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 leading edge on the competitive RFP.

2.310 Reserved

2.320 Extended Purchasing

**2.321 MiDEAL**

Public Act 431 of 1984 permits DMB to provide purchasing services to any city, village, county, township, school district, intermediate school district, non-profit hospital, institution of higher education, community, or junior college. A current listing of approved program members is available at: <http://www.michigan.gov/doingbusiness/0,1607,7-146-6586-16656--,00.html>. Unless otherwise stated, it is the responsibility of the Contractor to ensure that the non-state agency is an authorized purchaser before extending the Contract pricing.

The Contractor will supply Contract Services and equipment at the established State of Michigan contract prices and terms to the extent applicable and where available. Inasmuch as these are non-state agencies, all invoices will be submitted to and payment remitted by the local unit of government on a direct and individual basis.

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

**2.322 Reserved**

2.330 Possible Bond Requirements - Reserved



**EXHIBIT A**  
Definition of Terms

<b><u>Contract</u></b>	A binding agreement entered into by the State of Michigan resulting from a bidder's proposal; see also "Blanket Purchase Order"
<b>Contractor</b>	The successful bidder who is awarded the contract
<b>DMB</b>	Michigan Department of Management and Budget
<b>RFP</b>	Request for Proposal – A term used by the State to solicit proposals for services such as consulting. Typically used when the requesting agency requires vendor assistance in identifying an acceptable manner of solving a problem
<b>ITB</b>	Invitation to Bid – A generic form used by the Office of Purchasing to solicit quotations for services or commodities. The ITB serves as the document for transmitting the RFP to interested potential bidders.
<b>Successful Bidder</b>	The bidder(s) awarded a Contract as a result of a solicitation
<b><u>State</u></b>	State of Michigan
<b>Blanket Purchase Order</b>	Alternate term for "Contract" used in the State's Computer system (Michigan Automated Information Network [MAIN])
<b>Expiration</b>	Except where specifically provided for in the Contract, the ending and termination of the contractual duties and obligations of the parties to the Contract pursuant to a mutually agreed upon date.
<b>Cancellation</b>	Ending all rights and obligations of the State and Contractor, except for any rights and obligations that are due and owing
<b>* Pre-Appointment Test</b>	Conducted in the Non-DOT Testing Program only. The test is given when an employee, who does not currently occupy a Test Designated Position (TDP), is selected to occupy a TDP. The employee must take this drug test with a negative result prior to occupying the position.
<b>NERES</b>	Non Exclusively Represented Employees
<b>CS Rule 2-7</b>	Civil Service Rule mandating a Non-DOT drug and alcohol testing program for State employees, and job applicants.
<b>CS Regulation 2-7</b>	Regulation applying to drug testing conducted under Civil Service Rule 2-7-procedures
<b>CS Regulation 2-8</b>	Regulation applying to alcohol testing conducted under Civil Service Rule 2-7-procedures
<b>CS Regulation 2-9</b>	Regulation providing standards and guidelines for notifying the Department of Civil Service when an employee voluntarily discloses a drug or alcohol problem to the appointing authority under the provisions of Civil Service Rule 2-7.5
<b>CS Regulation 2-10</b>	Regulation establishing the procedures for a person not currently employed in the classified service to challenge the rescission of a conditional offer of employment after failing a pre-employment drug test
<b>DATC</b>	Drug and Alcohol Testing Coordinator
<b>DER</b>	Designated Employer Representative
<b>SAP</b>	Substance Abuse Professional
<b>Employee ID Number</b>	ID numbers for State of Michigan employees consist of a letter followed by seven digits



**EXHIBIT B (Estimates)**  
**ACTIVE CLASSIFIED EMPLOYEES OF MICHIGAN BY COUNTY**

<b><u>COUNTY</u></b>	<b><u>TOTAL EMPLOYEES</u></b>
ALCONA	28
ALGER	386
ALLEGAN	256
ALPENA	146
ANTRIM	29
ARENAC	366
BARAGA	466
BARRY	106
BAY	330
BENZIE	33
BERRIEN	460
BRANCH	751
CALHOUN	350
CASS	82
CHARLEVOIX	76
CHEBOYGAN	139
CHIPPEWA	1,343
CLARE	68
CLINTON	151
CRAWFORD	357
DELTA	260
DICKINSON	55
EATON	3,073
EMMET	111
GENESEE	928
GLADWIN	55
GOGEBIC	294
GRAND TRAVERSE	594
GRATIOT	887
HILLSDALE	64
HOUGHTON	147
HURON	71
INGHAM	11,054
IONIA	1,978
IOSCO	87
IRON	141
ISABELLA	628
JACKSON	2,837
KALAMAZOO	1,111
KALKASKA	60
KENT	1,802
KEWEENAW	13
LAKE	53
LAPEER	442
LEELANAU	9
LENAWEE	824

**EXHIBIT B****CONTRACT #071B6200359**

LIVINGSTON	667
LUCE	427
MACKINAC	220
MACOMB	1,289
MANISTEE	446
MARQUETTE	929
MASON	70
MECOSTA	75
MENOMINEE	59
MIDLAND	84
MISSAUKEE	48
MONROE	220
MONTCALM	655
MONTMORENCY	58
MUSKEGON	1,165
NEWAYGO	83
OAKLAND	1,257
OCEANA	115
OGEMAW	78
ONTONAGON	36
OSCEOLA	68
OSCODA	28
OTSEGO	282
OTTAWA	230
OUT OF STATE	58
PRESQUE ISLE	33
ROSCOMMON	198
SAGINAW	1,124
SANILAC	58
SCHOOLCRAFT	111
SHIAWASSEE	93
ST CLAIR	299
ST JOSEPH	96
STATEWIDE	846
TUSCOLA	575
VAN BUREN	290
WASHTENAW	1,880
WAYNE	7,057
WEXFORD	211
<b>TOTAL EMPLOYEES</b>	<b>55,019</b>



**EXHIBIT C  
(Estimates)**

**NUMBER AND PERCENT OF CLASSIFIED EMPLOYEES BY DEPARTMENT**

DEPARTMENT	Number of Employees	Percent of Total Classified Employees
Agriculture	641.5	1.3 %
Attorney General	527.0	1.0 %
Auditor General	147.0	0.3 %
Civil Rights	138.0	0.3 %
Civil Service	215.0	0.4 %
Community Health	4,408.0	8.9 %
Corrections	16,779.5	30.8 %
Education	356.5	0.6 %
Environmental Quality	1,493.0	2.8 %
Executive Office	50.0	0.1 %
History Arts and Libraries	238.5	0.5 %
Human Services	9,984.5	18.5 %
Information Technology	1,723.0	3.2 %
Labor and Economic Growth	4,190.0	7.8 %
Management and Budget	998.5	1.9 %
Military and Veterans Affairs	941.0	1.7 %
Natural Resources	1,703.5	3.2 %
State	1,836.0	3.5 %
State Police	2,715.5	5.1 %
Transportation	2,933.5	5.5 %
Treasury	1,576.0	2.9 %
<b>TOTAL</b>	<b>53,595.5</b>	<b>100.0 %</b>

**EXHIBIT E, Links**

**A - Civil Service Rule 2.7**, Drug and Alcohol Testing at [http://www.michigan.gov/mdcs/0,1607,7-147-6877\\_8155-72500--,00.html#2\\_7](http://www.michigan.gov/mdcs/0,1607,7-147-6877_8155-72500--,00.html#2_7)

**B - Civil Service Regulation 2.07**, Drug Testing at [http://www.michigan.gov/documents/Reg2\\_84183\\_7.07.pdf](http://www.michigan.gov/documents/Reg2_84183_7.07.pdf)

**C - Civil Service Regulation 2.08**, Alcohol Testing at [http://www.michigan.gov/documents/Reg2\\_84187\\_7.08.pdf](http://www.michigan.gov/documents/Reg2_84187_7.08.pdf)

**D - Civil Service Regulation 2.09**, Drug and Alcohol Testing Self-Reporting at [http://www.michigan.gov/documents/Regulation\\_2\\_76977\\_7.09.pdf](http://www.michigan.gov/documents/Regulation_2_76977_7.09.pdf)

**E - Civil Service Regulation 2.10**, Drug Testing Complaints by Non-Employees at [http://www.michigan.gov/documents/Regulation\\_2\\_99521\\_7.10.pdf](http://www.michigan.gov/documents/Regulation_2_99521_7.10.pdf)

**F – Bargaining Agreements**

**AFSCME, Art. 23** at [http://www.michigan.gov/documents/ART\\_23\\_111508\\_7.pdf](http://www.michigan.gov/documents/ART_23_111508_7.pdf)

**MCO, Article 12, Section N** at [http://www.michigan.gov/documents/Article\\_12\\_111528\\_7.pdf](http://www.michigan.gov/documents/Article_12_111528_7.pdf)

**SEIU, S&E Unit Art.35** at [http://www.michigan.gov/documents/Article\\_35\\_112030\\_7.pdf](http://www.michigan.gov/documents/Article_35_112030_7.pdf)

**MSEA, Art. 53** at [http://www.michigan.gov/documents/Article\\_53\\_113940\\_7.pdf](http://www.michigan.gov/documents/Article_53_113940_7.pdf)

**SEIU, HHS Unit Art.24** at [http://www.michigan.gov/documents/ARTICLE\\_24\\_116058\\_7.pdf](http://www.michigan.gov/documents/ARTICLE_24_116058_7.pdf)

**MSPTA, Art. 27, Part C.** at [http://www.michigan.gov/documents/ARTICLE\\_27\\_16989\\_7.pdf](http://www.michigan.gov/documents/ARTICLE_27_16989_7.pdf)

**UAW, Art. 52** at [http://www.michigan.gov/documents/ARTICLE\\_52\\_111848\\_7.pdf](http://www.michigan.gov/documents/ARTICLE_52_111848_7.pdf)

**G – DOT, 49 CFR, Part 40, [http://www.access.gpo.gov/nara/cfr/waisidx\\_04/49cfr40\\_04.html](http://www.access.gpo.gov/nara/cfr/waisidx_04/49cfr40_04.html)**

**SEIU, Technical Unit, Art. 29** at [http://www.michigan.gov/documents/Article\\_29\\_111972\\_7.pdf](http://www.michigan.gov/documents/Article_29_111972_7.pdf)

**H – DOT, 49 CFR, Part 382, [http://www.access.gpo.gov/nara/cfr/waisidx\\_04/49cfr382\\_04.html](http://www.access.gpo.gov/nara/cfr/waisidx_04/49cfr382_04.html)**