

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

October 28, 2011

CHANGE NOTICE NO. 2
TO
CONTRACT NO. 071B0200096
between
THE STATE OF MICHIGAN
and

NAME & ADDRESS OF CONTRACTOR Blue Cross & Blue Shield of Michigan 600 Lafayette East, B491 Detroit, MI 48226 <p style="text-align: right;">ggavin@bcbsm.com</p>	TELEPHONE (248) 448-5683 Gary Gavin
	BUYER/CA (517) 241-4225 Kevin Dunn
	Contract Compliance Inspector: Susan Kant (517) 335-3068 Pharmacy Benefits Management for State Employees/Retirees – DTMB / Civil Service Commission
CONTRACT PERIOD: From: December 21, 2009 To: December 31, 2012	
TERMS <p style="text-align: center;">Net 45</p>	SHIPMENT <p style="text-align: center;">N/A</p>
F.O.B. <p style="text-align: center;">N/A</p>	SHIPPED FROM <p style="text-align: center;">N/A</p>
MINIMUM DELIVERY REQUIREMENTS <p style="text-align: center;">N/A</p>	

THIS CONTRACT IS EXTENDED TO LOCAL UNITS OF GOVERNMENT.

NATURE OF CHANGE(S):

Effective immediately, the new service levels are hereby incorporated:

- Telephone lost calls, less than five percent.
- Telephone blocked calls, less than three percent.
- 90 percent of calls must be answered in 30 seconds or less.

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

AUTHORITY/REASON:

Per Civil Service request and DTMB Purchasing Operations' approval.

TOTAL ESTIMATED CONTRACT VALUE REMAINS: \$878,894,948.00

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 8, 2010

CHANGE NOTICE NO. 1
 TO
 CONTRACT NO. 071B0200096
 between
 THE STATE OF MICHIGAN
 and

NAME & ADDRESS OF CONTRACTOR		TELEPHONE (248) 448-5683
Blue Cross & Blue Shield of Michigan 600 Lafayette East, B491 Detroit, MI 48226 ggavin@bcbsm.com		Gary Gavin
		BUYER/CA (517) 241-4225 Kevin Dunn
Contract Compliance Inspector: Susan Kant (517) 335-3068 Pharmacy Benefits Management for State Employees/Retirees – DTMB / Civil Service Commission		
CONTRACT PERIOD: From: December 21, 2009 To: December 31, 2012		
TERMS	Net 45	SHIPMENT N/A
F.O.B.	N/A	SHIPPED FROM N/A
MINIMUM DELIVERY REQUIREMENTS N/A		

THIS CONTRACT IS EXTENDED TO LOCAL UNITS OF GOVERNMENT.

NATURE OF CHANGE(S):

Effective immediately, a new section is hereby added to the terms and conditions of the Contract:

Section 2.283 Civil Service Rule

1. The Contractor must support the State in compliance with Civil Service Rule 5-11.1, Section (e)(2), in that the State Personnel Director may approve agreements with other public entities to permit their employees to participate in group insurance plans authorized by the Civil Service Commission if 100 percent of any additional total cost of participation is paid by the participating public entities or their employees.

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

AUTHORITY/REASON: Executive Directive 2010-1, vendor agreement dated 6-14-10, and Purchasing Operations' approval.

CURRENT AUTHORIZED SPEND LIMIT REMAINS: \$878,894,948.00

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

January 22, 2010

NOTICE
 TO
 CONTRACT NO. 071B0200096
 Between
 THE STATE OF MICHIGAN
 and

NAME & ADDRESS OF CONTRACTOR		TELEPHONE (248) 448-5683
Blue Cross Blue Shield of Michigan 27000 W. 11 Mile Road Southfield, MI 48034 ggavin@bsbsm.com		Gary Gavin
		BUYER (517) 241-4225 Kevin Dunn
Contract Compliance Inspector: Susan Kant (517) 335-3068 Pharmacy Benefits Management for State Employees/Retirees - Civil Service Commission -		
CONTRACT PERIOD		
From: December 21, 2009		To: December 31, 2012
TERMS	SHIPMENT	
Net 45		N/A
F.O.B.	SHIPPED FROM	
N/A		N/A
MINIMUM DELIVERY REQUIREMENTS		
N/A		

THIS CONTRACT IS EXTENDED TO LOCAL UNITS OF GOVERNMENT.

The terms and conditions of this Contract are attached.

Current Authorized Spend Limit: **\$878,894,948.00**

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. 071B0200096
Between
THE STATE OF MICHIGAN
and

NAME & ADDRESS OF CONTRACTOR Blue Cross Blue Shield of Michigan 27000 W. 11 Mile Road Southfield, MI 48034 <div style="text-align: right;">ggavin@bsbsm.com</div>	TELEPHONE (248) 448-5683 Gary Gavin BUYER (517) 241-4225 Kevin Dunn
Contract Compliance Inspector: Susan Kant (517) 335-3068 Pharmacy Benefits Management for State Employees/Retirees - Civil Service Commission -	
CONTRACT PERIOD From: December 21, 2009 To: December 31, 2012	
TERMS <div style="text-align: right;">Net 45</div>	SHIPMENT <div style="text-align: right;">N/A</div>
F.O.B. <div style="text-align: right;">N/A</div>	SHIPPED FROM <div style="text-align: right;">N/A</div>
MINIMUM DELIVERY REQUIREMENTS <div style="text-align: center;">N/A</div>	
MISCELLANEOUS INFORMATION: THIS CONTRACT IS EXTENDED TO LOCAL UNITS OF GOVERNMENT. The terms and conditions of this Contract are attached. Current Authorized Spend Limit: \$878,894,948.00	

FOR THE CONTRACTOR: <div style="text-align: center;">Blue Cross Blue Shield of Michigan</div> <hr/> <div style="text-align: center;">Firm Name</div> <hr/> <div style="text-align: center;">Authorized Agent Signature</div> <hr/> <div style="text-align: center;">Authorized Agent (Print or Type)</div> <hr/> <div style="text-align: center;">Date</div>	FOR THE STATE: <div style="text-align: center;">Signature</div> <hr/> <div style="text-align: center;">Sergio Paneque, Director</div> <hr/> <div style="text-align: center;">Name/Title</div> <div style="text-align: center;">Business Services Administration</div> <hr/> <div style="text-align: center;">Division</div> <hr/> <div style="text-align: center;">Date</div>
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**STATE OF MICHIGAN
Department of Management and Budget
Purchasing Operations**

Contract No. 071B0200096
Prescription Services for State Employees/Retirees

Buyer Name: Kevin Dunn
Telephone Number: 517-241-4225
E-Mail Address: dunnk3@michigan.gov



Table of Contents

DEFINITIONS..... 7

Article 1 – Statement of Work (SOW)..... 11

1.010 Project Identification..... 11

 1.011 Project Request..... 11

 1.012 Background..... 11

1.020 Scope of Work and Deliverables..... 11

 1.021 In Scope..... 11

 1.022 Work and Deliverable..... 11

1.030 Roles and Responsibilities..... 27

 1.031 Contractor Staff, Roles, and Responsibilities..... 27

1.040 Contract Implementation & Reporting..... 28

 1.041 Contract Implementation Management and Implementation SLA..... 28

 1.042 Reports..... 29

1.050 Acceptance..... 30

 1.051 Criteria..... 30

 1.052 Final Acceptance – Deleted/Not Applicable..... 30

1.060 Contract Pricing..... 30

 1.061 Contract Pricing..... 30

 1.062 Price Term..... 30

 1.063 Tax Excluded from Price..... 31

1.070 Additional Requirements..... 31

 1.071 Additional Terms and Conditions specific to this Contract..... 31

Article 2, Terms and Conditions..... 32

2.000 Contract Structure and Term..... 32

 2.001 Contract Term..... 32

 2.002 Options to Renew..... 32

 2.003 Legal Effect..... 32

 2.004 Attachments & Exhibits..... 32

 2.005 Ordering..... 32

 2.006 Order of Precedence..... 32

 2.007 Headings..... 32

 2.008 Form, Function & Utility – Deleted/Not Applicable..... 32

 2.009 Reformation and Severability..... 32

 2.010 Consents and Approvals..... 33

 2.011 No Waiver of Default..... 33

 2.012 Survival..... 33

2.020 Contract Administration..... 33

 2.021 Issuing Office..... 33

 2.022 Contract Compliance Inspector (CCI)..... 33

 2.023 Project Manager – Deleted/Not Applicable..... 33

 2.024 Change Requests..... 33

 2.025 Notices..... 34

 2.026 Binding Commitments..... 34

 2.027 Relationship of the Parties..... 34

 2.028 Covenant of Good Faith..... 34

 2.029 Assignments..... 35

2.030 General Provisions..... 35

 2.031 Media Releases..... 35

 2.032 Contract Distribution..... 35

 2.033 Permits..... 35

 2.034 Website Incorporation..... 35

 2.035 Future Bidding Preclusion – Deleted/Not Applicable..... 35

 2.036 Freedom of Information..... 35

 2.037 Disaster Recovery..... 35



2.040 Financial Provisions 35

2.041 Fixed Prices for Services/Deliverables – Deleted/Not Applicable 35

2.042 Adjustments for Reductions in Scope of Services/Deliverables 36

2.043 Services/Deliverables Covered – Deleted/Not Applicable 36

2.044 Invoicing and Payment – In General 36

2.045 Pro-ration 36

2.046 Antitrust Assignment 36

2.047 Final Payment 36

2.048 Electronic Payment Requirement 36

2.050 Taxes 36

2.051 Employment Taxes 36

2.052 Sales and Use Taxes 36

2.060 Contract Management 37

2.061 Contractor Personnel Qualifications 37

2.062 Contractor Key Personnel 37

2.063 Re-assignment of Personnel at the State’s Request 37

2.064 Contractor Personnel Location – Deleted/Not Applicable 37

2.065 Contractor Identification 37

2.066 Cooperation with Third Parties 38

2.067 Contractor Return of State Equipment/Resources – Deleted/Not Applicable 38

2.068 Contract Management Responsibilities 38

2.070 Subcontracting by Contractor 38

2.071 Contractor Full Responsibility 38

2.072 State Consent to Delegation 38

2.073 Subcontractor Bound to Contract 38

2.074 Flow Down 38

2.075 Competitive Selection 38

2.080 State Responsibilities – Deleted/Not Applicable 39

2.090 Security 39

2.091 Background Checks 39

2.092 Security Breach Notification 39

2.100 Confidentiality 39

2.101 Confidentiality 39

2.102 Protection of Confidential Information 39

2.103 Exclusions 40

2.104 No Implied Rights 40

2.105 Respective Obligations 40

2.110 Records and Inspections 40

2.111 Inspection of Work Performed – Deleted/Not Applicable 40

2.112 Examination of Records 40

2.113 Retention of Records 40

2.114 Audit Resolution 41

2.115 Errors 41

2.120 Warranties 41

2.121 Warranties and Representations 41

2.122 Warranty of Merchantability – Deleted/Not Applicable 42

2.123 Warranty of Fitness for a Particular Purpose – Deleted/Not Applicable 42

2.124 Warranty of Title – Deleted/Not Applicable 42

2.125 Equipment Warranty – Deleted/Not Applicable 42

2.126 Equipment to be New – Deleted/Not Applicable 42

2.127 Prohibited Products – Deleted/Not Applicable 42

2.128 Consequences for Breach 42

2.130 Insurance 42

2.131 Liability Insurance 42

2.132 Subcontractor Insurance Coverage 44

2.133 Certificates of Insurance and Other Requirements 44



2.140 Indemnification 44

2.141 General Indemnification 44

2.142 Code Indemnification..... 44

2.143 Employee Indemnification 45

2.144 Patent/Copyright Infringement Indemnification 45

2.145 Continuation of Indemnification Obligations 45

2.146 Indemnification Procedures..... 45

2.150 Termination/Cancellation 46

2.151 Notice and Right to Cure 46

2.152 Termination for Cause..... 46

2.153 Termination for Convenience 47

2.154 Termination for Non-Appropriation 47

2.155 Termination for Criminal Conviction 47

2.156 Termination for Approvals Rescinded 47

2.157 Rights and Obligations upon Termination 47

2.158 Reservation of Rights 48

2.160 Deleted – Not/Applicable 48

2.170 Transition Responsibilities 48

2.171 Contractor Transition Responsibilities..... 48

2.172 Contractor Personnel Transition..... 48

2.173 Contractor Information Transition..... 48

2.174 Contractor Software Transition..... 48

2.175 Transition Payments..... 49

2.176 State Transition Responsibilities 49

2.180 Stop Work..... 49

2.181 Stop Work Orders..... 49

2.182 Cancellation or Expiration of Stop Work Order 49

2.183 Allowance of Contractor Costs 49

2.190 Dispute Resolution..... 49

2.191 In General..... 49

2.192 Informal Dispute Resolution 49

2.193 Injunctive Relief 50

2.194 Continued Performance 50

2.200 Federal and State Contract Requirements 50

2.201 Nondiscrimination 50

2.202 Unfair Labor Practices..... 50

2.203 Workplace Safety and Discriminatory Harassment..... 51

2.210 Governing Law..... 51

2.211 Governing Law 51

2.212 Compliance with Laws..... 51

2.213 Jurisdiction..... 51

2.220 Deleted/Not Applicable 51

2.230 Disclosure Responsibilities 51

2.231 Disclosure of Litigation 51

2.232 Call Center Disclosure..... 52

2.233 Bankruptcy..... 52

2.240 Performance..... 52

2.241 Time of Performance..... 52

2.243 Liquidated Damages – Deleted/Not Applicable..... 53

2.244 Excusable Failure 53

2.250 Approval of Deliverables – Deleted/Not Applicable..... 54

2.260 Ownership 54

2.261 Ownership of Work Product by State 54

2.262 Vesting of Rights 54

2.263 Rights in Data 54

2.264 Ownership of Materials..... 54



2.270 State Standards 54
 2.271 Existing Technology Standards..... 54
 2.272 Acceptable Use Policy..... 54
2.280 Extended Purchasing..... 55
 2.281 MIDEAL 55
2.290 Environmental Provision 55
 2.291 Environmental Provision..... 55

ATTACHMENTS:

Attachment A, Pricing

**DEFINITIONS**

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

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

Administrative Fee means the agreed upon amount that will be paid to the Contractor by the Plan Sponsor for administration of the pharmacy benefit Plan.

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

Average Wholesale Price or AWP means the average wholesale price of a prescription pharmaceutical published in a nationally recognized reporting service purchased or licensed by the Contractor.

Brand Name Drug means a pharmaceutical that has a trade name, is patent protected and can be produced and sold only by the company holding the patent and that is labeled as such in a nationally recognized data source.

Business Associate means a person assisting a Covered Entity in connection with its payment, treatment or health care operations, as more fully defined in 45 CFR §160.103.

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

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

Contract Holder means an active employee, retiree, pension beneficiary or COBRA participant who satisfies all of the eligibility criteria necessary to receive pharmacy coverage through the appropriate Plan Sponsor.

Coinsurance means that portion of the charge for Covered Products, calculated as a percentage of the charge, which is to be paid by Members pursuant to the Plan Sponsor's Plan Guidelines (or for certain Participating Pharmacies, if less, the U&C of the Covered Products).

Coordination of Benefits means claims administration when Members are covered by more than one pharmacy benefit plan.

Copayment means a fixed dollar portion of the charge for Covered Products which must be paid by Members pursuant to the Plan Sponsor's Plan Guidelines (or for certain Participating Pharmacies, if less, the U&C of the Covered Products).

Covered Entity means a health plan, a health care clearinghouse, or a health care provider who transmits any health information in electronic form in connection with a HIPAA transaction. See Part II, 45 CFR 160.103.

Covered Products means the prescription pharmaceuticals, ancillary devices, and supplies covered under the Plan Sponsor's Plan Guidelines.

CSC means the Michigan Civil Service Commission.

Days means calendar days unless otherwise specified.

Deductible means a predetermined amount of money that a Member must pay before benefits are eligible for payment as stated in the Plan Sponsor's Plan Guidelines. The Deductible applies to each Member each contract year. Only charges for Covered Products calculated in accordance with the Plan benefit design may be used to satisfy the Deductible.

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

Dependent means an individual who satisfies the eligibility criteria necessary to receive pharmacy benefits under a Plan Sponsor's Plan and is identified by a Plan Sponsor to the Contractor.



Direct Reimbursement Claim means a request for reimbursement of one or more Covered Products dispensed by a pharmacy and submitted by a Participating Pharmacy, a Non-Participating Pharmacy, a Member, or Contract Holder in a form acceptable to the Pharmacy Benefit Manager.

Discount Credit is a payment by the Contractor to the Plan Sponsor to offset both implementation and on-going expenses.

Disruption Analysis means a review of where Members are obtaining their prescriptions under the current program, followed by a review to determine if any of them will no longer have the same access under the new Contract. It also includes the identification of any Members so affected, along with proposed remediation.

DMB means the Michigan Department of Management and Budget.

DQM means Drug Quantity Management.

DUR means Drug Utilization Review.

EBD means the Employee Benefits Division.

FDA means the United States Food and Drug Administration.

Fiduciary means the Contractor's relationship to the Plan Sponsor in relation to Pass-Through pricing, and disclosure of Contractor's interests and the Transparency requirements of this Contract.

Formulary means a list of FDA-approved Covered Products developed by the Contractor's Pharmacy and Therapeutics Committee, subject to the Plan Sponsor's Plan Guidelines and coverage decisions. This also refers to the existing list of FDA-approved Covered Products for the Plan Sponsor.

Generic Drug or Generic Pharmaceutical means a pharmaceutical designated as generic according to the pharmaceutical reporting service agreed upon pursuant to this Contract. It must also mean a prescribed pharmaceutical that is paid by the Contractor to the participating pharmacy as a generic (e.g., Brand Pharmaceutical priced at MAC).

HIPAA means the Health Insurance Portability and Accountability Act of 1996.

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

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

MAC- The term "MAC" means Maximum Allowable Costs and refers to, for Generic Pharmaceuticals (and brand pharmaceuticals that are dispensed as its generic formulation), the MAC price reimbursed to the Participating Pharmacy, as established by the Contractor. The Contractor must establish MAC prices in order to: (i) enable the Contractor to generate cost-effective and marketing competitive prices, and (ii) decrease such prices as generic prices decrease in the market place. Accordingly, the Contractor is obligated to establish such prices, and thereafter adjust such prices, to provide the Plan Sponsor with prices accurately reflecting Contractor's acquisition and/or reimbursement costs. The Contractor represents that it currently has only one proprietary MAC list used to reimburse all retail, Mail Order and Specialty Pharmacies and to invoice all clients (other than those few clients who may have created certain customized changes to the Contractor's MAC list). Should the Contractor in the future establish multiple MAC lists as alternative proprietary MAC lists for Participating Pharmacies, the Contractor must provide to the Plan Sponsor the lowest MAC price for each Generic Pharmaceutical (and each brand pharmaceutical that is dispensed as a generic) on any of its MAC lists. The Contractor also represents that it currently reviews adjustments to its proprietary MAC list at least monthly, and that it will continue to do so, using Pass-Through Pricing as defined herein as a basis for its adjustments. The Contractor must pass-through to the Plan Sponsor all financial benefits obtained from all pharmaceutical manufacturers, wholesalers, and any other sources, and all amounts paid to Participating Pharmacies, without any markup.

Mail Order Services means the dispensing of prescriptions, by the Contractor's Mail Service Pharmacy, for home delivery to the Member, per the Plan Sponsor's Plan designs.



Mail Service Pharmacy means a pharmacy where prescriptions are filled and delivered to Members via the United States Postal Service, United Parcel Service or other delivery service, and which has entered into an agreement with the Contractor to dispense Covered Products to Members.

Medicare Part D Subsidy means a subsidy program offered through the Centers for Medicare & Medicaid Services (CMS) for providing prescription drug coverage to Medicare eligible retirees.

Medicare Prescription Drug Plan (MPDP) means stand-alone Medicare Part D Prescription drug coverage to Medicare recipients.

Medication Therapy Management means a pharmaceutical therapy management program that may be provided by a pharmacist and that is designed to assure, with respect to targeted Members, that covered pharmaceuticals under the Plan are appropriately used to optimize therapeutic outcomes through improved medication use, and to reduce the risk of adverse events, including adverse pharmaceutical interactions.

Member means each Contract Holder and eligible Dependent.

MPSERS means the Michigan Public School Employees Retirement System.

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

Non-Participating Pharmacy means a USA licensed pharmacy that does not have an agreement with the Contractor to dispense Covered Products to Members.

ORS means Office of Retirement Services.

Pass-Through Pricing means that the Contractor must pass-through to the Plan Sponsor all financial benefits (including, but not limited to, 100% pass-through of all Rebates, and associated fees and revenue streams) obtained from all pharmaceutical manufacturers, wholesalers, and other sources. Additionally, the Contractor must not charge the Plan Sponsor more than the amount paid to the Participating Pharmacy (without markup). The only fee or revenue the Contractor may derive under this Contract is the agreed upon Administrative Fee.

Participating Pharmacy means a pharmacy, or a company authorized to represent one or more subsidiary, affiliated, or franchised pharmacies, which has entered into an agreement with Pharmacy Benefit Manager to dispense Covered Products to Members. For purposes of this Contract, a Participating Pharmacy is not considered a representative, subcontractor, or agent of the Contractor and will include the Mail Service Pharmacy and the Specialty Pharmacy.

Pharmacy and Therapeutics Committee (P & T Committee) refers to the Contractor's group responsible for developing, managing, updating and administering a Formulary.

Pharmacy Benefit Manager (PBM) means a third party administrator of prescription pharmaceutical programs that has been assigned a Business Identification Number (BIN) by The National Council for Prescription Pharmaceutical Programs, Inc (NCPDP).

Plan means the Plan Sponsor's programs which provides prescription drug coverage to Members.

Plan Guidelines means a description of the Plan Sponsor's Plan related to pharmacy benefits and limitations thereto, including the framework of policies, interpretations, rules, practices and procedures applicable to such benefits, required and signed by the Plan Sponsor and submitted to PBM.

Plan Sponsor means a public entity that provides for funded prescription care coverage for a defined group of beneficiaries. For the purposes of this Contract, the Plan Sponsor are ORS and CSC.

Practitioner means a licensed physician or other licensed health care provider authorized to prescribe pharmaceuticals to Members.

Prior Authorization (PA) means an advance verification or confirmation that certain criteria required by the Plan Sponsor are satisfied for specific Covered Products before processing the Claim for Covered Products.



Protected Health Information (PHI) means individually identifiable health information related to the past, present, or future physical or mental health or condition of a Member; the provision of health care to a Member; or the past, present or future payment for the provision of health care to a Member, as more fully defined in 45 CFR §164.501 or otherwise considered confidential under federal or state law.

Rebate(s) mean refund(s) or discount(s) received by the Contractor pursuant to a contract with a pharmaceutical manufacturer, wholesalers, and other sources and which are, either directly or indirectly, attributable to the Formulary and Covered Product utilization by Members. Rebate(s) include all management fees and the like paid by pharmaceutical manufacturers, wholesalers, and other sources, to the Contractor.

RFP means a Request for Proposal used to solicit proposals for Services.

SAS-70 means is an auditing standard developed by the American Institute of Certified Public Accountants (AICPA).

Services means any function performed for the benefit of the Plan Sponsor as required in the Statement of Work.

Specialty Drugs means those biotech and other Covered Products identified as Specialty Drugs by the Contractor.

Specialty Pharmacy means a pharmacy that has entered into an agreement to dispense Covered Products including Specialty Drugs to Members.

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

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

Third Party Administrator (TPA) means an entity who processes claims pursuant to a service contract and who may also provide one or more other administrative services pursuant to a service contract, other than under a worker's compensation self-insurance program pursuant to Section 611 of the Worker's Disability Compensation Act of 1969, 1969 PA 317, MCL 418.611. Third Party Administrator does not include a carrier or employer sponsoring a plan.

Transparency means full disclosure by the Contractor as to all of its sources of revenue that enables the Plan Sponsor (and their agents) to have complete and full access to all information necessary to determine and verify that the Contractor has met all terms of this Contract, and satisfied all Pass-Through Pricing requirements.

Unauthorized Removal means the removal of Key Personnel without the prior written consent of the appropriate Plan Sponsor.

Usual and Customary Price (U&C) means the retail price, including any minimum price, charged by a Non-Participating Pharmacy or a Participating Pharmacy for a Covered Product in a cash or uninsured transaction on the date the pharmaceutical is dispensed. It also includes non-funded prescription discount programs managed or promoted by the pharmacy.

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

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



Article 1 – Statement of Work (SOW)

1.010 Project Identification

1.011 Project Request

This Contract is for administration of prescription benefit management Services for the Plans as listed below:

- 1) Eligible Members of the Plans administered by the EBD of the CSC

The Contract is effective December 21, 2009 through December 31, 2012.

The period of December 21, 2009 through December 31, 2009 will be for implementation and transition for the Contractor; no payment will be made to the Contractor during this period. The Contractor must begin providing all Services to the Plan Sponsor, without interruption, on January 1, 2010.

1.012 Background

The CSC provides health benefits to State active and retired State employees and their eligible Dependents through the State Health Plan PPO and a Medicare Advantage plan administered by the EBD. Prescription drug benefits are carved-out of the medical plans and are provided by a separate stand-alone plan. The prescription drug plan covers active employees, COBRA participants, Medicare and non-Medicare eligible retirees and their eligible Dependents for a total covered membership of approximately 150,000. The Plan does not include participants in the following:

- State enrollees in Health Maintenance Organizations (HMOs)
- State enrollees in the catastrophic medical plan

1.020 Scope of Work and Deliverables

1.021 In Scope

Covered services considered within the scope of this Contract include, but are not limited to, the following:

- A. Provide retail, Mail Order Services, and Specialty Drug benefit programs and a pharmacy network with convenient access for Members.
- B. Provide claim services, claim eligibility verification, claim payment or denial, claims tracking and review of claim appeals.
- C. Reduce and control the cost of prescription drugs.
- D. Introduce innovative services that improve physician prescribing and treatment.
- E. Provide a fully transparent, Pass-Through Pricing model that results in quality coverage, and must operate in the best interest of the Plan Sponsor not only on a per claim basis but also in a comprehensive manner relating to overall costs.

This Contract is for the CSC Plan Members only. However, the State reserves the right at any time, at the State's sole discretion, to add additional Plans (such as the MPSERS Plan) to this Contract at any time. For purposes of this Contract, addition of any other Plan is not considered a change in scope.

1.022 Work and Deliverable

Contractor must provide all Deliverables/Services and staff, and must do all things necessary for or incidental to the performance of the work as set forth below:

A. Plan Design

Contractor must administer prescription drug benefits in accordance with the Plan of the Plan Sponsor, specifically CSC. The Contractor must duplicate the current programs for the Plan Sponsor.

Plan designs are subject to change throughout the duration of this Contract. The Contractor must implement Plan changes as requested by the Plan Sponsor in a timely fashion, at no additional cost to the Plan Sponsor.

**B. Claims Processing**

1. The Contractor must process all prescription drug claims for all Members.
2. The Contractor must pre-load a one-year claim history file, including claims and Prior Authorizations for the Plan Sponsor.
3. Claims processing must include, at a minimum, the following:
 - a. A pharmacy network with an electronic "Point-Of-Sale" (POS) computerized administrative and claims payment system that provides:
 1. Electronic collection and recording of retail charges.
 2. Records of individual Member prescription drug purchases (based upon the Comprehensive Claim Format published by the National Council for Prescription Pharmaceutical Programs, Inc.) to include, at a minimum:
 - Member name, sex, social security number or unique Member identifier and relationship to Contract Holder
 - Prescription drug name, strength, dosage and days supply
 - Eleven digit National Drug Code (NDC) number
 - Rx number
 - New fill or refill indicator
 - Date filled
 - Pharmacy NABP/NCPDP number
 - Pharmacy name
 - National Provider Identifier Number (NPI) and DEA number
 - If a compound prescription, list of ingredients and quantities
 - Usual, customary, and reasonable retail price
 - DAW indicators
 - b. On-line access with pharmacies for the following:
 1. Eligibility
 2. Non-covered items
 3. Pharmaceutical to pharmaceutical interactions
 4. Pharmaceutical to sex edit
 5. Pharmaceutical to age edit
 6. Early refill edit
 7. Duplicate Claim edit
 8. On-line pricing
 - c. Maintenance of confidentiality of all data by the Contractor, according to all applicable laws, rules, and regulations.
 - d. Transmittal of prescription drug utilization data to current health plan vendors, in support of the disease management programs they administer on behalf of the Plan Sponsor.

C. Provider Network

1. The Contractor must manage the provider network for Members.
2. The Contractor's system must comply with HIPAA.
3. The Contractor must maintain a network of retail pharmacies in areas where Members reside.
4. The Contractor's network is expected to provide one or more Participating Pharmacies located within a convenient distance of Member residences, provided there is a pharmacy available. Otherwise, the standard must be the nearest available pharmacy. Convenient distances, for purposes of this Contract, are defined to be:
 - 1-mile distance in urban areas
 - 3-mile distance in suburban areas
 - 10-mile distance in rural areas



5. The Contractor must administer a complete, comprehensive audit program that will include both desk and on-site audits. The Contractor must manage the audit and compliance programs for its own network, including appropriate sanctions and recoveries.
 - a. The Contractor must perform initial credentialing, monitoring, and re-credentialing of network pharmacies.
 - b. The Contractor must perform periodic on-site audits of Participating Pharmacies.
 1. 100% of all audit recoveries will be returned to the appropriate Plan Sponsor within 90 days.
 2. Audit results must be reported each quarter and must be made available to the Plan Sponsor upon request.

D. Customer Support

The Contractor must provide a Michigan-based call center, where it must maintain staff dedicated to supporting the needs of the Plan Sponsor's Members.

The Contractor must provide web-based (Internet) support to the Plan Sponsor and its Members. This must be a plan-specific website dedicated solely to the Plan Sponsor and its Members.

1. Telephone and Internet Support

a. Customer service activities to include but not limited to:

1. Single front-end toll-free telephone number with touch-tone routing (if necessary) for Member services to respond to requests for participating pharmacy locations, recipient questions on claims and access, and complaints about pharmacists practices and services.
 - Inquiry/service responsiveness for both retail and Mail Order Services must be integrated.
 - The system must be scalable to demand in the future.
 - The Contractor must have an advanced telephone system that provides the Plan Sponsor with management tracking and reporting capabilities.
 2. A voice response system with a user-friendly menu. There must be separate toll-free numbers for Members, physicians, and pharmacies.
- b. The Contractor must have professional (licensed) medical and pharmacological advisory staff and other resources to provide pharmacists at the point of sale, with advice pertaining to the proper use of prescription drugs, consistent with prospective drug utilization and other medical standards, as they apply to each Member's Plan. Telephone services must be provided 24x7x365.
 - c. The Contractor must produce reports on usage of the toll-free numbers, including number of inquiries, types of inquiries, and timeliness of responses (see Section 1.042).
 - d. The Contractor's process must provide a way for Members to locate nearby pharmacies for special situations, such as 24-hour pharmacies or those dispensing compound pharmaceuticals, etc.
 1. The Contractor's customer service staff must have complete on-line access to all computer files and databases that support the system for applicable programs. System access must be restricted on a client-specific basis.
 2. The Contractor's system must be able to inform the customer service staff exactly where a mail service or specialty prescription is within the dispensing process, i.e. doctor call area, fulfillment or shipping. The ability to only track if a prescription was received or sent out does not meet the intent of this requirement.
 3. The Contractor must be able to provide all of the above-stated services through the Internet as well as telephonically.
 - e. The Contractor must provide Services and functions to the Plan Sponsor and Members via Internet portal. This must include, but not be limited to, access to Member refill requests.



- f. One random sample member survey must be completed annually on a Plan Sponsor specific basis. A minimum of a 90% rating of "Satisfactory" is required.
2. **Communication Meetings**

The Contractor must provide speakers at meetings designated by the Plan Sponsor.

The Contractor must provide activity reports within two weeks following the close of each calendar quarter. The reports must contain the date, location, and size of the meetings as well as the sponsoring organization and contact person.

In addition to the Plan Sponsor's designated meetings, the Contractor may receive requests through the Plan Sponsor for speakers from employee or retiree support organizations. Reasonable effort must be made to accommodate requests for in-state meetings.
3. **Communication Material**

The Contractor must prepare and cover the cost of all announcements, letters, notices, brochures, forms, postage and other supplies and services for distribution to Members. Customized Member communications must be provided at no additional charge, subject to the Plan Sponsor's approval. All communication materials must be approved by the Plan Sponsor in advance of distribution. Specific material requirements include but are not limited to:

 - a. Plan Sponsor specific Plan booklet for Members
 - b. Reimbursement/Claim forms, when applicable
 - c. Electronic copies of Member communication materials for the appropriate Plan Sponsor's review. The Plan Sponsor intends to provide access to designated electronic documents on their websites.

E. Utilization and Clinical Management Programs

The Contractor must provide state-of-the-art utilization management programs, such as PA, clinical authorization, step therapy, and DQM programs for the Plan Sponsor, according to the specifications listed in this section and the Plan Sponsor's current Plan Design.

1. Prescription drug benefits are to be provided only if medically necessary and only if prescribed by a Practitioner.
2. The Contractor must utilize effective and innovative programs for DUR, physician and pharmacist profiling.
3. The Contractor must utilize effective clinical programs that eliminate waste but do not impede compliance in certain disease categories.
4. Utilization management programs must include, but are not limited to, the following:
 - a. Concurrent, prospective, and retrospective DUR
 - b. Academic detailing, which must include physician education including face-to-face counter detailing on proper drug and dosage prescribing protocols, choice of medications for certain diagnoses, proper dosages, selection of Generic Drugs when available and utilization of preferred single source product as needed.
 - c. Formulary/physician interventions
 - d. Prescriber and pharmacy profiling
 - e. Case management
 - f. Demand management/Nurse advice lines
 - g. Medication adherence programs

F. Formulary And Rebates

The Formulary for this Contract is based on the Plan Sponsor's participation in State of Michigan Exclusive Formulary Program reflecting the current content of the existing formulary as of August 18, 2009; with the Contractor serving as the exclusive Formulary Program Manager.



The Contractor must fulfill the following requirements relative to Formulary and Rebates:

1. The Contractor must provide and manage a Formulary that ensures quality and the use of a lowest net cost strategy.
2. The Formulary must be updated periodically.
3. The Contractor must have a P&T Committee that is staffed by independent physicians and clinical pharmacists.
4. The P&T Committee must include specialists in diverse areas of practice, such as, cardiologists, obstetricians, pediatricians, gerontologists and internal medicine specialists.
5. The Contractor must provide quarterly Rebate reports to Plan Sponsor that include, but not limited to, the following data elements:
 - a. Manufacturer, wholesaler, or other source
 - b. By product including:
 - Number of claims
 - Total sales
 - Total Rebate dollars
 - Total Administrative Fee dollars
 - Total of all dollars received
 - c. Total for manufacturer
 - d. Summary totals by manufacturers, wholesalers, or any other sources of rebates
 - e. Rebates per Rx for time period
 - f. Rebates per Brand Rx for time period
 - g. Top 25 rebated product
 - h. Source of rebate
6. Rebate payments must be submitted to the Plan Sponsor on a monthly basis.

G. Eligibility

CSC is responsible for transmitting eligibility and enrollment information for State active employees, COBRA participants and their Dependents. CSC also is responsible for transmitting eligibility and enrollment information for some of the Defined Contribution former qualified participants. ORS is responsible for transmitting eligibility and enrollment information for Members of MPSEERS, State Employee Retirement System (SERS), State Police Retirement System (SPRS), Judges Retirement System (JRS) and Military Retirement System (MRS), COBRA participants and their Dependents. ORS is also responsible for transmitting eligibility and enrollment information for some of the Defined Contribution former qualified participants.

The Contractor must meet the following requirements:

1. Member information must be maintained by the Contractor.
2. Eligibility information for Members will be transferred by CSC via Electronic Data Interchange (EDI) on a weekly basis. Data for active Members will be supplied through the Human Resource Management Network (HRMN).
3. The Contractor must work with the Plan Sponsor in the implementation of this data transfer. The Contractor is responsible for any changes to its systems or processes required to support the receipt and processing of the Plan Sponsor's enrollment files.
4. The Contractor must be able to accept the Plan Sponsor's electronic enrollment files in the file format IT File Layout Guide.doc and process change transactions to maintain up-to-date information for eligibility certification. The file must be processed and Member eligibility and/or enrollment update completed within 12 hours of notification from the Plan Sponsor or its designee, with confirmation of changes submitted to the Plan Sponsor and number of records loaded. The Contractor must also accept a full audit file on a quarterly basis.



5. Upon verbal notification, Member eligibility and/or enrollment updates must be completed in real-time.
6. The Contractor must have appropriate staff of information technology professionals to provide timely programming when needed to implement system changes and produce reports.
7. The Contractor must use the State of Michigan's SSL Message Center, or provide a similar secure system, for all administrative communications concerning individual Members, including transport of electronic files containing confidential information.
8. Communication involving any identifiable Member information must be protected using passwords and a File Transfer Protocol for retrieval.
9. The Contractor must comply with all requirements of HIPAA.
10. The Contractor must maintain separate records for the Plan Sponsor for auditing and management information reporting and analysis.

H. Identification Cards

The Contractor must produce and issue Identification (ID) cards to Members according to the Plan Sponsor's requirements. The ID cards must conform to the National Council for Prescription Drug Programs (NCPDP) specifications. ID cards must include the toll-free number for the Contractor's Member services for the Plan Sponsor.

I. Specialty Pharmacy (SRX)

The Contractor must provide a dedicated and separate Specialty Pharmacy facility, for the delivery of Specialty Drugs. It should be a Center of Excellence for the major diseases states that are treated with these drugs. At a minimum, the following components must be included in the Contractor's Specialty Drug program:

1. The Contractor must maintain the Specialty Drug list and ensure that it includes all dosage forms and package sizes of products.
2. The Contractor must dispense and ship 95% of routine prescriptions (those prescriptions not requiring intervention) within two business days of receipt of the order at the Specialty Pharmacy.
3. The Contractor must dispense and ship, or resolve, 100% of all prescriptions within five business days of receipt of the order at the Specialty Pharmacy.
4. The Contractor must have adequate infrastructure and staff to provide this Service in accordance with the Plan Sponsor's requirements.
5. The Contractor must notify the Plan Sponsor monthly, in writing, of all changes to the Specialty Drug list. The Contractor must provide written documentation to the Plan Sponsor supporting the addition of medications to the Specialty Drugs list, including clinical evidence of the medications efficacy as well as evidence showing that its inclusion meets with generally accepted industry standards. The Plan Sponsor reserves the right to not cover additions to the Specialty Drug list.
6. The Contractor must have a comprehensive program for managing the care of Members taking Specialty Drugs. It must include, at a minimum, the following elements:
 - a. Intake and initial assessment
 - b. A plan of care including:
 - PA
 - Coordination of benefits
 - Coordination with the Plan Sponsor's hospital and medical benefits
 - Dosage optimization
 - c. Education and support
 - d. Counseling to patients by qualified staff 24X7X365
 - e. Adherence monitoring
 - f. Controlled dispensing and distribution, including suitable temperature controls



- g. Ongoing re-assessment
- h. Detailed reporting
- i. Trend management

J. SAS-70

The Contractor must conduct a Type II Statement of Auditing Standards (“SAS”) 70 audit on an annual basis. A copy of the annual audit, exceptions and corrective action plans (if applicable) must be sent to the Plan Sponsor.

K. Mail Order Services

The Contractor must comply with the following requirements pertaining to Mail Order Services:

1. The Contractor must offer the Member the option of obtaining maintenance drugs via mail order.
2. The Contractor’s Mail Service Pharmacy must provide controls on prescription errors and Member services.
3. The Contractor must dispense and ship 95% of routine prescriptions (those prescriptions not requiring intervention) within two business days of receipt of the order at the Mail Service Pharmacy.
4. The Contractor must dispense and ship, or resolve, 100% of all prescriptions within five business days of receipt of the order at the Mail Service Pharmacy.
5. The Contractor must not perform any therapeutic interchange program without the Plan Sponsor’s approval.
6. The Contractor must provide a complete therapeutic interchange list on a quarterly basis.

L. Performance Guarantees/Service Level Agreements (SLAs) – Ongoing Services

The Contractor must ensure that the SLAs are measurable using the Contractor’s standard management information systems. The Plan Sponsor reserves the right to independently verify the Contractor’s assessment of its performance, either by State employee or third party review. Disagreements regarding SLAs will be subject to Dispute Resolution (Section 2.190).

Within 45 Days after the end of each calendar quarter, the Contractor must provide the Plan Sponsor with a report assessing the Contractor’s performance under each SLA for the Plan Sponsor, and provide payment for any applicable penalties to the Plan Sponsor.

The following SLAs are related to ongoing Services and will apply throughout the duration of the Contract, including any optional renewal periods (if exercised). SLAs are for all Services provided under this Contract for the Plan Sponsor.

SLA# 1
ID Cards
Guarantee
ID Cards for all new Contract Holders must be mailed within seven Days of Contractor receiving eligibility record. The Contractor must measure and report its performance on this SLA on a quarterly basis. Performance must be able to be substantiated by documentation providing proof of mailing date.
Penalty
The penalty for failure to meet this SLA is .5% per quarter not met , of the total annual Administrative Fees paid to the Contractor by the Plan Sponsor.



SLA# 2
Eligibility Uploads
Guarantee
<p>All Eligibility files must be uploaded according to the Plan Sponsor’s schedules (as defined in 1.022G) with 100% accuracy.</p> <p>The Contractor must measure its performance on this SLA on a monthly basis and report on a quarterly basis.</p>
Penalty
<p>The penalty for failure to meet this SLA is .2% per month not met, of the total annual Administrative Fees paid to the Contractor by the Plan Sponsor for each month that the SLA is not met.</p>

SLA# 3
Account Management - Satisfaction
Guarantee
<p>The Plan Sponsor’s satisfaction with account management services must be rated as satisfactory. The Contractor must work with the Plan Sponsor to develop an annual survey to assess the Senior Account Manager’s performance within following categories:</p> <ol style="list-style-type: none"> 1. Timely issues resolution by the account management team (e.g. issues resolvable by account management are acknowledged, responded to within 24 hours and closed within a reasonable period of time). 2. Consultative services. 3. Timeliness of reporting and annual reviews 4. Frequency of meetings/plan updates. <p>The annual survey must allow the Plan Sponsor to rate performance on a scale of 1 to 5. The Contractor must achieve a minimum rating of 3.75 on each of the four categories.</p>
Penalty
<p>The penalty for failure to meet this SLA is 1% of the total annual Administrative Fees paid to the Contractor by the Plan Sponsor.</p>



SLA # 4
Satisfaction Surveys
Guarantee
One Random Sample Member survey must be completed annually on a Plan Sponsor specific basis. A response of "satisfied" or higher, from a minimum of 90% of survey respondents, is required. The respondent pool must be statistically valid based on the Plan Sponsor's total population.
Penalty
The penalty for failure to meet this SLA is 2% of the total annual Administrative Fees paid to the Contractor by the Plan Sponsor.

SLA # 5
Customer Service Call - Average Speed of Answer
Guarantee
On a monthly basis 95% of the calls must be answered within an average of 30 seconds or less. The Contractor must measure its performance on this SLA on a monthly basis and report on a quarterly basis.
Penalty
The penalty for failure to meet this SLA is .2% per month not met , of the total annual Administrative Fees paid to the Contractor by the Plan Sponsor for each month that the SLA is not met.

SLA # 6
Customer Service Response Time – Blockage Rate (Busy Signal)
Guarantee
The monthly blockage rate must not exceed 2%. Blockage is defined as a caller receiving a busy signal. The Contractor must measure its performance on this SLA on a monthly basis and report on a quarterly basis.
Penalty
The penalty for failure to meet this SLA is .1% per month not met , of the total annual Administrative Fees paid to the Contractor by the Plan Sponsor.



SLA # 7
First Call Resolution
Guarantee
90% of calls must be resolved on the first call. Members following up on same issue within seven calendar days cannot be considered resolved. The Contractor must measure its performance on this SLA on a monthly basis and report on a quarterly basis.
Penalty
The penalty for failure to meet this SLA is .1% per month not met , of the total annual Administrative Fees paid to the Contractor by the Plan Sponsor.

SLA #8
Customer Service Response Time to Written Inquiries
Guarantee
The Contractor must respond to 95% or more of written inquiries within five business days, and 100% of written inquiries within 10 business days. The Contractor must measure its performance on this SLA on a monthly basis and report on a quarterly basis.
Penalty
The penalty for failure to meet this SLA is .1% per month not met , of the total annual Administrative Fees paid to the Contractor by the Plan Sponsor.

SLA #9
Customer Service Response Time - Percent of Calls Abandoned
Guarantee
The monthly call abandonment rate must not exceed 3%. A call will be considered abandoned if the Member hangs up at any time after initiating a transfer out of the IVR. The Contractor must measure its performance on this SLA on a monthly basis and report on a quarterly basis.
Penalty
The penalty for failure to meet this SLA is .1% per month not met , of the total annual Administrative Fees paid to the Contractor by the Plan Sponsor.



SLA #10
Turnaround Time for Prescriptions – Mail Order Services
Guarantee
<p>The Contractor must resolve or dispense and ship 95% of routine prescriptions (those prescriptions not requiring intervention) within a quarterly average of two business days of receipt of the order at the Mail Service Pharmacy.</p> <p>The Contractor must resolve or dispense and ship 100% of all prescriptions with a quarterly average of five business days of receipt of the order at the Mail Service Pharmacy.</p> <p>The Contractor must measure its performance on this SLA on a monthly basis and report on a quarterly basis.</p>
Penalty
<p>The penalty for failure to meet this SLA is 0.1% per month not met, of the total annual Administrative Fees paid to the Contractor by the Plan Sponsor.</p>

SLA #11
Turnaround Time for Prescriptions – Specialty Pharmacy
Guarantee
<p>The Contractor must resolve or dispense and ship 95% of routine prescriptions (those prescriptions not requiring intervention) within a quarterly average of two business days of receipt of the order at the Specialty Pharmacy.</p> <p>The Contractor must resolve or dispense and ship 100% of all prescriptions with a quarterly average of five business days of receipt of the order at the Specialty Pharmacy.</p> <p>The Contractor must measure its performance on this SLA on a monthly basis and report on a quarterly basis.</p>
Penalty
<p>The penalty for failure to meet this SLA is .1% per month not met, of the total annual Administrative Fees paid to the Contractor by the Plan Sponsor.</p>



SLA #12
Timely Production of Management Reports
Guarantee
<p>The Contractor must provide monthly and quarterly reports within 45 Days of the end of the month and quarter, and annual reports within 90 Days of Plan year end.</p> <p>The Contractor must measure and report its performance on this SLA on an annual basis.</p>
Penalty
<p>The penalty for failure to meet this SLA is .1% of the total annual Administrative Fees paid to the Contractor by the Plan Sponsor.</p>

SLA #13
Point-of-Sale (POS) Claims Accuracy
Guarantee
<p>100% of POS claims must be processed and paid accurately.</p> <p>The Contractor must measure its performance on this SLA on a monthly basis and report on a quarterly basis.</p>
Penalty
<p>The penalty for failure to meet this SLA is 0.1% per month not met, of the total annual Administrative Fees paid to the Contractor by the Plan Sponsor.</p>



SLA #14
Paper Claims Processing Time - POS
Guarantee
<p>95% of all retail paper claims must be paid within 10 business days.</p> <p>100% of all retail paper claims must be paid within 15 business days.</p> <p>Turnaround time is measured beginning the day the claim is received by the Contractor to the day the claim is processed.</p> <p>The Contractor must measure its performance on this SLA on a monthly basis and report on a quarterly basis.</p>
Penalty
<p>The penalty for failure to meet this SLA is 0.1% per month not met, of the total annual Administrative Fees paid to the Contractor by the Plan Sponsor.</p>

SLA #15
Network - POS
Guarantee
<p>The Contractor must provide one or more Participating Pharmacies located within a convenient distance of Member residences, provided there is a pharmacy available, using the parameters below:</p> <ul style="list-style-type: none"> • 1-mile distance in urban areas • 3-mile distance in suburban areas • 10-mile distance in rural areas <p>The Contractor must measure and report its performance on this SLA on an annual basis.</p>
Penalty
<p>The penalty for failure to meet this SLA is 1% of the total annual Administrative Fees paid to the Contractor by the Plan Sponsor.</p>



SLA #16
Point-of-Sale Network System Downtime
Guarantee
<p>Contractor’s POS system must be available 99.5% of the time with the exception of pre-established scheduled down time.</p> <p>The Contractor must measure its performance on this SLA on a monthly basis and report on a quarterly basis.</p>
Penalty
The penalty for failure to meet this SLA is 0.1% per month affected Plan Sponsor.

SLA #17
Member Access to Pharmacist in Call Center
Guarantee
<p>During the hours of 9:00 a.m. to 5:00 pm EST., Monday through Friday with the exception of official State of Michigan holidays, 95% of calls requesting to speak to a pharmacist must be connected within two minutes of making the request.</p> <p>The Contractor must measure its performance on this SLA on a monthly basis and report on a quarterly basis.</p>
Penalty
The penalty for failure to meet this SLA is .1% per month not met , of the total annual Administrative Fees paid to the Contractor by the Plan Sponsor.



SLA #18
Rebates
Guarantee
<p>All Rebate payments must be made to the Plan Sponsor within 30 Days of the Contractor's receipt of the Rebates from the manufacturer, wholesaler, or other source. Rebate payments must be submitted in a consolidated monthly payment to the applicable Plan Sponsor.</p> <p>The Contractor must provide a quarterly Rebate report as described in Section 1.022F-5.</p> <p>Final annual reconciliation must be performed and paid out within 90 Days of Plan year end.</p> <p>The Contractor must measure and report its performance on this SLA on a monthly basis.</p>
Penalty
<p>The Contractor must, in addition to full recovery of any unpaid rebates, pay the Plan Sponsor an additional 100% of the recovery on a monthly basis.</p>

SLA #19
Desk Audits - POS
Guarantee
<p>The Contractor must perform desk audits on at least 10% of Participating Pharmacies in each year of the Contract, including any optional renewal periods which may be exercised.</p> <p>This standard must be measured and reported quarterly.</p>
Penalty
<p>The penalty for failure to meet this SLA is 1% per quarter not met, of the total annual Administrative Fees paid to the Contractor by the Plan Sponsor.</p>



SLA #20
On-site Audits - POS
Guarantee
<p>The Contractor must physically perform on-site audits of 3% Participating Pharmacies that fill 200 or more prescriptions per year for CSC Members.</p> <p>This standard must be measured and reported annually.</p>
Penalty
<p>The penalty for failure to meet this SLA is 1% of the total annual Administrative Fees paid to the Contractor by the Plan Sponsor.</p>

SLA #21
Prior Authorizations
Guarantee
<p>The Contractor must provide a final determination of all requests for Prior Authorization within 72 hours upon receiving all information required for review. If completed information for making a final determination is not received on the initial Prior Authorization request, the physician's office will be contacted within 48 business hours to request the missing information.</p> <p>The Contractor must measure its performance on this SLA on a monthly basis and report on a quarterly basis.</p>
Penalty
<p>The penalty for failure to meet this SLA is .1% per month not met, of the total annual Administrative Fees paid to the Contractor by the Plan Sponsor.</p>



SLA #22
Mail Order Services Dispensing Accuracy
Guarantee
The Mail Service Pharmacy must dispense 100% of all prescriptions without Dispensing Errors. Dispensing Error is defined as incorrect patient, drug, strength, dose, or form, label or directions. The Contractor must measure its performance on this SLA on a monthly basis and report on a quarterly basis.
Penalty
The penalty for failure to meet this SLA is 0.1% per month not met , of the total annual Administrative Fees paid to the Contractor by the Plan Sponsor.

M. 90 Day Retail Maintenance Drug Program – Deleted/Not Applicable

N. Medicare Part D

The Contractor must be able to provide Center for Medicare and Medicaid (CMS) compliant Prescription Pharmaceutical Subsidy Plan and/or Medicare Prescription Drug Plan (MPDP), on an administrative-only arrangement for the Plan Sponsor, as per their Plan requirements.

O. Disease Management Programs

The Contractor must provide disease management services for CSC.

1.030 Roles and Responsibilities

1.031 Contractor Staff, Roles, and Responsibilities

The Contractor must provide an account team for CSC. The service team will include a dedicated Senior Account Manager (SAM) and an Assistant Account Manager (AAM).

- A. The Contractor must provide a dedicated SAM for the Plan Sponsor who will be the single point of accountability. In addition, the Contractor will provide an AAM. For purposes of this Contract, the SAM and the AAM are considered Key Personnel.
- B. The SAM, and/or the AAM, must be made available to the Plan Sponsor, at a location to be determined by the Plan Sponsor, upon request of the Plan Sponsor.
- C. The SAM must have the authority to make decisions regarding Service issues on a daily basis. The Contractor must also provide escalation procedures and contact information for issues which need to be escalated above the SAM.
- D. The SAM must have the authority within his or her organization to obtain the use of all Contractor’s resources, both direct and indirect, as are necessary
- E. The SAM must have at least one qualified back-up, in addition to the AAM, who must be involved in account management and who is capable of performing the responsibilities of the SAM in the event that the SAM is unavailable. The back-up must be familiar with the requirements of this Contract.
- F. The Contractor must work with the Plan Sponsor to develop an annual survey to assess the SAM’s performance.



- G. The Contractor must provide a dedicated Implementation Manager for the Plan Sponsor. For purposes of this Contract, the Implementation Manager is considered Key Personnel.
- H. The Implementation Manager must provide regular updates to the Plan Sponsor during scheduled weekly meetings tracking the status of the implementation. The Contractor's SAM will conduct a post-implementation review meeting with the Plan Sponsor within 30 days after the effective date of the Plan's services.
- I. The Contractor's dedicated pharmacist will work with EBD to agree upon procedures to handle Member inquiries with regards to Prior Authorization.
- J. The Contractor's account team must be comprised of individuals responsible for, at a minimum, the following functions:
 - 1. Account management
 - 2. Pharmacist(s)
 - 3. Member communications
 - 4. Claims processing
 - 5. Enrollment and eligibility
 - 6. Customer service
- K. The account team's Pharmacists must work under the direction of the Plan Sponsor and will provide day-to-day assistance to the Plan Sponsor in interfacing with Contractor.
- L. The Contractor must promptly notify the Plan Sponsor of administrative changes in the Contractor's systems or procedures that impact the Plan Sponsor and/or Members.
 - 1. Management meetings must be held between the Contractor and the Plan Sponsor on a regular basis to review Plan performance. The Contractor must review all open projects and present the status, progress and results of each project. The Contractor must provide data and cost analysis upon request.
 - 2. Quarterly meetings will be held at a location as determined by the Plan Sponsor, and additional meetings may be held each year.
 - 3. The Contractor must participate in strategic planning sessions to provide the following:
 - a. Data analysis with commensurate recommendations and cost-benefit analysis to provide support for proposed plan modifications.
 - b. Review of changes in the market and identification of emerging trends.
 - c. Provide seminars on related topics for the Plan Sponsor.
 - 4. The Contractor must meet with the Plan Sponsor to review plan performance, report on progress, and identify improvement opportunities. On a quarterly basis, the Contractor must present a comprehensive review of the cost and utilization experience of the Plan to include:
 - a. Proposed solutions to performance variances (such as cost, utilization, and administrative performance and their root causes).
 - b. Working collectively with Plan Sponsor's other benefits administrators (such as hospital/medical vendor, vision plan administrator, and dental plan administrator) on joint Plan improvement projects.

1.040 Contract Implementation & Reporting

1.041 Contract Implementation Management and Implementation SLA

The Contractor must provide the final transition and implementation plan within five Days of the Contract start date, including a final Disruption Analysis, and a plan for averting disruptions and communicating any disruptions to affected Members. All transition and implementation plans are subject to the approval of the Plan Sponsor.

The following SLA applies to implementation only:

Implementation SLA
Implementation



Guarantees
The Contractor must begin providing full Services as described throughout Section 1.022 at 12:00am on January 1, 2010.
Penalty
The total penalty at risk for failure to meet the implementation dates under this SLA is \$1,000,000.00 .

1.042 Reports

The Contractor must provide reports to the Plan Sponsor, including but not limited to, the reports listed below:

- A. The Contractor must provide monthly and quarterly reports within 45 days of the end of the month and quarter, and annual reports within 90 days of year end.
- B. The Contractor must provide (monthly) an electronic copy of all paid claims to the Plan Sponsor or their designee.
- C. The Plan Sponsor must receive the Contractor's standard report package and, at a minimum, the reports described below for their Members:
 1. Monthly activity summaries including a brief narrative of significant accomplishments, administrative issues, outstanding problems, etc., which occurred in the month, as well as developments in major new drugs, Brand Name Drugs going Generic or OTC, etc.
 2. Monthly reports, to be split among retail and mail order, 90 day retail and specialty, between Brand and Generic and Formulary compliance, for the following: Number of prescriptions, average wholesale ingredient cost, discounted ingredient cost charged, Member cost share, dispensing fees and amount paid.
 3. Claims lag reports showing total payments by "incurred" and "paid" months, separated by retail and mail order.
 4. All reports must be provided for active, COBRA, and retiree Members and also a combined report for all of these.
 5. Quarterly Rebate reports according to the requirements in Section 1.022F.
 6. Weekly requests for reimbursement of claims paid need to be separated between active and retiree Member groups. In addition, CSC retiree Members need to be reported separately by State employees, State Police, Judges and Military groups. This breakdown must be provided for all reports including lag and Rebate reports.
- D. The Contractor must provide the following quarterly reports:
 1. Year-to-date summaries of the monthly reports.
 2. Quarterly performance standard results.
- E. The Contractor must provide the following annual reports:
 1. Management summary.
 2. Full financial and enrollment experience.
 3. Top 100 Brand Name and Generic Drugs.
 4. Separate detailed report on the usage of Specialty Drugs.
 5. Formulary reimbursement reports.
 6. Physician profiling/other clinical effectiveness reports.



F. The Contractor must provide the following with regards to ad hoc reporting:

1. An ad hoc reporting tool that Plan Sponsor can use to access utilization and other data without assistance from the Contractor
2. Perform ad hoc reporting upon request and specification of the Plan Sponsor.

1.050 Acceptance

1.051 Criteria

Implementation must be accomplished within the agreed upon timeframes per the implementation plan for the Plan Sponsor. The Plan Sponsor will determine acceptance of implementation and will give final approval for Contractor to begin providing Services.

1.052 Final Acceptance – Deleted/Not Applicable

1.060 Contract Pricing

1.061 Contract Pricing

The Contractor must establish MAC prices in order to: (i) enable the Contractor to generate cost-effective and marketing competitive prices, and (ii) decrease such prices as generic prices decrease in the market place. Accordingly, the Contractor is obligated to establish such prices, and thereafter adjust such prices, to provide the Plan Sponsor with prices accurately reflecting Contractor's acquisition and/or reimbursement costs. The Contractor represents that it currently has only one proprietary MAC list used to reimburse all retail, Mail Order and Specialty Pharmacies and to invoice all clients (other than those few clients who may have created certain customized changes to the Contractor's MAC list). Should the Contractor in the future establish multiple MAC lists as alternative proprietary MAC lists for Participating Pharmacies, the Contractor must provide to the Plan Sponsor the lowest MAC price for each Generic Pharmaceutical (and each brand pharmaceutical that is dispensed as a generic) on any of its MAC lists. The Contractor also represents that it currently reviews adjustments to its proprietary MAC list at least monthly, and that it will continue to do so, using Pass-Through Pricing as defined herein as a basis for its adjustments. The Contractor must pass-through to the Plan Sponsor all financial benefits obtained from all pharmaceutical manufacturers, wholesalers and any other sources, and all amounts paid to Participating Pharmacies, without any markup.

For purposes of this Contract, the Contractor is the Plan Sponsor's Fiduciary and must administer the Plans in accordance with the Contract's Pass-Through Pricing and Transparency requirements.

The Contractor must disclose the source of its AWP list. The Plan Sponsor reserves the right to approve the source and to require a change in source.

1.062 Price Term

This is a firm, fixed price Contract, subject to the following conditions:

If at any time during the term of this Contract, the Contractor implements or provides for any other client of lesser or comparable size pricing terms more favorable than the aggregate pricing terms to the Plan Sponsor, then the Contractor must offer such pricing terms to the Plan Sponsor within 30 days of implementing or providing such terms to another party. The Contractor must compare the following factors to determine whether Plan Sponsor is entitled to such revised pricing terms, including:

- The Administrative Fee
- The Aggregate pricing terms of such applicable clients, inclusive of the program savings, rebates and guarantees;
- The Services provided by Contractor to such clients;
- The Plan design of such clients, which may include Plan Formulary, Brand Name and Generic Drug utilization information and mail and retail utilization information.

In the event that the more favorable pricing terms are not readily adaptable to the pricing terms of the Plan Sponsor programs, the Contractor and the State must negotiate in good faith to reach mutually acceptable pricing terms.



For each year of the Contract, including any optional renewal periods (if exercised), on the anniversary of the Contract start date, the Contractor must provide a written certification stating that the Contractor is in full compliance with this Section for that Contract year.

The Contractor must regularly and continuously review their contract rates with retail, Mail Order, and Specialty Participating Pharmacies. The Contractor must provide a report annually, on each anniversary of the Contract start date, including any optional renewal periods (if exercised) reflecting the results of these on-going reviews.

1.063 Tax Excluded from Price

(a) Sales Tax: The Michigan Constitution exempts from sales and use tax the sale of prescription drugs, Const 1963, art 9,8. Prices must not include Michigan sales taxes.

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

1.064 Expenses

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

1.070 Additional Requirements

1.071 Additional Terms and Conditions specific to this Contract

The Contractor must make the Pass-Through Pricing (Attachment A) available to any MiDEAL member that requests to participate in the Contract. The Contractor must honor all DEFINITIONS in this Contract when providing pricing to any MiDEAL member. The Contractor must negotiate in good faith with any MiDEAL member to offer the Services required specific to the MiDEAL member's Plan for a reasonable Administrative Fee.



Article 2, Terms and Conditions

2.000 Contract Structure and Term

2.001 Contract Term

This Contract is for a period of three years and two weeks beginning December 21, 2009 through December 31, 2012. All outstanding Purchase Orders must also expire upon the termination (cancellation for any of the reasons listed in **Section 2.150**) of the Contract, unless otherwise extended under the Contract. Absent an early termination for any reason, Purchase Orders issued but not expired, by the end of the Contract's stated term, will remain in effect for the balance of the fiscal year for which they were issued.

2.002 Options to Renew

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

2.003 Legal Effect

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

Except as otherwise agreed in writing by the parties, the State assumes no liability for costs incurred by Contractor or payment under 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.

2.004 Attachments & Exhibits

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

2.005 Ordering

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

2.006 Order of Precedence

The Contract, including any Statements of Work and Exhibits, to the extent not contrary to the Contract, each of which is incorporated for all purposes, constitutes the entire agreement between the parties with respect to the subject matter and supersedes all prior agreements, whether written or oral, with respect to the subject matter.

2.007 Headings

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

2.008 Form, Function & Utility – Deleted/Not Applicable

2.009 Reformation and Severability

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

**2.010 Consents and Approvals**

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

2.011 No Waiver of Default

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

2.012 Survival

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

2.020 Contract Administration**2.021 Issuing Office**

This Contract is issued by the Department of Management and Budget, Purchasing Operations, 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:

Kevin Dunn
Purchasing Operations
Department of Management and Budget
Mason Bldg, 2nd Floor
PO Box 30026
Lansing, MI 48909
Email: Dunnk3@michigan.gov
Phone: 517-241-4225

2.022 Contract Compliance Inspector (CCI)

The persons named below, or any other persons so designated, will 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 the Contract as that authority is retained by DMB Purchasing Operations.** The Contract Compliance Inspectors for this Contract are:

For EBD:
Susan Kant
Civil Service Commission, Employee Benefits Division
Email: kants@michigan.gov
Phone: 517-335-3068

2.023 Project Manager – Deleted/Not Applicable**2.024 Change Requests**

During the course of ordinary business, it may become necessary for the State to discontinue certain business practices or create Additional Services/Deliverables. The State reserves the right, by giving Contractor written notice of a change request within a reasonable time, to request any changes to the requirements and specifications of the Contract and the work to be performed by the Contractor under the Contract. In such an event, the Contractor must 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 proposal to implement the change.



The State may accept a Contractor's proposal for change, reject it, or reach another agreement with Contractor. Should the parties agree on carrying out a change, a written Contract Change Notice must be prepared and issued under this Contract, describing the change and its effects on the Services and any affected components of this Contract (a "Contract Change Notice"). No proposed Change may 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. If the Contractor fails to notify the State before beginning to work on the requested activities, then the Contractor waives any right to assert any claim for additional compensation or time for performing the requested activities.

If the State requests or directs the Contractor to perform any activities that Contractor believes constitute a change to the Statement of Work, the Contractor must notify the State that it believes the requested activities are a change before beginning to work on the requested activities. If the Contractor fails to notify the State before beginning to work on the requested activities, then the Contractor waives any right to assert any claim for additional compensation or time for performing the requested activities. If the Contractor commences performing work outside the scope of this Contract and then ceases performing that work, the Contractor must, at the request of the State, retract any out-of-scope work that would adversely affect the Contract.

2.025 Notices

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

State:

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

Contractor:

Blue Cross Blue Shield of Michigan
Attn: Gary Gavin
600 Lafayette East
Detroit, MI 48226

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

2.026 Binding Commitments

Representatives of Contractor must have the authority to make binding commitments on Contractor's behalf within the bounds set forth in this Contract.

2.027 Relationship of the Parties

The relationship between the State and Contractor is that of client and independent contractor. No agent, employee, or servant of Contractor or any of its Subcontractors must be deemed to be an employee, agent or servant of the State for any reason. Contractor 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.

2.028 Covenant of Good Faith

Each party must 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.

**2.029 Assignments**

(a) Neither party may assign the Contract, or assign or delegate any of its duties or obligations under the Contract, to any other party (whether by operation of law or otherwise), without the prior written consent of the other party; provided, however, that the State may assign the Contract to any other State agency, department, division or department without the prior consent of Contractor. The State may withhold consent from proposed assignments, subcontracts, or novations when the transfer of responsibility would operate to decrease the State's likelihood of receiving performance on the Contract or the State's ability to recover damages.

(b) Contractor may not, without the prior written approval of the State, assign its right to receive payments due under the Contract. If the State permits an assignment, the Contractor is not relieved of its responsibility to perform any of its contractual duties, and the requirement under the Contract that all payments must be made to one entity continues.

(c) If the Contractor requests consent to assign the Contract or any of the Contractor's rights or duties under the Contract, the Contractor must notify the State in writing at least 180 days before the proposed assignment would take effect. The Contractor also must provide the State with adequate information about the assignee within a reasonable amount of time before the assignment for the State to determine whether to approve the assignment.

2.030 General Provisions**2.031 Media Releases**

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

2.032 Contract Distribution

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

2.033 Permits

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

2.034 Website Incorporation

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

2.035 Future Bidding Preclusion – Deleted/Not Applicable**2.036 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 PA 442, MCL 15.231, et seq (the "FOIA").

2.037 Disaster Recovery

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

2.040 Financial Provisions**2.041 Fixed Prices for Services/Deliverables – Deleted/Not Applicable**

**2.042 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 must negotiate an equitable reduction in Contractor's charges under such Statement of Work commensurate with the reduction in scope.

2.043 Services/Deliverables Covered – Deleted/Not Applicable**2.044 Invoicing and Payment – In General**

Correct invoices will be due and payable by the State, in accordance with the State's standard payment procedure as specified in 1984 PA 279, MCL 17.51 et seq., within 45 days after receipt, provided the State determines that the invoice was properly rendered.

2.045 Pro-ration

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

2.046 Antitrust Assignment

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

2.047 Final Payment

The making of final payment by the State to Contractor does not constitute a waiver by either party of any rights or other claims as to the other party's continuing obligations under the Contract, nor will it constitute a waiver of any claims by one party against the other arising from unsettled claims or failure by a party to comply with 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 constitutes 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.

2.048 Electronic Payment Requirement

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

2.050 Taxes**2.051 Employment Taxes**

Contractors must collect and pay all applicable federal, state, and local employment taxes.

2.052 Sales and Use Taxes

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



2.060 Contract Management

2.061 Contractor Personnel Qualifications

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

2.062 Contractor Key Personnel

(a) The Contractor must provide the Contract Compliance Inspector with the names of the Key Personnel.

(b) Key Personnel must be dedicated as defined in the Statement of Work to the Contract for its duration in the applicable Statement of Work.

(c) The State reserves the right to recommend and approve in writing the initial assignment, as well as any proposed reassignment or replacement, of any Key Personnel. Before assigning an individual to any Key Personnel position, Contractor must notify the State of the proposed assignment, must introduce the individual to the appropriate State representatives, and must provide the State with a resume and any other information about the individual reasonably requested by the State. The State reserves the right to interview the individual before granting written approval. In the event the State finds a proposed individual unacceptable, the State will provide a written explanation including reasonable detail outlining the reasons for the rejection.

(d) Contractor must not remove any Key Personnel from their assigned roles or the Contract without the prior written consent of the State. The Contractor's removal of Key Personnel without the prior written consent of the State is an unauthorized removal ("Unauthorized Removal"). Unauthorized Removals does not include replacing Key Personnel for reasons beyond the reasonable control of Contractor, including illness, disability, leave of absence, personal emergency circumstances, resignation, or for cause termination of the Key Personnel's employment. Unauthorized Removals does not include replacing Key Personnel because of promotions or other job movements allowed by Contractor personnel policies or Collective Bargaining Agreement(s) as long as the State receives prior written notice before shadowing occurs and Contractor provides 30 days of shadowing unless parties agree to a different time period. The Contractor with the State must review any Key Personnel replacements, and appropriate transition planning 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 termination and cancellation rights.

(e) The Contractor must notify the Contract Compliance Inspector and the Contract Administrator at least 10 business days before redeploying non-Key Personnel, who are dedicated to primarily to the Project, to other projects. If the State does not object to the redeployment by its scheduled date, the Contractor may then redeploy the non-Key Personnel.

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

The State reserves the right to require the removal from the Contract of Contractor personnel found, in the judgment of the State, to be unacceptable. The State's request must be written with reasonable detail outlining the reasons for the removal request. Additionally, the State's request must be based on legitimate, good-faith reasons. Replacement personnel for the removed person must be fully qualified for the position. If the State exercises this right, and the Contractor cannot immediately replace the removed personnel, the State agrees to an equitable adjustment in schedule or other terms that may be affected by the State's required removal. If any incident with removed personnel results in delay not reasonably anticipatable under the circumstances and which is attributable to the State, the applicable SLAs for the affected Service will not be counted for a time as agreed to by the parties.

2.064 Contractor Personnel Location – Deleted/Not Applicable

2.065 Contractor Identification

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

**2.066 Cooperation with Third Parties**

Contractor must cause its personnel and the personnel of any Subcontractors to cooperate with the State and its agents and other contractors including the State's Quality Assurance personnel. As reasonably requested by the State in writing, the Contractor must provide to the State's agents and other contractors reasonable access to Contractor's Project personnel, systems and facilities to the extent the access relates to activities specifically associated with this Contract and must not interfere or jeopardize the safety or operation of the systems or facilities.

2.067 Contractor Return of State Equipment/Resources – Deleted/Not Applicable**2.068 Contract Management Responsibilities**

The Contractor must assume responsibility for all contractual activities, whether or not that Contractor performs them. Further, the State considers the Contractor to be the sole point of contact with regard to contractual matters, including payment of any and all charges resulting from the anticipated Contract. If any part of the work is to be subcontracted, the Contract must include a list of Subcontractors, including firm name and address, contact person and a complete description of work to be subcontracted.

2.070 Subcontracting by Contractor**2.071 Contractor Full Responsibility**

Contractor must 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.

2.072 State Consent to Delegation

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

2.073 Subcontractor Bound to Contract

In any subcontracts entered into by Contractor for the performance of the Services, Contractor must require the Subcontractor, to the extent of the Services to be performed by the Subcontractor, to be bound to Contractor by the terms of 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. The management of any Subcontractor will be the responsibility of Contractor, and Contractor must remain responsible for the performance of its Subcontractors to the same extent as if Contractor had not subcontracted such performance. Contractor must make all payments to Subcontractors or suppliers of Contractor. Except as otherwise agreed in writing by the State and Contractor, the State will not be obligated to direct payments for the Services other than to Contractor. The State's written approval of any Subcontractor engaged by Contractor to perform any obligation under this Contract will not relieve Contractor of any obligations or performance required under this Contract.

2.074 Flow Down

Except where specifically approved in writing by the State on a case-by-case basis, Contractor must flow down the obligations in **Sections 2.030, 2.060, 2.100, 2.110, 2.120, 2.130, 2.200** in their entirety, in all of its agreements with any Subcontractors.

2.075 Competitive Selection

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

**2.080 State Responsibilities – Deleted/Not Applicable****2.090 Security****2.091 Background Checks**

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

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

2.092 Security Breach Notification

If the Contractor breaches this Section, the Contractor must (i) promptly cure any deficiencies and (ii) comply with any applicable federal and state laws and regulations pertaining to unauthorized disclosures. Contractor and the State will cooperate to mitigate, to the extent practicable, the effects of any breach, intrusion, or unauthorized use or disclosure. Contractor must report to the State in writing any use or disclosure of Confidential Information, whether suspected or actual, other than as provided for by the Contract within 24 hours of becoming aware of the use or disclosure or the shorter time period as is reasonable under the circumstances.

2.093 PCI Data Security Requirements – Deleted/Not Applicable**2.100 Confidentiality****2.101 Confidentiality**

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

2.102 Protection of Confidential Information

The State and Contractor must each use at least the same degree of care to prevent disclosing to third parties the Confidential Information of the other as it employs to avoid unauthorized disclosure, publication or dissemination of its own confidential information of like character, but in no event less than reasonable care. Neither Contractor nor the State will (i) make any use of the Confidential Information of the other except as contemplated by 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 must limit disclosure of the other party's Confidential Information to employees and Subcontractors who must have access 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) the disclosure is necessary or otherwise naturally occurs in connection with work that is within the Subcontractor's scope of responsibility, and (C) Contractor obligates the Subcontractor in a written Contract to maintain the State's Confidential Information in confidence.



At the State's request, any employee of Contractor and of any Subcontractor having access or continued access to the State's Confidential Information may be required to execute an acknowledgment that the employee has been advised of Contractor's and the Subcontractor's obligations under this Section and of the employee's obligation to Contractor or Subcontractor, as the case may be, to protect the Confidential Information from unauthorized use or disclosure.

2.103 Exclusions

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

2.104 No Implied Rights

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

2.105 Respective Obligations

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

2.110 Records and Inspections

2.111 Inspection of Work Performed – Deleted/Not Applicable

2.112 Examination of Records

For seven years after the Contractor provides any work under this Contract (the "Audit Period"), the State's authorized representatives must at all reasonable times, and within seven days prior written notice, be granted full access to Contractor's books and records, in print or electronic form, for examination and audit purposes. The State may examine and copy any of Contractor's books, records, documents and papers pertinent to establishing Contractor's compliance with the Contract and with applicable laws and rules. This requirement also applies to the books, records, accounts, documents and papers, in print or electronic form, of any parent, affiliated or subsidiary organization of Contractor, or any Subcontractor of Contractor performing Services in connection with the Contract. In addition, records must be maintained for seven years after the Contractor provides any work under this Contract,

The State reserves the right to examine any Formulary and/or Rebate agreements between the Contractor or its subcontractor(s) and pharmaceutical manufacturers, wholesalers, or any other sources.

Audits will review multiple items, including but not limited to:

1. Review of Rebate contracts with pharmaceutical manufacturers
2. Contracts with pharmacies and subcontractors
3. Recoveries by the Contractor from provider audits
4. Contractor compliance with Contract pricing terms
5. Adherence to SLAs
6. Proper and accurate administration of the Plan designs
7. Any claims paid by the Contractor to ineligible persons

2.113 Retention of Records

Contractor must maintain at least until the end of the Audit Period all pertinent financial and accounting records (including time sheets and payroll records, and information pertaining to the Contract and to the Services, equipment, and commodities provided under the Contract) pertaining to the Contract according to generally accepted accounting principles and other procedures specified in this Section. Financial and accounting records must be made available, upon request, to the State at any time during the Audit Period.



If an audit, litigation, or other action involving Contractor's records is initiated before the end of the Audit Period, the records must be retained until all issues arising out of the audit, litigation, or other action are resolved or until the end of the Audit Period, whichever is later.

2.114 Audit Resolution

If necessary, the Contractor and the State will meet to review each audit report promptly after issuance. The Contractor must respond to each audit report in writing within 30 days from receipt of the report, unless a shorter response time is specified in the report. The Contractor must develop, and the State must agree to an action plan to promptly address and resolve any deficiencies, concerns, and/or recommendations in the audit report. The Contractor cannot hold a Member, a pharmacy provider or the Plan Sponsor financially responsible for the Contractor's errors that are identified in an audit. If a pattern of payment errors is identified for a particular pharmacy, the Contractor must assume the cost of auditing that pharmacy.

2.115 Errors

(a) If the audit demonstrates any errors in the documents provided to the State, then the amount in error must be reflected as a credit or debit on the next invoice and in subsequent invoices until the amount is paid or refunded in full. However, a credit or debit may not be carried for more than four invoices. If a balance remains after four invoices, then the remaining amount will be due as a payment or refund within 45 days of the last quarterly invoice that the balance appeared on or termination of the Contract, whichever is earlier.

(b) In addition to other available remedies, if the difference between the payment received and the correct payment amount is greater than 10%, then the Contractor must pay all of the reasonable costs of the audit.

2.120 Warranties

2.121 Warranties and Representations

The Contractor represents and warrants:

(a) It is capable in all respects of fulfilling and must fulfill all of its obligations under this Contract. The performance of all obligations under this Contract must be provided in a timely, professional, and workman-like manner and must 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 the items in this Contract, Contractor must assign or otherwise transfer to the State or its designees, or afford the State the benefits of, any manufacturer's warranty for the Deliverable.

(e) The Contractor's 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, must have, or must acquire, any contractual, financial, business, or other interest, direct or indirect, that would conflict in any manner or degree with Contractor's performance of its duties and responsibilities to the State under this Contract or otherwise create an appearance of impropriety with respect to the award or performance of this Agreement. Contractor must notify the State about the nature of the conflict or appearance of impropriety within two days of learning about it.



(h) Neither Contractor nor any Affiliates, nor any employee of either has accepted or must accept anything of value based on an understanding that the actions of the Contractor or Affiliates or employee on behalf of the State would be influenced. Contractor must not attempt to influence any State employee by the direct or indirect offer of anything of value.

(i) 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 the financial statements, reports, other information. Since the respective dates or periods covered by the 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.

(j) All written information furnished to the State by or for the 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 the information not misleading.

(k) 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 the department within the previous five years for the reason that Contractor failed to perform or otherwise breached an obligation of the Contract.

(l) If any of the certifications, representations, or disclosures made in the Contractor's original bid response change after contract award, the Contractor is required to report those changes immediately to the Department of Management and Budget, Purchasing Operations.

2.122 Warranty of Merchantability – Deleted/Not Applicable

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

2.124 Warranty of Title – Deleted/Not Applicable

2.125 Equipment Warranty – Deleted/Not Applicable

2.126 Equipment to be New – Deleted/Not Applicable

2.127 Prohibited Products – Deleted/Not Applicable

2.128 Consequences for Breach

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

2.130 Insurance

2.131 Liability Insurance

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

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

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

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

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

1. Commercial General Liability with the following minimum coverage:
- \$2,000,000 General Aggregate Limit other than Products/Completed Operations
 - \$2,000,000 Products/Completed Operations Aggregate Limit
 - \$1,000,000 Personal & Advertising Injury Limit
 - \$1,000,000 Each Occurrence Limit

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

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

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

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

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

5. 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 three million dollars (\$3,000,000.00) 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 must 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 the office space, including without limitation, those contents used by Contractor to provide the Services to the State, up to its replacement value, where the office space and its contents are under the care, custody and control of Contractor. The policy must 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 must be endorsed on the policy as a loss payee as its interests appear.

2.132 Subcontractor Insurance Coverage

Except where the State has approved in writing a Contractor subcontract with other insurance provisions, Contractor must require all of its Subcontractors under 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) must 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.

2.133 Certificates of Insurance and Other Requirements

Contractor must furnish to DMB-Purchasing Operations, certificate(s) of insurance verifying insurance coverage or providing satisfactory evidence of self-insurance as required in this Section (the "Certificates"). The Certificate must be on the standard "accord" form or equivalent. **THE CONTRACT OR PURCHASE ORDER NO. MUST BE SHOWN ON THE CERTIFICATE OF INSURANCE TO ASSURE CORRECT FILING.** All Certificate(s) are to be prepared and submitted by the Insurance Provider. All Certificate(s) must contain a provision indicating that coverages afforded under the policies **WILL NOT BE CANCELLED, MATERIALLY CHANGED, OR NOT RENEWED** without 30 days prior written notice, except for 10 days for non-payment of premium, having been given to the Director of Purchasing Operations, Department of Management and Budget. The notice must include the Contract or Purchase Order number affected. Before the Contract is signed, and not less than 20 days before the insurance expiration date every year thereafter, the Contractor must provide evidence that the State and its agents, officers and employees are listed as additional insureds under each commercial general liability and commercial automobile liability policy. In the event the State approves the representation of the State by the insurer's attorney, the attorney may be required to be designated as a Special Assistant Attorney General by the Attorney General of the State of Michigan.

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

2.140 Indemnification

2.141 General Indemnification

To the extent permitted by law, the Contractor must indemnify, defend and hold harmless the State from liability, including all claims and losses, and all related costs and expenses (including reasonable attorneys' fees and costs of investigation, litigation, settlement, judgments, interest and penalties), accruing or resulting to any person, firm or corporation that may be injured or damaged by the Contractor in the performance of 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.

2.142 Code Indemnification

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

**2.143 Employee Indemnification**

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

2.144 Patent/Copyright Infringement Indemnification

To the extent permitted by law, the Contractor must indemnify, defend and hold harmless the State from and against all losses, liabilities, damages (including taxes), and all related costs and expenses (including reasonable attorneys' fees and costs of investigation, litigation, settlement, judgments, interest and penalties) incurred in connection with any action or proceeding threatened or brought against the State to the extent that the action or proceeding is based on a claim that any piece of equipment, software, commodity or service supplied by the Contractor or its subcontractors, or the operation of the equipment, software, commodity or service, or the use or reproduction of any documentation provided with the equipment, software, commodity or service infringes any United States patent, copyright, trademark or trade secret of any person or entity, which is enforceable under the laws of the United States.

In addition, should the equipment, software, commodity, or service, or its operation, become or in the State's or Contractor's opinion be likely to become the subject of a claim of infringement, the Contractor must at the Contractor's sole expense (i) procure for the State the right to continue using the equipment, software, commodity or service or, if the option is not reasonably available to the Contractor, (ii) replace or modify to the State's satisfaction the same with equipment, software, commodity or service of equivalent function and performance so that it becomes non-infringing, or, if the option is not reasonably available to Contractor, (iii) accept its return by the State with appropriate credits to the State against the Contractor's charges and reimburse the State for any losses or costs incurred as a consequence of the State ceasing its use and returning it.

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

2.145 Continuation of Indemnification Obligations

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

2.146 Indemnification Procedures

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

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



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

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

2.150 Termination/Cancellation

2.151 Notice and Right to Cure

If the Contractor breaches the Contract, and the State in its sole discretion determines that the breach is curable, the State will provide the Contractor with written notice of the breach and a reasonable time period to cure the breach. During the cure and resolution period, the Contractor must continue to provide Services in a manner to minimize the disruption of Services to Members. The notice of breach and opportunity to cure is inapplicable for successive or repeated breaches or if the State determines in its sole discretion that the breach poses a serious and imminent threat to the health or safety of any person or the imminent loss, damage, or destruction of any real or tangible personal property.

2.152 Termination for Cause

(a) The State may terminate this Contract, for cause, by notifying the Contractor in writing, if the Contractor (i) breaches any of its material duties or obligations under this Contract (including a Chronic Failure to meet any particular SLA), or (ii) fails to cure a breach within the time period specified in the written notice of breach provided by the State

(b) If this Contract is terminated for cause, the Contractor must pay 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 are not consequential, indirect or incidental damages, and cannot be excluded by any other terms otherwise included in this Contract, provided the costs are not in excess of 50% more than the prices for the Service/Deliverables provided under this Contract.

(c) If 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 must 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 must cease on the effective date of the termination.

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

**2.153 Termination for Convenience**

The State may terminate this Contract for its convenience, in whole or part, if the State determines that a termination is in the State's best interest. Reasons for the termination is in 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 30 days before the date of termination. If the State chooses to terminate this Contract in part, the charges payable under this Contract must be equitably adjusted to reflect those Services/Deliverables that are terminated.

2.154 Termination for 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 must 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 must give Contractor at least 30 days advance written notice of termination for non-appropriation or unavailability (or the time as is available if the State receives notice of the final decision less than 30 days before the funding cutoff).

(b) If funding for the Contract is reduced by law, or funds to pay Contractor for the agreed-to level of the Services or production of Deliverables to be provided by Contractor are not appropriated or otherwise unavailable, the State may, upon 30 days written notice to Contractor, reduce the level of the Services or the change the production of Deliverables in the manner and for the periods of time as the State may elect. The charges payable under this Contract will be equitably adjusted to reflect any equipment, services or commodities not provided by reason of the reduction.

(c) If the State terminates this Contract, eliminates certain Deliverables, or reduces the level of Services to be provided by Contractor under this Section, the State must pay Contractor for all Work-in-Process performed through the effective date of the termination or reduction in level, as the case may be and as determined by the State, to the extent funds are available. This Section will not preclude Contractor from reducing or stopping Services/Deliverables or raising against the State in a court of competent jurisdiction, any claim for a shortfall in payment for Services performed or Deliverables finally accepted before the effective date of termination.

2.155 Termination for Criminal Conviction

The State may terminate 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 related to a State, public or private Contract or subcontract.

2.156 Termination for Approvals Rescinded

The State may terminate this Contract if any final administrative or judicial decision or adjudication disapproves a previously approved request for purchase of personal services under the Michigan Constitution, Const 1963, Article 11, § 5, and Civil Service Rule 7-1. In that case, the State will pay the Contractor for only the work completed to that point under the Contract. Termination may be in whole or in part and may be immediate as of the date of the written notice to Contractor or may be effective as of the date stated in the written notice.

2.157 Rights and Obligations upon Termination

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



(b) If the State terminates this Contract before its expiration for its own convenience, the State must pay Contractor for all charges due for Services provided before the date of termination and, if applicable, as a separate item of payment under 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 under this Contract, at the option of the State, becomes the State's property, and Contractor is entitled to receive equitable fair compensation for the Deliverables. Regardless of the basis for the termination, the State is not obligated to pay, or otherwise compensate, Contractor for any lost expected future profits, costs or expenses incurred with respect to Services not actually performed for the State.

(c) Upon a good faith termination, the State may assume, at its option, any subcontracts and agreements for Services and Deliverables provided under 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.

2.158 Reservation of Rights

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

2.160 Deleted – Not/Applicable

2.170 Transition Responsibilities

2.171 Contractor Transition Responsibilities

If the State terminates this Contract, for convenience or cause, or if the Contract is otherwise dissolved, voided, rescinded, nullified, expires or rendered unenforceable, the Contractor must comply with direction provided by the State to assist in the orderly transition of applicable equipment, Services, software, leases, etc. to the State or a third party designated by the State. If this Contract expires or terminates, the Contractor must make all reasonable efforts to effect an orderly transition of Services within a reasonable period of time that in no event will exceed 365 days. These efforts must include, but are not limited to, those listed in **Sections 2.171, 2.172, 2.173, 2.174, and 2.175.**

2.172 Contractor Personnel Transition

The Contractor must work with the State, or a specified third party, to develop a transition plan setting forth the specific tasks and schedule to be accomplished by the parties, to effect an orderly transition. The Contractor must allow as many personnel as practicable to remain on the job to help the State, or a specified third party, maintain the continuity and consistency of the Services required by 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 must reasonably, and with good-faith, work with the State to use the Services of Contractor's subcontractors or vendors. Contractor must notify all of Contractor's subcontractors of procedures to be followed during transition.

2.173 Contractor Information Transition

The Contractor must 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 must 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 must deliver to the State any remaining owed reports and documentation still in Contractor's possession subject to appropriate payment by the State.

2.174 Contractor Software Transition

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



2.175 Transition Payments

If the transition results from a termination for any reason, reimbursement must 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 agreed upon by the State. The Contractor must prepare an accurate accounting from which the State and Contractor may reconcile all outstanding accounts.

2.176 State Transition Responsibilities

In the event that this Contract is terminated for any reason, the State must perform the following obligations, and any others upon which the State and the Contractor agree:

- (a) Reconciling all accounts between the State and the Contractor;
- (b) Completing any pending post-project reviews.

2.180 Stop Work

2.181 Stop Work Orders

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

2.182 Cancellation or Expiration of Stop Work Order

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

2.183 Allowance of Contractor Costs

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

2.190 Dispute Resolution

2.191 In General

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

2.192 Informal Dispute Resolution

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



- (i) The representatives of Contractor and the State must meet as often as the parties reasonably deem necessary to gather and furnish to each other all information with respect to the matter in issue which the parties believe to be appropriate and germane in connection with its resolution. The representatives must discuss the problem and negotiate in good faith in an effort to resolve the dispute without the necessity of any formal proceeding.
- (ii) During the course of negotiations, all reasonable requests made by one party to another for non-privileged information reasonably related to the Contract 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 60 calendar days, the Director of Purchasing Operations, DMB, or designee, must issue a written opinion regarding the issue(s) in dispute within 30 calendar days. The opinion regarding the dispute must be considered the State's final action and the exhaustion of administrative remedies.

(b) This Section must not be construed to prevent either party from instituting, and a party is authorized to institute, formal proceedings earlier to avoid the expiration of any applicable limitations period, to preserve a superior position with respect to other creditors, or under **Section 2.193**.

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

2.193 Injunctive Relief

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

2.194 Continued Performance

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

2.200 Federal and State Contract Requirements

2.201 Nondiscrimination

In the performance of the Contract, Contractor must not 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. Every subcontract entered into for the performance of this Contract or any purchase order resulting from this Contract must contain a provision requiring non-discrimination in employment, as specified here, binding upon each Subcontractor. This covenant is required under the Elliott-Larsen Civil Rights Act, 1976 PA 453, MCL 37.2101, et seq., and the Persons with Disabilities Civil Rights Act, 1976 PA 220, MCL 37.1101, et seq., and any breach of this provision may be regarded as a material breach of the Contract.

2.202 Unfair Labor Practices

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

**2.203 Workplace Safety and Discriminatory Harassment**

In performing Services for the State, the Contractor must comply with the CSC Rule 1-8.3 regarding Discriminatory Harassment and 2-20 regarding Workplace Safety. In addition, the Contractor must comply with Civil Service regulations and any applicable agency rules provided to the Contractor. For Civil Service Rules, see <http://www.michigan.gov/mdcs>.

2.210 Governing Law**2.211 Governing Law**

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

2.212 Compliance with Laws

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

2.213 Jurisdiction

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

2.220 Deleted/Not Applicable**2.230 Disclosure Responsibilities****2.231 Disclosure of Litigation**

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

(b) Assurances. If any Proceeding disclosed to the State under this Section, or of which the State otherwise becomes aware, during the term of this Contract would cause a reasonable party to be concerned about:

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



- (c) Contractor must make the following notifications in writing:
- (1) Within 30 days of Contractor becoming aware that a change in its ownership or officers has occurred, or is certain to occur, or a change that could result in changes in the valuation of its capitalized assets in the accounting records, Contractor must notify DMB Purchasing Operations.
 - (2) Contractor must also notify DMB Purchasing Operations within 30 days whenever changes to asset valuations or any other cost changes have occurred or are certain to occur as a result of a change in ownership or officers.
 - (3) Contractor must also notify DMB Purchasing Operations within 30 days whenever changes to company affiliations occur.

2.232 Call Center Disclosure

Contractor and/or all Subcontractors involved in the performance of 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 is a material breach of this Contract.

2.233 Bankruptcy

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

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

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

2.240 Performance

2.241 Time of Performance

(a) Contractor must use commercially reasonable efforts to provide the resources necessary to complete all Services and Deliverables according to the time schedules contained in the Statements of Work and other Exhibits governing the work, and with professional quality.

(b) Without limiting the generality of **Section 2.241(a)**, Contractor must notify the State in a timely manner upon becoming aware of any circumstances that may reasonably be expected to jeopardize the timely and successful completion of any Services/Deliverables on the scheduled due dates in the latest State-approved delivery schedule and must inform the State of the projected actual delivery date.

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

2.242 Service Level Agreements (SLAs)

- (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 been determined.
 - (ii) SLAs will not be calculated for individual Incidents where loss of service is planned and where the State has received prior notification 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. 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:

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 will be defined as three unscheduled outage(s) or interruption(s) on any individual Service for the same reason or cause or if the same reason or cause was reasonably discoverable in the first instance over a rolling 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 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 CCI. Contractor will provide its analysis within two weeks of outage(s) and provide a recommendation for resolution.

(d) All decimals must be rounded to two decimal places with five and greater rounding up and four and less rounding down unless otherwise specified.

2.243 Liquidated Damages – Deleted/Not Applicable

2.244 Excusable Failure

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

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

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

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



2.250 Approval of Deliverables – Deleted/Not Applicable

2.260 Ownership

2.261 Ownership of Work Product by State

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

2.262 Vesting of Rights

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

2.263 Rights in Data

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

(b) The State is the owner of all State-specific (Plan Sponsor) data under the Contract. The State may use the data provided by the Contractor for any purpose. The State will not possess or assert any lien or other right against the Contractor's data. Without limiting the generality of this Section, the State may use personally identifiable information only as strictly necessary to utilize the Services and must disclose the information only to its employees who have a strict need to know the information, except as provided by law. The State must comply at all times with all laws and regulations applicable to the personally identifiable information. Other material developed and provided to the State remains the State's sole and exclusive property.

2.264 Ownership of Materials

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

2.270 State Standards

2.271 Existing Technology Standards

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

2.272 Acceptable Use Policy

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

2.273 Systems Changes – Deleted/Not Applicable



2.280 Extended Purchasing

2.281 MIDEAL

1984 PA 431 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: www.michigan.gov/buymichiganfirst. Unless otherwise stated, the Contractor must ensure that the non-state agency is an authorized purchaser before extending the Contract pricing.

The Contractor must make the Pass-Through Pricing (Attachment A) available to any MiDEAL member that requests to participate in the Contract. The Contractor must honor all DEFINITIONS in this Contract when providing pricing to any MiDEAL member. The Contractor must negotiate in good faith with any MiDEAL member to offer the Services required for the specific MiDEAL member's Plan for a reasonable Administrative Fee.

The Contractor must send its invoices will be submitted to and pay the local unit of government on a direct and individual basis.

2.282 State Employee Purchases – Deleted/Not Applicable

2.290 Environmental Provision

2.291 Environmental Provision

Hazardous Materials:

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

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

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

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



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

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

Refrigeration and Air Conditioning:

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

Environmental Performance:

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



Attachment A, Pricing

The Plan Sponsor will pay the Contractor for services performed in connection with this Contract as defined below.

Retail Pharmacy Program

The Plan Sponsor will pay the Contractor for Covered Products dispensed under the retail pharmacy network based on minimum guarantees according to the following schedule using the Pass-Through Pricing model as defined in this Contract. The Plan Sponsor will pay Contractor for drugs dispensed and submitted by Participating Pharmacies in an amount equal to the minimum guaranteed value of AWP minus 16.25% for Brand Name Drugs and a minimum guarantee of AWP minus 71.5% on Generic Drugs dispensed through the retail pharmacy national network of pharmacies offered by the Contractor and guaranteed under the Pass-Through Pricing terms of this Contract. The Plan Sponsor will be charged the lowest of the Participating Pharmacies' U&C price, MAC Price or AWP discounts plus a Dispensing Fee and Tax (where applicable) minus the applicable copayment, deductible or coinsurance.

Dispensing Fees

The guaranteed minimum Pass-Through dispensing fee for retail claims is \$1.60 per paid retail brand and generic claim.

Copayments or Member Liability

Copayments/Member Liability is determined by the Plan Sponsor and administered by the Contractor.

Minimum Charges at Retail

The minimum charge at retail will be the lowest of the pharmacies' U&C , MAC, AWP discounted price or Copayment/Coinsurance. To the extent the calculated reimbursement for a drug is less than the U&C, the Copayment and the calculated discount that the Plan Sponsor's Members will pay is the lowest of those values. Therefore, there is no minimum required payment by the Member at retail.

Direct Reimbursement Claims

Direct Reimbursement Claims will be processed using the same discount and lowest pricing methodology as described in this section and consistent with all other terms and conditions of this contract between the Plan Sponsor and the Contractor.

Mail Order Pharmacy Program

The Plan Sponsor will reimburse the Contractor for mail order pharmacy services based on minimum Pass-Through guarantees described below

Brand Drugs will be paid to the Contractor at a minimum guaranteed rate of AWP -26.5%.

Generic Drugs will be paid to the Contractor based on a minimum guaranteed rate of AWP -76%.

Dispensing Fees will not exceed a maximum guarantee of \$0.00 for each brand and generic drug dispensed.

Minimum Pricing at Mail

The Plan Sponsor and its Members are not subjected to minimum pricing at mail. Minimum price will be an amount no greater than the lowest of MAC, AWP discounted price or Copayment/Coinsurance. To the extent the calculated reimbursement for a drug is less than the copayment or the calculated discount, the Plan Sponsor Members will pay the lowest of those values.



Guaranteed Retail & Mail Pricing

The Contractor guarantees that the Plan Sponsor and its members will not pay any amount or value that exceeds the minimum guarantees for both the Retail Pricing Program and the Mail Order Pricing Program. Using the guaranteed Pass-Through Pricing methodology, the Contractor agrees that each price point (i.e. guaranteed brand discounts, generic discounts, dispensing fees and every other consideration including Rebates) must be passed through to the Plan Sponsor at the minimum guaranteed rates and further the Contractor agrees that any shortfall in one guarantee can be offset with any excess in any other price point guarantee. This guarantee applies to all pricing points within each delivery channel (i.e. retail, Mail, and Specialty Pharmacy).

One hundred and eighty days after each State fiscal year, the Contractor will provide reports to the Plan Sponsor as to the actual fiscal year end performance of each price point and to the extent there is a shortfall in any pricing area the Contractor agrees to reimburse the Plan Sponsor on a dollar by dollar basis. To the extent there is excess in one or more price points, the Plan Sponsor retains the benefits of those savings achieved by the Contractor.

Rebates

Contractor agrees to provide 100% of all manufacturer revenue as described in Section 1.061 and the Definitions section of the Contract, whereas the Contractor must remit to Plan Sponsor 100% of all such revenues based on the minimum guaranteed values for retail claims of:

Retail Claims Minimum Guarantees	Per Brand Claim Minimum
2010	\$18.60
2011	\$19.70
2012	\$21.40

Contractor agrees to provide 100% of all manufacturer revenue as described in Section 1.061 and the Definitions section of the Contract, whereas Contractor agrees to remit to Plan Sponsor 100% of all such revenues based on the minimum guaranteed values for mail claims of:

Mail Claims Minimum Guarantees	Per Brand Claim Minimum
2010	\$54.20
2011	\$54.20
2012	\$57.70

The Contractor agrees based on the Pass-Through language of the Contract that each minimum guaranteed Rebate value must stand on its own such that any shortfall in Rebates in one area must be trued up on a dollar by dollar basis without the benefit of making up such a shortfall by excesses in other Rebate areas, where an excess may have occurred.



Administrative Fees

The Plan Sponsor will pay the Contractor a fee not to exceed \$0.70 Per Contract Holder Per Month (PCHPM) which is an all inclusive fee that includes but is not limited to:

- All existing clinical programs
- Claim processing fees
- Replication of the current PBM's plan administration
- All DUR programs
- All step therapy programs
- All prior authorization programs
- All drug quantity management programs
- ID Card production
- Network management services including credentialing and auditing
- Mail Service and Specialty Pharmacy Management Programs
- All other services outlined in this Contract

Specialty Pharmacy

The Contractor must provide a separate and distinct specialty pharmacy program as described in Section 1.022-I.

Dispensing Fees Dispensing fees for the specialty medications from the designated specialty facility are \$0.00 per claim.



STATE OF MICHIGAN/MPERS
I.E. "SPECIALTY DRUG PROPOSAL"

BCBSM / BCN SPECIALTY DRUG LIST
EFFECTIVE 4/1/2009

PRODUCT	AWP Based Discount (-x%)	PRODUCT	AWP Based Discount (-x%)	PRODUCT	AWP Based Discount (-x%)
ACTHAR GEL	16.0%	HEPARIN 5000U/ML CARPUJECT	19.0%	RAPAMUNE	19.0%
ACTIMMUNE	7.0%	HEPARIN 20,000U/ML tubex	20.0%	RAPTIVA	18.0%
APOKYN	16.0%	HEPARIN 20,000U/ML vial	58.0%	REBETOL	20.0%
ARACALYST	16.0%	HEPSERA	16.0%	REBETRON KIT	18.0%
ARANESP ¹	20.0%	HERCEPTIN	17.0%	REBIF ¹	20.0%
ARIMIDEX	17.5%	HUMATROPE	20.0%	REMODULIN	5.0%
ARIXTRA	20.0%	HUMIRA	20.0%	REPRONEX	29.0%
AROMASIN	17.5%	HYCANTIN	17.0%	REVATIO	18.0%
AVASTIN	17.0%	HYPERRHO	11.5%	REVLIMID	17.5%
AVONEX	18.0%	INCRELEX	18.0%	RHOGAM / RHOGAM PLUS	11.5%
BARACLUDE	18.0%	INFERGEN	23.0%	RHOPHYLAC	30.0%
BAYRHO-D	11.5%	INNOHEP	35.0%	RIBAPAK	60.0%
BETASERON	20.0%	INTRON A	20.0%	RIBATAB DOSE PAK	60.0%
BRAVELLE	18.0%	IRESSA	15.5%	RIBAVIRIN	MAC
CARIMUNE	45.0%	IVEEGAM EN	25.0%	RITUXAN	17.0%
CASODEX	17.5%	KINERET	21.0%	ROFERON-A	20.0%
CELLCEPT ¹	19.0%	KUVAN	16.0%	SAIZEN	20.0%
CEREZYME	16.0%	LETAIRIS	18.0%	SANDIMMUNE	16.5%
CETROTIDE	18.0%	LEUKINE	27.0%	SANDOSTATIN	20.0%
CHOREX	22.0%	LEUPROLIDE ACETATE	MAC	SANGCYA	16.5%
COPAXONE ¹	20.0%	LOVENOX	20.0%	SENSIPAR	16.0%
COPEGUS	23.0%	LUPRON & LUPRON DEPOT	20.0%	SEROSTIM	20.0%
CYCLOSPORINE	MAC	LUVERIS	16.0%	SOMATULINE DEPOT	17.0%
CYCLOSPORINE MODIFIED	MAC	MENOPUR	20.0%	SOMAVERT	16.0%
CYCLOSPORINE SOLN	16.5%	MICRHOGAM PLUS	11.50%	SPRYCEL	18.0%
ELIGARD	16.0%	MYFORTIC	18.0%	SUPPRELIN	16.0%
ENBREL	20.0%	NEORAL	16.5%	SUTENT	17.5%
EPOGEN	21.0%	NEULASTA	17.5%	SYPRINE	18.0%
FACTREL	16.0%	NEUMEGA	20.0%	TARCEVA	17.5%
FEMARA	17.5%	NEUPOGEN	18.0%	TARGRETIN	17.5%
FERTINEX	24.0%	NEXAVAR	17.5%	TASIGNA	18.0%
FLEBOGAMMA/ DIF	22.0%	NORDITROPIN	20.0%	TEMODAR	17.5%
FOLLISTIM & FOLLISTIM AQ	24.0%	NORDITROPIN NORDIFLEX	20.0%	TEV-TROPIN	20.0%
FORTEO	13.29%	NOVAREL	22.0%	THALOMID	19.0%
FRAGMIN	20.0%	NUTROPIN	20.0%	TOBI	17.0%
FUZEON	20.0%	NUTROPIN AQ	20.0%	TRACLEER	17.0%
GAMASTAN S/D	15.0%	NUTROPIN DEPOT	20.0%	TRELSTAR DEPOT	42.0%
GAMASTAN S/D disp syr.	18.0%	OCTAGAM	25.0%	TRELSTAR LA	42.0%
GAMMAGARD S/D	25.0%	OMNITROPE	20.0%	TYKERB	17.5%
GAMUNEX	20.0%	OVIDREL	16.0%	TYZKA	18.0%
GANIRELIX ACETATE	16.0%	PEGASYS ¹	23.0%	VIDAZA	17.5%
GENGRAF	16.5%	PEG-INTRON	18.5%	VIVAGLOBIN	25.0%
GENOTROPIN	20.0%	POLYGAM S/D	25.0%	WINRHO SDF	35.0%
GEREF	18.0%	PREGNYL	22.0%	XELODA	17.5%
GLEEVEC	20.0%	PRIVIGEN	25.0%	XENAZINE	16.0%
GONAL F	18.0%	PROCRIT ¹	21.0%	ZAVESCA	17.0%
HEPARIN 10,000U/ML 1ML	50.0%	PROFASI	22.0%	ZOLADEX	28.0%
HEPARIN 5000U/0.5ML	19.0%	PROGRAF	20.0%	ZOLINZA	17.5%
HEPARIN 5000U/ML 10ML	19.0%	PROMACTA	18.0%	ZORBIVE	20.0%
HEPARIN 5000U/ML 1ML	50.0%	PULMOZYME	15.5%		

PRICING APPLIES TO DRUGS DISPENSED BY SPECIALTY PHARMACY AND RETAIL NETWORK PHARMACIES
DISPENSING FEES ARE NOT PAID ON SPECIALTY DRUGS WHEN DISPENSED BY SPECIALTY PHARMACY OR RETAIL NETWORK PHARMACIES

¹ REBATE ELIGIBLE DRUG