Form No. DTMB-3522 (Rev. 4/2012)
AUTHORITY: Act 431 of 1984
COMPLETION: Required
PENALTY: Contract will not be executed unless form is filed

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

NOTICE OF CONTRACT NO. 071B5500047
between
THE STATE OF MICHIGAN
and

NAME & ADDRESS OF CONTRACTOR:	PRIMARY CONTACT	EMAIL
INS Regulatory Insurance Services, Inc.	Michael B. Kogut	Mkogut@insris.com
419 South 2nd Street	TELEPHONE	CONTRACTOR #, MAIL CODE
Philadelphia, PA 19147	(215) 625-9877	

STATE CONTACTS	AGENCY	NAME	PHONE	EMAIL
CONTRACT COMPLIANCE INSPECTOR:	DIFS	David Piner	(517) 335-1734	pinerd@michigan.gov
BUYER:	DTMB	Chelsea Edgett	(517) 284-7031	edgettc@michigan.gov

CONTRACT SUMMARY:

DESCRIPTION: **Captive Insurance Company Financial Examinations - Prequalification**

INITIAL TERM	EFFECTIVE DATE	INITIAL EXPIRATION DATE	AVAILABLE OPTIONS
Two Years, Ten Months, 17 Days	12/15/2014	10/31/2017	Two additional one year period(s)
PAYMENT TERMS	**F.O.B**	**SHIPPED**	**SHIPPED FROM**
NET45	N/A	N/A	N/A

ALTERNATE PAYMENT OPTIONS:			AVAILABLE TO MiDEAL PARTICIPANTS	
☐ P-card	☐ Direct Voucher (DV)	☐ Other	☒ YES	☐ NO

MINIMUM DELIVERY REQUIREMENTS:

N/A

MISCELLANEOUS INFORMATION:

N/A

ESTIMATED CONTRACT VALUE AT TIME OF EXECUTION:	$75,000.00

THIS IS NOT AN ORDER: This Contract Agreement is awarded on the basis of our inquiry bearing the solicitation #007114B0002796**. Orders for delivery will be issued directly by the Department of Insurance & Financial Services through the issuance of a Purchase Order Form.**

Notice of Contract #:

FOR THE CONTRACTOR:	FOR THE STATE:
INS Regulatory Insurance Services, Inc.	
Firm Name	Signature
Authorized Agent Signature	Name/Title
Authorized Agent (Print or Type)	Enter Name of Agency
Date	Date

STATE OF MICHIGAN

Contract No.071B5500047
CAPTIVE INSURANCE COMPANY FINANCIAL EXAMINATIONS

EXHIBIT A
STATEMENT OF WORK
CONTRACT ACTIVITIES

Background

The purpose of this Contract is to establish a pre-qualification pool of Contractors to provide captive insurance company actuarial examination services. The Department of Insurance and Financial Services (DIFS), Office of Insurance Evaluation (OIE), Captive Unit has new and on-going captive insurance company examinations that require resources exceeding the available staff resources.

The Captive Unit is responsible for regulating the financial solvency and compliance with Michigan insurance laws, regulations, administrative rules and bulletins of Michigan licensed captive insurance companies.

A. The Captive Unit Program Objective:

A primary program objective for the Captive Unit is to ensure that Michigan licensed captive insurance companies doing business in the State of Michigan remains solvent and able to fulfill their contractual obligations to claimants and creditors.

The Captive Unit's regulatory responsibilities include ensuring captive insurance company solvency and affiliated entity protection and ensuring compliance with Michigan law. To accomplish this, the Captive Unit must review captive insurance companies' financial statements in a timely manner and examine each company at least every five years.

Contractor(s) mustprovide insurance company examination services quickly and appropriately to allow the Captive Unit to meet the regulatory responsibility noted above.

The examination program was developed by the Captive Unit to address the unique issues surrounding the examination of captive insurance companies. These captive insurance companies are organized and licensed under the captive laws of the State of Michigan. Due to the nature of these companies, they are regulated only by the Department and the examinations of these companies are not currently subject to the accreditation standards of the National Association of Insurance Commissioners. The examination program has been designed to address these unique aspects of captive insurance companies as well as the Department's captive regulatory structure which requires the Department's approval of the captives', initial as well as ongoing, plan of operations. The procedures in the captive insurance company examination program emphasize the compliance with approved business plan, the adequacy of loss reserves, and require a risk focused examination approach.

Note that examination Contractors may not be required to travel to the captive insurance company. In cases where examination Contractors are not required to travel, exam documents will be provided by the Captive Unit, as the Captive Unit's Examiner-in-Charge (EIC) will be the contact between the captive insurance company and the Contractor.

B. Level / Volume of Service:

The Captive Unit is responsible for monitoring and analyzing the financial statements of Michigan licensed captive insurance companies. Over the next five years, it is anticipated the average will be one to three exams per year. The captive unit currently has 14 captives and the program is growing at a steady pace.

1.0 Requirements

Pre-qualified Contractor(s) must submit a quotation per project that the Captive Unit issues through a Request for Quote (RFQ) in www.Buy4Michigan.com. The scope of work will cover actuarial examinations for captive insurance companies licensed in the State of Michigan.

The second tier work request process will be initiated by the Captive Unit as specific captive insurance company examination needs arise. After formalizing a comprehensive statement of work (SOW) and RFQ, the Captive Unit will

facilitate the second tier selection process for each contracting effort. The RFQ will identify the statement of work, period of performance, deliverables, specific response information required, and any special terms and conditions. The Captive Unit will send out the solicitation to all pre-qualified Contractors. These Contractors will respond directly to the Captive Unit within the timeframe specified in the RFQ. The Captive Unit will evaluate the responses and determine the Contractor that will provide the best overall value for the RFQ.

1.1 Work and Deliverables

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

A. Project Assignment:
The Captive Unit will prepare a written RFQ that details the captive insurance company involved and the work to be performed by the Contractor.

Each RFQ statement will be submitted to all pre-qualified Contractors via www.Buy4Michigan.com. Each RFQ from the Captive Unit will include the following information:

1. Cover Sheet:
   a. Contractor Proposal due date.
   b. Name of captive insurance company to be analyzed/examined.
   c. Period of captive insurance company operation time to be reviewed by this examination.
   d. Expected end work product, i.e., agreed-upon procedures.
   e. Criteria for determining acceptance of deliverables and final acceptance criteria.
   f. Timeframe for work to be finished

2. Excerpts from Captive Insurance Company's Annual Report.

B. Contractor Response:
The Contractor will have approximately three weeks from date RFQ is received to submit a Proposal in response to an RFQ. The Contractor must respond to the RFQ with a quotation and a work plan.

1. Responses to RFQs must include the following:

   a. Assignment Scope: Statement of the project assignment.

   b. Dates by which examination of the captive insurance company will begin and be completed.

   c. Description of the services, including:
      1) Contractor's approach to completing the financial examination of the captive insurance company identified in the RFQ (to include a history of the captive insurance company, particular industry considerations, any significant issues raised by the Captive Unit, etc.).
      2) Technical work plan.
      3) End product of the assignment (e.g. all examination work papers, including a finalized examination report, following captive program examination guidelines, etc.).
      4) Individual staff assigned to project.

   d. Assigned staff information:
      1) Name and title.
      2) Background and credentials.
      3) Total amount of experience relevant to completing captive insurance company financial examinations.
      4) Specific experience relevant to the type of captive insurance company being examined. (Not necessary to include individual resumes, if included in Contractor's proposal under which this Contract was awarded.).
      5) All the individual staff assigned to the examination, the areas each individual will be assigned to the examination, and the estimated number of hours each individual will participate in the examination. (Note that this description **must** reflect that the examination's senior level auditor has previous experience in auditing captive insurance companies).

NOTE: It is imperative that Contractor staff that perform these examinations not be affiliated or associated (either financially or contractually) with an entity being examined and that there has been financial or contractual relationship, either written or oral, with an entity being examined and this Contractor, during the life of this Contract. Failure by the firm to comply with this provision will result in the cancellation of this Contract.

e. Detail of costs:
   1) Staff assigned to project.
   2) Estimated hours assigned for each of the project-staff members.
   3) The hourly rate per staff person. The hourly rate must also include travel costs.*
   4) Total projected cost for examination.

*Hourly rates must be inclusive of travel costs that may be incurred by the Contractor during the normal course of an individual project. Should the Contractor be required to defend their findings at a hearing, DIFS will reimburse the Contractor for any specific travel costs incurred while defending the findings. This reimbursement is in addition to the total cost bid and accepted by the DIFS in response to an RFQ. Travel costs incurred to attend hearings must be approved by DIFS prior to incurring and only be incurred to defend the Contractor's findings, pursuant to the State of Michigan Travel policy, as listed on the travel Web site. Travel costs cannot exceed those established by the Department of Civil Service for employee reimbursement; see: http://www.michigan.gov/dmb/0,1607,7-150-9141_13132---,00.html

2. FINANCIAL EXAMINATIONS ONLY - Responses to an RFQ must also include the following:

   a. The Contractor must utilize the agreed upon procedures for the captive insurance company using the captive audit program developed by the Captive Unit, which must be jointly approved by the Contractor. The Contractor's examination plan must include:

      1) A description of the standard examination tests which the Contractor will use to determine the solvency of the company.

      2) A description of tests which the Contractor will use to determine compliance with Michigan laws, regulations and bulletins and an elapsed time and worker-hours budget.

3. The Contractor will be held to the price quoted. No additional funds will be approved and paid to the Contractor for delays in the examination because of the company delays providing needed examination information unless the Contractor can provide sufficient documentation to demonstrate the delays. The delays must be in all areas of information or a significant portion of the information such that the Contractor's staff is not able to remain productive. Also, the Contractor must be able to demonstrate that its staff could not be temporarily reassigned during any such lulls in receiving documentation. The Captive Unit does not anticipate any delays and would work with the Contractor and company to ensure delays will not occur.

   a. The Captive Unit will pay for all Financial Examination services by the Contractor that are provided according to the terms of this Contract. No charges shall be submitted to the regulated captive insurance company being examined, unless otherwise directed by the Captive Unit.

   b. The Captive Unit will make the final determination whether agreed-upon procedures are necessary and acceptable.

4. RFQ Evaluation

1. Each RFQ response must include all items identified in Section 1.022-B of this Contract and will be evaluated utilizing the following criteria:

- Description of Examination Services:

☐ Examination Plan
☐ Service Description

- Resource Allocation:
  ☐ Appropriate supervisory-staff time allocated
  ☐ Examination's senior level auditor
  ☐ Senior auditor has previous experience in auditing captive insurance companies
  _____ Total project staff hours for completion of examination

- Time:
  ☐ Complete within 180 days or less from date assigned
  Estimated Date of Completion: _____

- Price:
  _____ Project Cost
  _____ Expenses
  _____ Total quote for examination

C. Service Requirements

1. Financial Examinations
   If awarded the financial examination (project) assignment, Contractor must carry out this project under the direction and control of the Captive Unit, and must:

   a. Perform specific examination tests identified in the initial examination plan and other examination tests as deemed necessary throughout the course of the examination to determine solvency and compliance with Michigan captive insurance laws, regulations, administrative rules and bulletins. The Contractor must review the tests performed and the results found with a Captive Unit EIC on request.

   b. Work in conjunction with Captive Unit consulting actuary firms. The Contractor will be responsible for testing the underlying data used by the consulting actuary for accuracy and completeness.

   c. Use, if available, the company's independent certified public accountant (CPA) work papers to the greatest extent possible without compromising the Contractor's responsibility to perform the necessary tests as defined in the work statement and approved examination plan.

   d. Document all work performed and examination findings in examination work papers, ensuring all work papers generated during the examination meet its firm's work paper quality standards, and Captive Unit work paper standards (all work papers will be reviewed and must be approved by the EIC). Note that TeamMate file repository software use is preferred. These work papers shall become the property of the Captive Unit after the examination and must be provided in electronic format.

   e. Be responsible for bringing their own supplies and equipment.

   f. Not contact the company prior to the examination without written authorization from the Captive Unit, even though it is the Captive Unit's practice to give captive insurance companies at least 30 days' notice prior to beginning an examination.

   g. Assign staff who are certified public accountants familiar with Michigan captive insurance laws, regulations, administrative rules and bulletins supervising the examination.

   h. Identify any items of noncompliance with State statutes and regulations, whether financial or non-financial, which become apparent during the examination. Also, the Contractor must identify any findings, again whether financial or non-financial, where the company could improve its operations, controls or reporting. The Captive Unit will make the final determination about which items should then be discussed with the captive insurance company and then whether that item should be included in the final report or management letter.

i. Work with, and under the direction of the EIC, to prepare a draft copy of the examination report and management letter on the captive insurance company. The management letter must include all findings that are not material to the captive insurance company's financial solvency or code violations, but are areas where the company could improve its operations, controls or reporting.

j. Submit examination findings and work papers to the Captive Unit within 10 calendar days following the completion of the on-site examination of the company unless otherwise agreed to by the Captive Unit. If the Contractor prepares a draft report and management letter, then the report and management letter must conform to reporting guidelines, as determined by the Captive Unit's policies and procedures.

k. Make changes to the report as agreed to, following discussions with the Captive Unit.

l. Hold a meeting (may be a conference call) with the Captive Unit and the captive insurance company being examined to discuss any findings or comments arising from the examination. Following the meeting, adjust the draft report and management letter based on the meeting and subsequent information received by the Captive Unit and submit the final draft report and management letter to the Captive Unit within 10 calendar days of approval of the draft by the EIC.

m. Attend final exit conference meetings (may be a conference call) at the Captive Unit's office, if regulated entities accept Captive Unit's offer for one 1 final exit conference. The cost of travel and hourly rate must be included in the overall cost proposed by the Contractor.

n. Remain available to answer any inquiries or clarify test-work and findings found during the examination until the next examination of the captive insurance company is completed. This is normally a five year period. Also, the Contractor must assist the Captive Unit during any administrative or court proceedings involving the examination reports, the examinations or any matter related to the Contractor's work under this Contract.

o. Upon notice by the Captive Unit, appear or be available to appear for testimony in any administrative or court proceedings involving the examination reports, the examinations or any matter related to the Contractor's work under this Contract. The Captive Unit will pay for this type of service outside the cost proposed under the Contract. However, the Captive Unit will only pay the individual hourly rates agreed to within this Contract. These services will only be provided at the request of the Contract Compliance Inspector and a total agreed price will be determined before any services are rendered. No additional costs will be provided above the amount agreed to by the Contract Compliance Inspector.

p. Remain available to participate in Chapter 81 proceedings. During the course of an examination, it may become necessary for the Captive Unit to take a Chapter 81 action, such as seizure of the assets or rehabilitation. If these services are above the normal course of the examination, a separate arrangement will be negotiated with the Contractor. The Captive Unit will make the final determination whether the services are above the normal course of the examination. Once a Chapter 81 action is taken, the Director of the Receivership Division, DIFS, may take responsibility for the examination.

q. Remain available to answer any questions or provide any additional documentation requested by the auditor general's office if the Captive Unit is audited during this Contract period by the Auditor General's office. DIFS is also audited by the State of Michigan Legislature's Office of the Auditor General. The Auditor General may review the Contractor's work papers. DIFS will pay for this type service outside the cost proposed under the Contract. The rate charged by the Contractor for these services must be the hourly rates agreed to in the Contract. These services will only be provided at the request of the Contract Compliance Inspector and a total agreed price will be determined before any services are rendered.

NOTE: No additional costs will be provided above the amount agreed to by the Contract Compliance Inspector.

r. Within 10 working days from the beginning of the examination, unless otherwise agreed upon, the Contractor must submit a work plan to the EIC for final approval. This final work plan or agreed upon procedures will be finalized after the examination planning has been completed jointly by the Contractor and DIFS. This final implementation plan must be in agreement with the Contractor's accepted and approved quotation and must include the following:

1) The Contractor's project organizational structure.

2) The Contractor's staffing table with names and title of personnel assigned to the project. This must be in agreement with staffing of accepted proposal. Necessary substitutions due to change of employment status and other unforeseen circumstances may only be made with prior approval of the State.

3) The project breakdown showing sub-projects, activities and tasks, and resources required and allocated to each.

4) The time-phased plan in the form of a graphic display, showing each event, task, and decision point in your work plan.

s. The Contractor must agree to comply with Section 222(4) of the Michigan Insurance Code regarding the confidentiality of all information and knowledge obtained by the Contractor during an examination of an entity under this Contract. Section 222(4) states, in part, “all work papers, correspondence, memoranda, reports, records and other written or oral information related to an examination report or an investigation shall be withheld from public inspection, shall be confidential, shall not be subject to subpoena, and shall not be divulged to any person, except as provided for in Section 222(4)“. If the Contractor receives a subpoena for any information related to an examination under a Contract, the Contractor must contact DIFS immediately. The Contractor should also be aware of Section 226 of the Michigan Insurance Code that states, in part, a person acting under this act who discloses any fact or information that is confidential under this act is guilty of a misdemeanor, punishable by a fine of not more than $1,000, or imprisonment of not more than one year, or both.

2.0 Acceptance

2.1 Acceptance, Inspection and Testing

The following criteria will be used by the State to determine Acceptance of the Services or Deliverables provided under this Contract:
Deliverables must be presented in writing to the agency project manager. Deliverables must meet the agreed upon criteria between the agency project manager and the Contractor in Section 1.0, Exhibit A.

2.2 Final Acceptance

Final Acceptance is when the project is completed and functions according to the requirements in Section 1.0, Exhibit A. Any intermediate acceptance of sub-deliverables does not complete the requirement of Final Acceptance.

3.0 Staffing

3.1 Contractor Representative

The Contractor appoints the following qualified individuals, specifically assigned to this State of Michigan Contract, that will respond to State inquiries regarding the Contract Activities and answer all questions related to the Contracts subject matter.

Staff Assigned to Task:
Barry Armstrong, CPA, CFE
Gregory Bealuk, CFE
Peter Bliss, CFE
Pat Casey Davis, CPA
John Clark, CPA, CFE, CPCU
David DelBiondo, CPA
Thomas Dudek, CPA, CFE
Don Gaskill, CFE
Craig Jackson, CPA, CFE, FLMI
Donna Letterio, CPA, CFE

John Mills, CFE
Patrick White, CFE
Kelly Willison, CPA, CFE

The Contractor must notify the Contract Administrator at least 14 calendar days before removing or assigning a new Contractor Representative.

3.2 Work Hours

The Contractor must provide Contract Activities during the State's normal working hours Monday – Friday 7:00 a.m. to 6:00 p.m. EST, and possible night and weekend hours depending on the requirements of the project.

3.3 Key Personnel

The Contractor must appoint an individual who will be directly responsible for the day-to-day operations of the Contract ("Key Personnel"). Key Personnel must be specifically assigned to the State account, be knowledgeable on the contractual requirements, and respond to State inquires within 48 hours.

The State has the right to recommend and approve in writing the initial assignment, as well as any proposed reassignment or replacement, of any Key Personnel. Before assigning an individual to any Key Personnel position, Contractor will notify the State of the proposed assignment, introduce the individual to the State's Project Manager, and 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. The State may require a 30-calendar day training period for replacement personnel.

Contractor will not remove any Key Personnel from their assigned roles on this 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**"). An Unauthorized Removal 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. Any Unauthorized Removal may be considered by the State to be a material breach of this Contract, in respect of which the State may elect to terminate this Contract for cause under Termination for Cause in the Standard Terms.

It is further acknowledged that an Unauthorized Removal will interfere with the timely and proper completion of this Contract, to the loss and damage of the State, and that it would be impracticable and extremely difficult to fix the actual damage sustained by the State as a result of any Unauthorized Removal. Therefore, Contractor and the State agree that in the case of any Unauthorized Removal in respect of which the State does not elect to exercise its rights under Termination for Cause, Contractor will issue to the State the corresponding credits set forth below (each, an "Unauthorized Removal Credit"):

(i) For the Unauthorized Removal of any Key Personnel designated in the applicable Statement of Work, the credit amount will be $25,000.00 per individual if Contractor identifies a replacement approved by the State and assigns the replacement to shadow the Key Personnel who is leaving for a period of at least 30 calendar days before the Key Personnel's removal.

(ii) If Contractor fails to assign a replacement to shadow the removed Key Personnel for at least 30 calendar days, in addition to the $25,000.00 credit specified above, Contractor will credit the State $833.33 per calendar day for each day of the 30 calendar-day shadow period that the replacement Key Personnel does not shadow the removed Key Personnel, up to $25,000.00 maximum per individual. The total Unauthorized Removal Credits that may be assessed per Unauthorized Removal and failure to provide 30 calendar days of shadowing will not exceed $50,000.00 per individual.

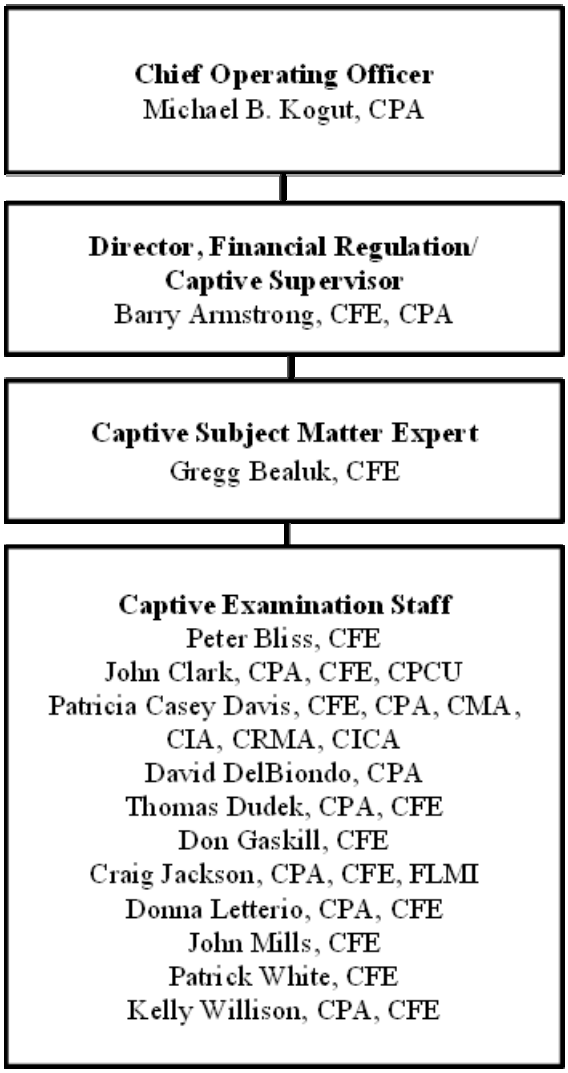
Contractor acknowledges and agrees that each of the Unauthorized Removal Credits assessed above: (i) is a reasonable estimate of and compensation for the anticipated or actual harm to the State that may arise from the Unauthorized

Removal, which would be impossible or very difficult to accurately estimate; and (ii) may, at the State's option, be credited or set off against any fees or other charges payable to Contractor under this Contract.

The Contractor must identify the Key Personnel, indicate where they will be physically located, describe the functions they will perform, and provide current chronological résumés.

3.4 Organizational Chart

The Contractor must provide an overall organizational chart that details staff members, by name and title, and subcontractors.



3.5 Disclosure of Subcontractors

If the Contractor intends to utilize subcontractors, the Contractor must disclose the following:

a. The legal business name; address; telephone number; a description of subcontractor's organization and the services it will provide; and information concerning subcontractor's ability to provide the Contract Activities.

b. The relationship of the subcontractor to the Contractor.

c. Whether the Contractor has a previous working experience with the subcontractor. If yes, provide the details of that previous relationship.

d. A complete description of the Contract Activities that will be performed or provided by the subcontractor.

e. Of the total bid, the price of the subcontractor's work.

3.6 Security
The Contractor will be subject the following security procedures:

The Contractor's staff may be required to make deliveries to or enter State facilities. The Contractor must: (a) explain how it intends to ensure the security of State facilities, (b) whether it uses uniforms and ID badges, etc., (c) identify the company that will perform background checks, and (d) the scope of the background checks. The State may require the Contractor's personnel to wear State issued identification badges.

4.0 Ordering

4.1 Authorizing Document
The appropriate authorizing document for the Contract will be via purchase order.

5.0 Invoice and Payment

5.1 Invoice Requirements

a. Complete Exhibit C and submit with Proposal.

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

c. The Contractor will be required to submit an Administrative Fee (Section 7, Standard Contract Terms) on MiDEAL payments remitted under the Contract.

d. All invoices submitted to the State must include: (a) date; (b) purchase order; (c) quantity; (d) description of the Contract Activities; (e) unit price; (f) shipping cost (if any); and (g) total price. Overtime, holiday pay, and travel expenses will not be paid.

6.0 Liquidated Damages
Late or improper completion of the Contract Activities will cause loss and damage to the State and it would be impracticable and extremely difficult to fix the actual damage sustained by the State. Therefore, if there is late or improper completion of the Contract Activities the State is entitled to collect liquidated damages in the amount of $5,000 and an additional $100 per day for each day Contractor fails to remedy the late or improper completion of the Work.

EXHIBIT B - RESERVED

STATE OF MICHIGAN

Contract No.071B5500047
CAPTIVE INSURANCE COMPANY FINANCIAL EXAMINATIONS

EXHIBIT C
PRICING

The price proposal will be submitted in accordance with the second tier, competitive selection process as explained in Exhibit A.

Staff/Role	Hourly Rate
	$0.00
	$0.00
	$0.00
	$0.00
	$0.00
	$0.00
	$0.00
	$0.00
	$0.00
	$0.00

STATE OF MICHIGAN

Contract No. 071B5500047
CAPTIVE INSURANCE COMPANY FINANCIAL EXAMINATIONS

STANDARD CONTRACT TERMS

This STANDARD CONTRACT ("**Contract**") is agreed to between the State of Michigan (the "**State**") and INS Regulatory Insurance Services, Inc., a Delaware Corporation. This Contract is effective on December 15, 2014 ("**Effective Date**"), and unless terminated, expires on October 30, 2017.

This Contract may be renewed for up to two additional one year period(s). Renewal must be by written agreement of the parties.

The parties agree as follows:

1. **Duties of Contractor.** Contractor must perform the services and provide the deliverables described in **Exhibit A – Statement of Work** (the "**Contract Activities**"). An obligation to provide delivery of any commodity is considered a service and is a Contract Activity.

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

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

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

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

If to State:	If to Contractor:
Chelsea Edgett 525 W. Allegan St. 1st Floor Lansing, MI edgettc@michigan.gov (517) 284-7031	Michael B. Kogut 419 South 2nd Street Philadelphia, PA 19147 mkogut@insris.com (215) 625-9877

3. **Contract Administrator.** The Contract Administrator for each party is the only person authorized to modify any terms and conditions of this Contract (each a "**Contract Administrator**"):

If to State:	If to Contractor:
Chelsea Edgett 525 W. Allegan St. 1st Floor Lansing, MI edgettc@michigan.gov (517) 284-7031	Michael B. Kogut 419 South 2nd Street Philadelphia, PA 19147 mkogut@insris.com (215) 625-9877

4. **Program Manager.** The Program Manager for each party will monitor and coordinate the day-to-day activities of the Contract (each a "**Program Manager**"):

If to State:	If to Contractor:
David Piner 611 W. Ottawa St., 3rd Floor Lansing, MI 48913 pinerd@michigan.gov (517) 335-1734	Michael B. Kogut 419 South 2nd Street Philadelphia, PA 19147 mkogut@insris.com (215) 625-9877

5. **Performance Guarantee**. Contractor must at all times have financial resources sufficient, in the opinion of the State, to ensure performance of the Contract and must provide proof upon request. The State may require a performance bond (as specified in Exhibit A) if, in the opinion of the State, it will ensure performance of the Contract.

6. **Insurance Requirements.** Contractor must maintain the insurances identified below and is responsible for all deductibles. All required insurance must: (a) protect the State from claims that may arise out of, are alleged to arise out of, or result from Contractor's or a subcontractor's performance; (b) be primary and non-contributing to any comparable liability insurance (including self-insurance) carried by the State; and (c) be provided by an company with an A.M. Best rating of "A" or better and a financial size of VII or better.

Insurance Type	**Additional Requirements**
Commercial General Liability Insurance	
Minimal Limits: $1,000,000 Each Occurrence Limit $1,000,000 Personal & Advertising Injury Limit $2,000,000 General Aggregate Limit $2,000,000 Products/Completed Operations Deductible Maximum: $50,000 Each Occurrence	Contractor must have their policy: (1) endorsed to add "the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees, and agents" as additional insureds using endorsement CG 20 10 11 85, or both CG 2010 07 04 and CG 2037 07 04; (2) include a waiver of subrogation; and (3) for a claims-made policy, provide three years of tail coverage.
Motor Vehicle Insurance	
Minimal Limits: $1,000,000 Per Occurrence	
Workers' Compensation Insurance	
Minimal Limits: Coverage according to applicable laws governing work activities.	Waiver of subrogation, except where waiver is prohibited by law.
Employers Liability Insurance	
Minimal Limits:	

$100,000 Each Accident $100,000 Each Employee by Disease $500,000 Aggregate Disease.	

Professional Liability (Errors and Omissions) Insurance	
Minimal Limits: $2,000,000 Each Occurrence $2,000,000 Annual Aggregate Deductible Maximum: $50,000 Per Loss	

If Contractor's policy contains limits higher than the minimum limits, the State is entitled to coverage to the extent of the higher limits. The minimum limits are not intended, and may not be construed to limit any liability or indemnity of Contractor to any indemnified party or other persons.

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

7. MiDEAL Administrative Fee and Reporting

Contractor must pay an administrative fee of 1% on all MiDEAL payments made to Contractor under the Contract for only transactions with MiDEAL members. Administrative fee payments must be made by check payable to the State of Michigan and mailed to:

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

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

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

8. Extended Purchasing Program.

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

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

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

9. Independent Contractor. Contractor is an independent Contractor and assumes all rights, obligations and liabilities set forth in this Contract. Contractor, its employees, and agents will not be considered employees of the State. No

partnership or joint venture relationship is created by virtue of this Contract. Contractor, and not the State, is responsible for the payment of wages, benefits and taxes of Contractor's employees and any subcontractors. Prior performance does not modify Contractor's status as an independent contractor.

10. **Subcontracting.** Contractor may not delegate any of its obligations under the Contract without the prior written approval of the State. Contractor must notify the State at least 90 calendar days before the proposed delegation, and provide the State any information it requests to determine whether the delegation is in its best interest. If approved, Contractor must: (a) be the sole point of contact regarding all contractual matters, including payment and charges for all Contract Activities; (b) make all payments to the subcontractor; and (c) incorporate the terms and conditions contained in this Contract in any subcontract with a subcontractor. Contractor remains responsible for the completion of the Contract Activities, compliance with the terms of this Contract, and the acts and omissions of the subcontractor. The State, in its sole discretion, may require the replacement of any subcontractor.

11. **Staffing.** The State's Contract Administrator may require Contractor to remove or reassign personnel by providing a notice to Contractor.

12. **Background Checks.** Upon request, Contractor must perform background checks on all employees and subcontractors and its employees prior to their assignment. The scope is at the discretion of the State and documentation must be provided as requested. Contractor is responsible for all costs associated with the requested background checks. The State, in its sole discretion, may also perform background checks.

13. **Assignment.** Contractor may not assign this Contract to any other party without the prior approval of the State. Upon notice to Contractor, the State, in its sole discretion, may assign in whole or in part, its rights or responsibilities under this Contract to any other party. If the State determines that a novation of the Contract to a third party is necessary, Contractor will agree to the novation, provide all necessary documentation and signatures, and continue to perform, with the third party, its obligations under the Contract.

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

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

15. **Ordering.** Contractor is not authorized to begin performance until receipt of authorization as identified in Exhibit A.

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

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

    If Contractor is unable or refuses to correct the deficiency within the time response standards set forth in this Contract,

the State may cancel the order in whole or in part. The State, or a third party identified by the State, may perform the Contract Activities and recover the difference between the cost to cure and the Contract price plus an additional 10% administrative fee.

17. Reserved

18. Reserved

***19.* Reserved**

20. Terms of Payment. Invoices must conform to the requirements communicated from time-to-time by the State. All undisputed amounts are payable within 45 days of the State's receipt. Contractor may only charge for Contract Activities performed as specified in Exhibit A. Invoices must include an itemized statement of all charges. The State is exempt from State sales tax for direct purchases and may be exempt from federal excise tax, if Contract Activities purchased under the Contract are for the State's exclusive use. Prices are exclusive of all taxes, and Contractor is solely responsible for payment of any applicable taxes.
The State has the right to withhold payment of any disputed amounts until the parties agree as to the validity of the disputed amount. The State will notify Contractor of any dispute within a reasonable time. Payment by the State will not constitute a waiver of any rights as to Contractor's continuing obligations, including claims for deficiencies or substandard Contract Activities. Contractor's acceptance of final payment by the State 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 disputed.

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

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

21. Liquidated Damages. Liquidated damages, if applicable, will be assessed as described in Exhibit A.

22. Stop Work Order. The State may suspend any or all activities under the Contract at any time. The State will provide Contractor a written stop work order detailing the suspension. Contractor must comply with the stop work order upon receipt. Within 90 calendar days, or any longer period agreed to by Contractor, the State will either: (a) issue a notice authorizing Contractor to resume work, or (b) terminate the Contract or purchase order. The State will not pay for Contract Activities; Contractor's lost profits, or any additional compensation during a stop work period.

23. Termination for Cause. The State may terminate this Contract for cause, in whole or in part, if Contractor, as determined by the State: (a) endangers the value, integrity, or security of any location, data, or personnel; (b) becomes insolvent, petitions for bankruptcy court proceedings, or has an involuntary bankruptcy proceeding filed against it by any creditor; (c) engages in any conduct that may expose the State to liability; (d) breaches any of its material duties or obligations; or (e) fails to cure a breach within the time stated in a notice of breach. Any reference to specific breaches being material breaches within this Contract will not be construed to mean that other breaches are not material.

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

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

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

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

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

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

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

    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. An attorney designated to represent the State may not do so until approved by the Michigan Attorney General and appointed as a Special Assistant Attorney General.

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

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

29. Disclosure of Litigation, or Other Proceeding. Contractor must notify the State within 14 calendar days of receiving notice of any litigation, investigation, arbitration, or other proceeding (collectively, "**Proceeding**") involving Contractor, a subcontractor, or an officer or director of Contractor or subcontractor, that arises during the term of the Contract, including: (a) a criminal Proceeding; (b) a parole or probation Proceeding; (c) a Proceeding under the Sarbanes-Oxley Act; (d) a civil Proceeding involving: (1) a claim that might reasonably be expected to adversely affect Contractor's viability or financial stability; or (2) a governmental or public entity's claim or written allegation of fraud; or (e) a Proceeding involving any license that Contractor is required to possess in order to perform under this Contract.

30. Reserved.

31. State Data.

a. Ownership. The State's data ("**State Data**," which will be treated by Contractor as Confidential Information) includes: (a) the State's data collected, used, processed, stored, or generated as the result of the Contract Activities; (b) personally identifiable information ("**PII**") collected, used, processed, stored, or generated as the result of the Contract Activities, including, without limitation, any information that identifies an individual, such as an individual's social security number or other government-issued identification number, date of birth, address, telephone number, biometric data, mother's maiden name, email address, credit card information, or an individual's name in combination with any other of the elements here listed; and, (c) personal health information ("**PHI**") collected, used, processed, stored, or generated as the result of the Contract Activities, which is defined under the Health Insurance Portability and Accountability Act (HIPAA) and its related rules and regulations. State Data is and will remain the sole and exclusive property of the State and all right, title, and interest in the same is reserved by the State. This Section survives the termination of this Contract.

b. Contractor Use of State Data. Contractor is provided a limited license to State Data for the sole and exclusive purpose of providing the Contract Activities, including a license to collect, process, store, generate, and display State Data only to the extent necessary in the provision of the Contract Activities. Contractor must: (a) keep and maintain State Data in strict confidence, using such degree of care as is appropriate and consistent with its obligations as further described in this Contract and applicable law to avoid unauthorized access, use, disclosure, or loss; (b) use and disclose State Data solely and exclusively for the purpose of providing the Contract Activities, such use and disclosure being in accordance with this Contract, any applicable Statement of Work, and applicable law; and (c) not use, sell, rent, transfer, distribute, or otherwise disclose or make available State Data for Contractor's own purposes or for the benefit of anyone other than the State without the State's prior written consent. This Section survives the termination of this Contract.

c. Extraction of State Data. Contractor must, within one business day of the State's request, provide the State, without charge and without any conditions or contingencies whatsoever (including but not limited to the payment of any fees due to Contractor), an extract of the State Data in the format specified by the State.

d. Backup and Recovery of State Data. Unless otherwise specified in Exhibit A, Contractor is responsible for maintaining a backup of State Data and for an orderly and timely recovery of such data. Unless otherwise described in Exhibit A, Contractor must maintain a contemporaneous backup of State Data that can be recovered within two hours at any point in time.

e. Loss of Data. In the event of any act, error or omission, negligence, misconduct, or breach that compromises or is suspected to compromise the security, confidentiality, or integrity of State Data or the physical, technical, administrative, or organizational safeguards put in place by Contractor that relate to the protection of the security, confidentiality, or integrity of State Data, Contractor must, as applicable: (a) notify the State as soon as practicable but no later than 24 hours of becoming aware of such occurrence; (b) cooperate with the State in investigating the occurrence, including making available all relevant records, logs, files, data reporting, and other materials required to comply with applicable law or as otherwise required by the State; (c) in the case of PII or PHI, at the State's sole election, (i) notify the affected individuals who comprise the PII or PHI as soon

as practicable but no later than is required to comply with applicable law, or, in the absence of any legally required notification period, within five calendar days of the occurrence; or (ii) reimburse the State for any costs in notifying the affected individuals; (d) in the case of PII, provide third-party credit and identity monitoring services to each of the affected individuals who comprise the PII for the period required to comply with applicable law, or, in the absence of any legally required monitoring services, for no less than 24months following the date of notification to such individuals; (e) perform or take any other actions required to comply with applicable law as a result of the occurrence; (f) without limiting Contractor's obligations of indemnification as further described in this Contract, indemnify, defend, and hold harmless the State for any and all claims, including reasonable attorneys' fees, costs, and expenses incidental thereto, which may be suffered by, accrued against, charged to, or recoverable from the State in connection with the occurrence; (g) be responsible for recreating lost State Data in the manner and on the schedule set by the State without charge to the State; and, (h) provide to the State a detailed plan within 10 calendar days of the occurrence describing the measures Contractor will undertake to prevent a future occurrence. Notification to affected individuals, as described above, must comply with applicable law, be written in plain language, and contain, at a minimum: name and contact information of Contractor's representative; a description of the nature of the loss; a list of the types of data involved; the known or approximate date of the loss; how such loss may affect the affected individual; what steps Contractor has taken to protect the affected individual; what steps the affected individual can take to protect himself or herself; contact information for major credit card reporting agencies; and, information regarding the credit and identity monitoring services to be provided by Contractor. This Section survives the termination of this Contract.

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

a. Meaning of Confidential Information. For the purposes of this Contract, the term "**Confidential Information**" means all information and documentation of a party that: (a) has been marked "confidential" or with words of similar meaning, at the time of disclosure by such party; (b) if disclosed orally or not marked "confidential" or with words of similar meaning, was subsequently summarized in writing by the disclosing party and marked "confidential" or with words of similar meaning; and, (c) should reasonably be recognized as confidential information of the disclosing party. The term "Confidential Information" does not include any information or documentation that was: (a) subject to disclosure under the Michigan Freedom of Information Act (FOIA); (b) already in the possession of the receiving party without an obligation of confidentiality; (c) developed independently by the receiving party, as demonstrated by the receiving party, without violating the disclosing party's proprietary rights; (d) obtained from a source other than the disclosing party without an obligation of confidentiality; or, (e) publicly available when received, or thereafter became publicly available (other than through any unauthorized disclosure by, through, or on behalf of, the receiving party). For purposes of this Contract, in all cases and for all matters, State Data is deemed to be Confidential Information.

b. Obligation of Confidentiality. The parties agree to hold all Confidential Information in strict confidence and not to copy, reproduce, sell, transfer, or otherwise dispose of, give or disclose such Confidential Information to third parties other than employees, agents, or subcontractors of a party who have a need to know in connection with this Contract or to use such Confidential Information for any purposes whatsoever other than the performance of this Contract. The parties agree to advise and require their respective employees, agents, and subcontractors of their obligations to keep all Confidential Information confidential. Disclosure to a subcontractor is permissible where: (a) use of a subcontractor is authorized under this Contract; (b) the disclosure is necessary or otherwise naturally occurs in connection with work that is within the subcontractor's responsibilities; and (c) Contractor obligates the subcontractor in a written contract to maintain the State's Confidential Information in confidence. At the State's request, any employee of Contractor or any subcontractor may be required to execute a separate agreement to be bound by the provisions of this Section.

c. Cooperation to Prevent Disclosure of Confidential Information. Each party must use its best efforts to assist the other party in identifying and preventing any unauthorized use or disclosure of any Confidential Information. Without limiting the foregoing, each party must advise the other party immediately in the event either party learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this Contract and each party will cooperate with the other party

in seeking injunctive or other equitable relief against any such person.

d. Remedies for Breach of Obligation of Confidentiality. Each party acknowledges that breach of its obligation of confidentiality may give rise to irreparable injury to the other party, which damage may be inadequately compensable in the form of monetary damages. Accordingly, a party may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies which may be available, to include, in the case of the State, at the sole election of the State, the immediate termination, without liability to the State, of this Contract or any Statement of Work corresponding to the breach or threatened breach.

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

33. Data Privacy and Information Security.

a. Undertaking by Contractor. Without limiting Contractor's obligation of confidentiality as further described, Contractor is responsible for establishing and maintaining a data privacy and information security program, including physical, technical, administrative, and organizational safeguards, that is designed to: (a) ensure the security and confidentiality of the State Data; (b) protect against any anticipated threats or hazards to the security or integrity of the State Data; (c) protect against unauthorized disclosure, access to, or use of the State Data; (d) ensure the proper disposal of State Data; and (e) ensure that all employees, agents, and subcontractors of Contractor, if any, comply with all of the foregoing. In no case will the safeguards of Contractor's data privacy and information security program be less stringent than the safeguards used by the State, and Contractor must at all times comply with all applicable State IT policies and standards, which are available to Contractor upon request.

b. Audit by Contractor. No less than annually, Contractor must conduct a comprehensive independent third-party audit of its data privacy and information security program and provide such audit findings to the State.

c. Right of Audit by the State. Without limiting any other audit rights of the State, the State has the right to review Contractor's data privacy and information security program prior to the commencement of Contract Activities and from time to time during the term of this Contract. During the providing of the Contract Activities, on an ongoing basis from time to time and without notice, the State, at its own expense, is entitled to perform, or to have performed, an on-site audit of Contractor's data privacy and information security program. In lieu of an on-site audit, upon request by the State, Contractor agrees to complete, within 45 calendar days of receipt, an audit questionnaire provided by the State regarding Contractor's data privacy and information security program.

d. Audit Findings. Contractor must implement any required safeguards as identified by the State or by any audit of Contractor's data privacy and information security program.

e. State's Right to Termination for Deficiencies. The State reserves the right, at its sole election, to immediately terminate this Contract or a Statement of Work without limitation and without liability if the State determines that Contractor fails or has failed to meet its obligations under this Section.

34. Reserved.

35. Reserved.

36. Records Maintenance, Inspection, Examination, and Audit. The State or its designee may audit Contractor to verify compliance with this Contract. Contractor must retain, and provide to the State or its designee and the auditor

general upon request, all financial and accounting records related to the Contract through the term of the Contract and for seven years after the latter of termination, expiration, or final payment under this Contract or any extension ("**Audit Period**"). If an audit, litigation, or other action involving the records is initiated before the end of the Audit Period, Contractor must retain the records until all issues are resolved.

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

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

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

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

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

40. **Reserved.**

41. **Nondiscrimination.** Under the Elliott-Larsen Civil Rights Act, 1976 PA 453, MCL 37.2101, *et seq*., and the Persons with Disabilities Civil Rights Act, 1976 PA 220, MCL 37.1101, *et seq*., Contractor and its subcontractors agree not to discriminate against an employee or applicant for employment with respect to hire, tenure, terms, conditions, or privileges of employment, or a matter directly or indirectly related to employment, because of race, color, religion, national origin, age, sex, height, weight, marital status, or mental or physical disability. Breach of this covenant is a material breach of this Contract.

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

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

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

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

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

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

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

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

49. **Order of Precedence.** In the event of a conflict between the terms and conditions of the Contract, the exhibits, a purchase order, or an amendment, the order of precedence is: (a) the purchase order; (b) the amendment; (c) Exhibit A; (d) any other exhibits; and (e) the Contract.

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

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

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

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