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. 071B5500076
between
THE STATE OF MICHIGAN
and

NAME & ADDRESS OF CONTRACTOR:	PRIMARY CONTACT	EMAIL
Wakely Consulting Group, Inc. 1600 Highway 100 South, Suite 590 Minneapolis, MN 54416	Julia Lerche	Julia.Lerche@wakely.com
	TELEPHONE	**CONTRACTOR #, MAIL CODE**
	(727) 747-8644	

STATE CONTACTS	AGENCY	NAME	PHONE	EMAIL
PROGRAM MANAGER:	DIFS	Bob Lamberjack	(517) 335-1746	lamberjackr@michigan.gov
BUYER:	DTMB	Chelsea Edgett	(517) 284-7031	edgettc@michigan.gov

CONTRACT SUMMARY:

DESCRIPTION:

Financial and Insurance Actuarial Services – Prequalification Program (DIFS)

INITIAL TERM	EFFECTIVE DATE	INITIAL EXPIRATION DATE	AVAILABLE OPTIONS
Three Years	February 1, 2015	January 30, 2018	Two, One year periods
PAYMENT TERMS	**F.O.B**	**SHIPPED**	**SHIPPED FROM**
NET45, 3NET30	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:	$500,000.00

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THE STATE OF MICHIGAN
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NAME & ADDRESS OF CONTRACTOR:	PRIMARY CONTACT	EMAIL
Wakely Consulting Group, Inc.	Julia Lerche	Julia.Lerche@wakely.com
1600 Highway 100 South, Suite 590	TELEPHONE	CONTRACTOR #, MAIL CODE
Minneapolis, MN 54416	(727) 747-8644	

STATE CONTACTS	AGENCY	NAME	PHONE	EMAIL
PROGRAM MANAGER:	DIFS	Bob Lamberjack	(517) 335-1746	lamberjackr@michigan.gov
BUYER:	DTMB	Chelsea Edgett	(517) 284-7031	edgettc@michigan.gov

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☐ P-card	☐ Direct Voucher (DV)	☐ Other	☒ YES	☐ NO

MINIMUM DELIVERY REQUIREMENTS:

N/A

MISCELLANEOUS INFORMATION:

N/A

ESTIMATED CONTRACT VALUE AT TIME OF EXECUTION:	$500,000.00

THIS IS NOT AN ORDER: This Contract Agreement is awarded on the basis of our inquiry bearing the solicitation #007115B0003606. Orders for delivery will be issued directly by the Department of Insurance and Financial Services through the issuance of a Purchase Order Form.

Notice of Contract #: 071B5500076

FOR THE CONTRACTOR:	**FOR THE STATE:**
Wakely Consulting Group, Inc.	
Firm Name	Signature
	Tom Falik/Services Director
Authorized Agent Signature	Name/Title
	DTMB Procurement
Authorized Agent (Print or Type)	Enter Name of Agency
Date	Date

STATE OF MICHIGAN

Contract No.071B5500076
FINANCIAL AND INSURANCE ACTUARIAL SERVICES— PREQUALIFICATION PROGRAM

EXHIBIT A
STATEMENT OF WORK
CONTRACT ACTIVITIES

Background

This is a Contract for pre-qualified Contractors for Financial and Insurance Actuarial Services and provide the following services: life/health actuarial consulting services, property/casualty actuarial consulting services, Insurance Code Section 830(3) and Other Reviews, Life/Health Actuary for Rate Reviews, Other and Particular Insurance Line Actuarial Services, and Statutory Reports and Public Policy and Research Actuarial Services.

Prequalified Contractor qualifications and availability will be accessed by the Department of Insurance and Financial Services (DIFS) under a second tier, competitive selection process issued by DIFS. DIFS may then award a specific examination with the Contractor offering the best overall value for the specific DIFS examination.

The actuarial firms or individuals assisting DIFS with specific examinations must not be associated, either financially or contractually, with the entity being examined and that there must be no financial or contractual relationship, either written or oral, for two years prior to, during the life of and for two years after, any contract awarded or any subsequent contract work order without the written consent of DIFS. Failure by the Contractor to comply with this provision may result in the cancellation of services and/or the Contact.

It is because of the concern about conflict of interest that DIFS feels it is imperative to have a pool of contract actuaries available to assist with examinations. The pool of pre-qualified Contractors is also required because it is anticipated that there may be 60 or more examinations annually, with many examinations going on simultaneously.

DIFS (website link: http://www.michigan.gov/difs) regulates a wide range of entities including, but not limited to, the following:

- Full and single line HMO's
- Blue Cross Blue Shield of Michigan
- Multiple Employer Welfare Arrangements
- Property, Casualty, Life and Health Insurance Companies
- US Branches of Canadian Insurers
- Limited Liability Pools
- Reciprocal Exchanges
- Municipal Pools

The Offices of Insurance Evaluation,, Insurance Rates and Forms and Various Offices are responsible for licensing, examining, investigating, and supervising over 120,000 individual licensees and 15,000 entities. In addition, the Senior Advisor for Policy and Legislation is responsible for public policy matters related to this area. The legal authorities for the regulatory functions are encompassed in several acts:

- Health Benefit Agent Act
- Insurance Code: 1956 PA 218
- Nonprofit Health Care Corporation Reform Act
- Patient's Right to Independent Review Act

Below is a description of the DIFS Offices that will utilize the Contract:

Office of Insurance Evaluation processes corporate filings of insurance companies, examines insurance entities, and conducts a consolidated review and analysis of financial service enterprise organizations. The Office is also responsible for the financial analysis of insurance entities, both domestic and foreign. The Office is also responsible for monitoring troubled insurance entities including entities under supervision, seizure, rehabilitation or liquidation.

DIFS is responsible for regulating the financial solvency and compliance with National Association of Insurance Commissioners (NAIC) requirements and the Michigan Insurance Code. DIFS attempts to insure compliance with the regulations and Code through periodic examinations of the regulated entities. The examinations can occur throughout the United States and Canada. The staff of DIFS conducts the examinations, but the Division has no fully certified actuaries (actuaries who have taken and passed all ten exams) with training or experience in the fields of life, health, property or casualty insurance actuarial science. An analysis and evaluation by a Fellow of the Society of Actuaries/Fellow of the Casualty Society of Actuaries of the adequacy of reserves of regulated entities are critical to the Commissioner's ability to adequately examine the entities and ensure compliance with standards, regulations and Code.

Office of Insurance Rates and Forms is responsible for reviewing and analyzing subscriber certificate filings, rate system filings, provider contract filings, including nonprofit health care corporations (Blue Cross Blue Shield of Michigan) and nonprofit dental care corporations, as well as insurance entities such as health maintenance organizations, alternative financing and delivery systems and multiple employer welfare arrangements.

1. Scope of Work

1.1 Requirements

A. General:
   1. Prequalified Contractor qualifications and availability will be accessed under a second tier, competitive selection process. DIFS may then award a specific examination with the Contractor offering the best overall value.

   2. Each work statement will contain unique service levels, requirements and general deliverables may include, but are not limited to, services outlined in above Background section, Section 1.1 Requirements and Section 1.2 Work and Deliverable.

   3. The State will issue each work statement to all prequalified Contractors. The work statement will identify the deliverables, period of performance, specific response information required, work evaluation and payment criteria, and any additional terms and conditions that may apply to that work statement The process for the State issuing and the Contractor(s) responding to an SOW follows:.
      a) Issue a work statement to pre-qualified Contractors with a timeline including due dates for questions, due dates for responses, and period of performance
      b) Contractor responses must follow criteria required in each work statement, and Contractor pricing must not exceed rates provided in Exhibit C.
      c) State selection will be based on a best value evaluation using the criteria identified in the work statement. Other selection criteria or tools which may be in the best interest of the State may be utilized to make a selection.

1.1.1 Office of Insurance Evaluation:
Property/Casualty and Life/Health Actuarial Services to Analyze and Opine to the Adequacy of the Reserves
When specific company examinations require actuarial services, the DIFS Program Manager will prepare a written work statement detailing the line items where the State needs an actuary to analyze and opine to the adequacy of the reserves. Also, there are some examinations where several members within an insurance

holding company are being examined at the same time. One property and casualty Contractor will be awarded all property and casualty companies within the insurance holding company and one life and health Contractor will be awarded all life and health companies within the insurance holding company. When awarding individual Contracts, additional consideration may be given to Contractors that can render opinions on all members of an insurance group (both life/health and property/casualty). However, the Contractor must be one of the pre-qualified Contractors in both pools. Each statement of work will be initiated by the project manager and submitted by DIFS to all pre-qualified Vendors. Each statement of work will contain the following information:

- Name of company to be analyzed
- The last examination period
- Period to be covered by this examination
- Items needing analysis
- Excerpts from Company's Annual Statement and Actuarial
- Opinion.

The pre-qualified Contractors will have two weeks to submit, via e-mail, a work plan in response to the work statement. Pre-qualified Vendors will respond to the statement of work with a task proposal by the date specified in the statement of work. In detailing costs, the Contractor must not exceed the hourly rate included in their response. Each Task proposal must include the following:

1. Introduction – statement of the assignment;
2. End product of the assignment;
3. Services to be provided (activities, tasks and individuals assigned to each task or activity)
4. Background information and relevant specific experience of Vendor and names, experience and resumes of individuals assigned to the project; and
5. Detail of Costs:
    - Indicating who will be assigned
    - The hours they will be assigned
    - The hourly rate
    - Total cost

Travel Cost should be included in the Contractor's pricing proposal, Exhibit C.
Whenever possible, DIFS will ensure that no Contractor will be awarded a Contract to examine a company that they examined during the last state audit. Persons/Contractors selected may be expected to begin work one week following the receipt of a contract release. Should none of the Contractors offer an acceptable proposal, the State may pursue acquisition of services from other Contractors.

1.1.2 Insurance Code Section 830(3) and Other Reviews
DIFS needs assistance with reviews requested by domestics under Section 830(3) of the Michigan Insurance Code. These "Other Reviews" include, but are not limited to, changes in actuarial methodologies or changes in actuarially determined balances; concerns regarding adequacy of reserving or cash flow testing; analysis of reinsurance transactions and agreements; consulting on legislative changes (i.e. principles based reserving); evaluating value of business acquired proposals in accordance with MCL 500.1305; and, reviewing risk-based capital calculations.

When specific company reviews require actuarial services, the DIFS Program Manager will prepare a written work statement detailing the work to be performed by the Contractor.

1.1.3 - Reserved

1.1.4 Office of Insurance Rates and Forms:

Life/Health Actuary for Rate Reviews
The Health Plans Division of the Department of Insurance and Financial Services (DIFS) needs a life and health actuary to opine to the adequacy and actuarially sound basis of rates filed by health care entities for its individual lines of business. Those lines include the various products offered.

Upon submission of rate filings, DIFS has 30 days to determine whether the data submitted in these filings is complete. Once the filings are determined to be complete, DIFS has 60 days to determine whether the filings comply with all statutory standards found in the Act. On the 60th day, the Commissioner must determine whether the filing may be approved, disapproved, or approved with modifications.

When specific company reviews require actuarial services, the DIFS Program Manager will prepare a written work statement detailing the work to be performed by the Contractor.

1.1.5 – Reserved

1.1.6 Senior Advisor for Policy and Legislation:

Statutory Reports and Public Policy and Research Actuarial Services
DIFS is frequently presented with complicated public policy proposals developed by industry proponents that rely on actuarial analysis of company data. Having the ability to independently evaluate these proposals, and test the actuarial and/or economic modeling and assumptions used, would be of great benefit to the agency.

In most cases, proposals require review on an accelerated basis. The Contractor should understand that tight timeframes for delivery of analysis would be required. Because time is of the essence in performing the duties associated with the Contract, it will be necessary for the Contractor to work closely with DIFS staff to accurately and specifically identify:

- What information resources are required to perform the task
- What information DIFS is required to provide or obtain
- What are the timeframes in which deliverables will be provided
- In what form the final project product will take (report; analysis memo; spreadsheet; etc.)

Work performed will be on “as-needed” basis, and project frequency will be wholly dependent on the need for analysis to be performed as outlined herein. When specific actuarial services are required, the DIFS Program Manager will prepare a written work statement detailing the work to be performed by the Contractor.

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

1.2.1 Office of Insurance Evaluation:
Property/Casualty and Life/Health Actuarial Services to Analyze and Opine to the Adequacy of the Reserves

A. Review and opine on actuarial items in connection with financial examinations of domestic insurance companies, including Canadian and alien insurance companies using Michigan as the state of entry into the United States or other liabilities or assets specifically determined by DIFS which need to be reviewed by an actuary.

B. The actuarial items to be reviewed may include, but are not limited to, policy reserves, policy holder dividend scales and philosophy, tax liability, product features, risk based capital and surplus requirements, cash flow tests, asset adequacy testing and loss and loss adjustment expense reserves.

C. The actuary is responsible for reconciling all the data provided by the company back to the annual statement. Specifically, the property and casualty actuary must tie its loss data back to Schedule P, Part I.

D. The liabilities and assets to be reviewed and certified by the Contractor will be determined at the beginning of each examination. The Contractor must use, if available, the company's actuarial opinion, report and work papers to the greatest extent possible without compromising the Contractor's responsibility to perform the necessary tests to render his/her opinion on the agreed upon areas as defined in the work statement.

E. The Contractor must work closely with the examiner-in-charge (EIC) and other staff assigned to the examination to ensure the appropriate underlying master file and other data used by the Contractor in rendering their opinion is tested for completeness and accuracy by the DIFS staff. The Contractor must give the EIC progress reports throughout the examination. These reports can be verbal. The Contractor must immediately notify the EIC of any exceptions and important issues.

F. It is also imperative that the Contractor(s) not be associated with (either financially or contractually) the entity regulated by DIFS to which the Contractor is providing services and that such a relationship not be entered into for two years prior to, during the life of and for two years after the Contract award without the written consent of DIFS. Failure by the Contractor(s) to comply with this provision may result in the cancellation of any Contract.

G. The reports and opinions for life and health entities must be signed by a Fellow of the Society of Actuaries (FSA); and reports and opinions for property and casualty entities must be signed by a Fellow of the Casualty Actuarial Society (FCAS). The fellow must play a significant role in the analysis and oversight of the project.

H. The Contractor must be available for meetings with the regulated entity and DIFS. Also, from time to time, the Contractor may be called upon to appear at a place designated by DIFS, to discuss the issues of an emergency nature on short notice. Further, the Contractor is required to be flexible in changing their work efforts to accommodate the concerns of DIFS. The Contractor must be prepared and available to defend the Contractor's findings in a hearing. The Contractor must be willing to testify as an expert witness and perform other tasks related to the area of expertise as needed.

I. The Contractor may be called upon to help DIFS analyze complex reinsurance agreements and transactions or any other special assignment, where actuarial assistance may be deemed necessary by DIFS.

J. From time to time, there may be special projects that may be performed on non-domestic insurers or in areas which may be considered beyond the scope of a routine examination, which the Contractor may be asked to provide to DIFS. The scope of the project or area will be defined by DIFS and agreed upon with the Contractor before the work begins.

K The actuary should be able to perform most of the analysis from their work location. Due to the nature of the life insurance products, actuaries should plan to make one visit on-site to the company. All visits by the actuary to the company being examined must be coordinated with the approval by the EIC.

L. The Contractor must agree to comply with Section 222 of the Michigan Insurance Code regarding the confidentiality of all information and knowledge obtained by the Contractor during an examination of an entry under this contract. Section 222states, 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". If the Contractor receives a subpoena for any information related to an examination under a Contract, the Contractor must contact DIFS immediately. The Contractor must also be aware of Section 226 of the Michigan Insurance Code that states, in part, a person appointed or 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.

M. All of the Contractor's work papers are the property of DIFS and should be sent to DIFS at the conclusion of the examination.

N. Contractors will not be allowed to bid on a company if the Contractor performed the analysis and review for DIFS during the last examination.

1.2.2 Insurance Code Section 830(3) and Other Reviews
Contractor must provide Services and staff, and otherwise do all things necessary for or incidental to the performance of work, as set forth below:

1. Review pending legislative or regulatory proposals.
2. Examine company data, data provided by DIFS and data available to Contractor.
3. Evaluate pending proposals in light of public policy objectives.
4. Provide analysis in the form of summaries, reports, spreadsheets, or as otherwise requested, within the agreed upon time frames.
5. Be available for regular consultation on an ongoing basis.
6. Be available to provide legislative testimony as needed.

1.2.3 – Reserved

1.2.4 Office of Insurance Rates and Forms:

Life/Health Actuary for Rate Reviews
The actuarial firm awarded the Contract will be responsible for the following tasks:

- Review health entity rate filings and opining on all actuarial soundness and the rate filing requirements set forth in the Insurance Code and Nonprofit Health Care Reform Act.
- Perform a Completeness Determination within one (1) week of receipt.
- Provide an Actuarial Opinion of rates as filed and/or determination of amended (if applicable) within 30 days following the completeness determination.
- Provide at least two (2) copies of the finalized, written actuarial report and opinion to DIFS no later than one week after the actuarial firm receives approval from DIFS to finalize the report and opinion.
- Be available for questions and other consultation during the term of this contract, as may be necessary through the rate review process of these filings.

1.2.5 – Reserved

Policy Division Statutory Reports and Public Policy and Research Actuarial Services

- What information resources are required to perform the task.
- What information DIFS is required to provide or obtain.
- What are the timeframes in which deliverables will be provided.
- In what form the final project product will take (report, analysis memo, spreadsheet, etc.)

2. Acceptance

2.1 Acceptance, Inspection and Testing
The State will use the following criteria to determine acceptance of the Contract Activities:

2.1.1 Office of Insurance Evaluation:
Property/Casualty and Life/Health Actuarial Services to Analyze and Opine to the Adequacy of the Reserves
DIFS will require a deliverable work product in the form of an appropriately detailed written report and actuarial opinion for each assignment. The detailed report should adequately support the actuarial opinion. The report should include a discussion of the scope of the work performed and assumptions used, a summary of findings, any recommendations to the company for improving its system, loss developments, the accuracy of the aggregate reserves and other provisions for policy obligations and any other pertinent information used to render the opinion. The actuarial opinion should be in the format of and contain the information required by the

NAIC Annual Statement Instructions. The final detailed report and opinion must be delivered to DIFS prior to the end of the on-site examination by DIFS staff examiners unless prior consent is given by DIFS. The Contractor will provide four copies (or PDFs) of the report. The certification will not be attached or bound with the actuarial report but will be a separate document. The actuarial opinion must be submitted with the actuarial report. The detailed report and supporting work papers will become part of DIFS work papers which are confidential and are only available to other parties as defined by specific statutes. The regulated entity will also have a copy of the actuarial report supporting the certification. The regulated entity may provide a copy of the actuarial report and opinion to its appointed actuary.

Insurance Code Section 830(3) and Other Reviews
The DIFS Contract project manager or other people designated by the DIFS Commissioner or Chief Deputy Commissioner must submit a written or electronic communication to the Contractor that contains the insurance company filing/attachments, which identifies the specific project to be engaged pursuant to **Section 1.2.2** above.

The Contractor must acknowledge receipt of the communication and that work will begin immediately.

2.1.2 – Reserved

2.1.3 Office of Insurance Rates and Forms:
Life/Health Actuary for Rate Reviews
The DIFS Contract project manager or other people designated by the DIFS Director must submit a written or electronic communication to the Contractor that contains the insurance company filing/attachments, which identifies the specific project to be engaged pursuant to **Section 1.2.4** above.

The Contractor must acknowledge receipt of the communication and that work will begin immediately.

2.1.4 - Reserved

2.1.5 Senior Advisor for Policy and Legislation:
Statutory Reports and Public Policy and Research Actuarial Services
The DIFS Contract project manager or other people designated by the DIFS Commissioner or Chief Deputy Commissioner shall submit a written or electronic communication to the Contractor that contains the insurance company filing/attachments, which identifies the specific project to be engaged pursuant to **Section 1.2.6** above.

The Contractor must acknowledge receipt of the communication and that work will begin immediately.

3. Staffing

3.1 Contractor Representative
1. The Contractor appoints the following individual, specifically assigned to State of Michigan accounts, that will respond to State inquiries regarding the Contract Activities, answering questions related to ordering and delivery, etc. (the “Contractor Representative”).

Julia Lerche, FSA, MAAA, MPSH, Senior Consulting Actuary
Christine Bach, ASA, MAAA, FCA, Senior Consulting Actuary
Mary Hegemann, FSA, MAAA, Director

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

3. The actuarial firms or individuals assisting DIFS with specific examinations not be associated, either financially or contractually, with the entity being examined and that there must be no financial or contractual relationship, either written or oral, for two years prior to, during the life of and for two years after, any contract

awarded or any subsequent contract work order without the written consent of DIFS. Failure by the Contractor to comply with this provision may result in the cancellation of services and/or the Contact.

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 identifies the following Key Personnel.
Julia Lerche, FSA, MAAA, MPSH, Senior Consulting Actuary
Christine Bach, ASA, MAAA, FCA, Senior Consulting Actuary
Mary Hegemann, FSA, MAAA, Director

3.4 Organizational Chart
The Contractor must provide an overall organizational chart that details staff members, by name and title, and subcontractors during the second tier.

3.5 Disclosure of Subcontractors
If the Contractor intends to utilize subcontractors, the Contractor must disclose the following:

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.

The relationship of the subcontractor to the Contractor.

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

A complete description of the Contract Activities that will be performed or provided by the subcontractor.
Of the total bid, the price of the subcontractor's work.

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

The bidder's staff may be required to make deliveries to or enter State facilities. The bidder 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. Project Management

4.1 - Reserved

4.2 Meetings
The State may request meetings, as it deems appropriate.

4.3 Reporting

4.3.1 Office of Insurance Evaluation:
Property/Casualty and Life/Health Actuarial Services to Analyze and Opine to the Adequacy of the Reserves
Upon awarding of a Contract under the second tier competitive bid process, the Contractor must give the EIC progress reports throughout the examination. These reports can be verbal. The Contractor must immediately notify the EIC of any exceptions and important issues.

Although there will be continuous liaison with the Contractor team, the DIFS Contract Administrator will meet as needed with the Contractor's project manager for the purpose of receiving progress reports and providing necessary guidance to the Contractor in solving problems which arise.

Insurance Code Section 830(3) and Other Reviews
Upon the issuance of a work statement under the second tier competitive bid process, Contractor proposal should provide a flowchart of the tasks that will be performed, the individual assigned to perform each task, and the time that will be spent in completing the task. The Contractor must specifically detail previous

experience in projects of similar size and complexity, and the amount of work with similar projects. The proposal should also address how work will be performed and reports prepared in a timely manner.

4.3.2 – Reserved

4.3.3 Office of Insurance Rates and Forms:
Life/Health Actuary for Rate Reviews
Reporting requirements will be identified at the second tier competitive bid process. Each project report under the Contract may include a certified actuarial opinion, analysis statement and other necessary tools (spreadsheets, graphs, etc.) in an easy-to-read-and-understand format that helps DIFS staff communicate findings to the insurer and/or other parties via disapprovals, withdrawals of approvals of the filing, and/or other communications.

4.3.4 - Reserved

4.3.5 Policy Actuarial Services: Statutory Reports and Public Policy and Research Services
Reporting requirements will be identified at the second tier competitive bid process. Each project report under the Contract may include a certified actuarial opinion, analysis statement and other necessary tools (spreadsheets, graphs, etc.) in an easy-to-read-and-understand format that helps DIFS staff communicate findings to the insurer and/or other parties via disapprovals, withdrawals of approvals of the filing, and/or other communications.

5. Ordering

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

6. Invoice and Payment

6.1 Invoice Requirements
Contractor's out-of-pocket expenses are not separately reimbursable by the State unless, on a case-by-case basis for unusual expenses. Travel costs should be inclusive in bidder's pricing proposal. Exhibit C.

The selected Contractor will be required to submit an Administrative Fee (see Section 7, Standard Contract Terms) on all MiDEAL payments remitted under the Contract. The Bidder should consider Administrative Fee requirements when developing its price proposal.

Extended purchasing program volume requirements are not included, unless stated otherwise.

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.

6.2 Payment Methods
The State will make payment for Contract Activities via purchase order.

6.3 Procedure
Final pricing will be submitted via a second tier, competitive process.

7. 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 $1,000 and an additional $100 per day for each day Contractor fails to remedy the late or improper completion of the Work.

STATE OF MICHIGAN

Contract No. 071B5500076
FINANCIAL AND INSURANCE ACTUARIAL SERVICES— PREQUALIFICATION PROGRAM

EXHIBIT B - Reserved

STATE OF MICHIGAN
Contract No. 071B5500076
FINANCIAL AND INSURANCE ACTUARIAL SERVICES - PREQUALIFICATION PROGRAM
EXHIBIT C
PRICING

Pricing will be finalized in accordance with the second tier, competitive selection process as explained in Exhibit A.

Staff/Role	Hourly Rate
Director	$435
Senior Consultant	$370
Consultant	$290
Associate Actuary	$230
Senior Analyst	$200
Analyst	$180

*The above hourly rates are subject to a 3% annual increase

*Contractor offers 3% off invoice if paid within 30 days.

STATE OF MICHIGAN

STANDARD CONTRACT TERMS

This STANDARD CONTRACT ("**Contract**") is agreed to between the State of Michigan (the "**State**") and Wakely Consulting Group, Inc.("**Contractor**"), a Florida corporation. This Contract is effective on February 1, 2015 ("**Effective Date**"), and unless terminated, expires on January 30, 2018.

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 *Constitution Hall, 1st Floor* *525 W. Allegan St.* *Lansing, MI 48913* *EdgettC@michigan.gov* *(517) 284-7031*	*Julia Lerche, FSA, MAAA* *1600 Highway 100 South, Suite 590* *Minneapolis, MN 55416* *(727) 474-8644* *Julia.Lerche@wakely.com*

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 *Constitution Hall, 1st Floor* *525 W. Allegan St.* *Lansing, MI 48913* *EdgettC@michigan.gov* *(517) 284-7031*	*Mary Hegemann, FSA, MAAA* *9777 Pyramid Court, Suite 260* *Englewood, CO 80112* *720-226-9802* *MaryH@wakely.com*

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:
Bob Lamberjack, Chief Examiner *Michigan Department of Insurance and Financial Services* *611 W. Ottawa Street* *P.O. Box 30220* *Lansing, Michigan 48909* *(517) 335-1746* *lamberjackr@michigan.gov*	*Julia Lerche, FSA, MAAA* *1600 Highway 100 South, Suite 590* *Minneapolis, MN 55416* *(727) 474-8644* *Julia.Lerche@wakely.com*

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 3 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: $3,000,000 Each Occurrence $3,000,000 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 5 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. **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 (1) 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 (2) 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 twenty-four (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 5 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 twenty-four (24) months 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.

31. **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 5 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 5 calendar days from the date of termination to the other party.

32. **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.

33. **Reserved**

34. **Reserved**

35. **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 7 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.

36. **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.

37. **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.

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

39. **Reserved**

40. **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.

41. **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 compiled under MCL 423.322.

42. **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.

43. **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.

44. **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.

45. **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.

46. **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.

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

48. **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.

49. **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.

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

51. **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.

52. **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**").