Form No. DTMB-3522 (Rev. 2/2015)
AUTHORITY: Act 431 of 1984
COMPLETION: Required
PENALTY: Contract change 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. 071B5500167

between

THE STATE OF MICHIGAN

and

NAME & ADDRESS OF CONTRACTOR	PRIMARY CONTACT	EMAIL
Variance Reduction International, Inc.	Maria Milo	mariamilo@variancereduction.com
10 Newland Court	PHONE	VENDOR TAX ID # (LAST FOUR DIGITS ONLY)
The Woodlands, TX 77832	713-202-7553	6919

STATE CONTACTS	AGENCY	NAME	PHONE	EMAIL
PROGRAM MANAGER	LARA	Holly Grandy-Miller	517-241-7859	Millerh1@michigan.gov
CONTRACT ADMINISTRATOR	DTMB	Jillian Yeates	517-284-7019	YeatesJ@michigan.gov

CONTRACT SUMMARY

DESCRIPTION:

Business Process Review (BPR)/Lean Process Improvement (LPI) Prequalification Program

INITIAL TERM	EFFECTIVE DATE	INITIAL EXPIRATION DATE	AVAILABLE OPTIONS
3 Years	July 20, 2015	June 18, 2018	2, 1 Year Options

PAYMENT TERMS	F.O.B.	SHIPPED TO
0.5NET30, NET45	N/A	N/A

ALTERNATE PAYMENT OPTIONS	EXTENDED PURCHASING
☐ 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

STATE OF MICHIGAN
Contract No. 071B5500167
Business Process Review (BPR)/Lean Process Improvement (LPI) Prequalification

EXHIBIT A
STATEMENT OF WORK
CONTRACT ACTIVITIES

This exhibit identifies the anticipated requirements of any Contract resulting from this RFP. The term "Contractor" in this document refers to a bidder responding to this RFP.

Project Request
This is a Contract for a mandatory pre-qualification program for providing State agencies and MiDEAL members the ability to contract for Business Process Review (BPR)/Lean Process Improvement (LPI) consulting services on a fast-track, as-needed basis.

Contractors in the pre-qualification program will be eligible to bid on Statements of Work (SOWs) issued by individual State agencies or local units of government. **All work performed under the second tier SOWs is subject to the agreed upon contract terms.**

A pre-qualification RFP may be re-issued on an annual basis (approximately April/May) to allow for new Contractors to enter the pre-qualification program. Pre-qualified Contractors will not be required to respond to the annual solicitation to retain current contracts.

Background

The State of Michigan has a strong history of innovation through process improvement and process reengineering. To accelerate relentless positive action and create a sustainable cultural shift, the State must be able to capitalize on transformational opportunities.

The State's preferred strategy to address transformational opportunities is to leverage the State's Reinventing Performance in Michigan (RPM) methodology and framework through employee led process improvement and process reengineering projects. These projects are delivered or supported by the State's Office of Good Government (OGG) process improvement experts.

Occasionally, the State's internal resources may not be available to address certain transformational opportunities. In these situations, State agencies may require the assistance of external service providers with experience and skills in process improvement and process reengineering. The purpose of this RFP is to establish a list of prequalified service providers and a consistent process for State agencies to engage with prequalified service providers.

The State's objectives for a list of prequalified process improvement vendors include the following:

- Consistent contract terms
- Consistent selection criteria and screening processes
- Single point of contact for prequalified vendors
- Consistent billing practices

Requirements

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

A. Provide services as required by SOW issued by any individual agency or MiDEAL Members. Individual agencies may include but are not limited to:

While each SOW will contain unique service levels and requirements, general deliverables may include but are not limited to:

1. Scope, analyze and develop an approach for facilitating team based process improvement.
2. Design the facilitation approach for employee and customer engagement in improvement teams.
3. Develop project plans for improvement initiatives.
4. Identify, capture and evaluate relevant process data.
5. Facilitate business process reviews and provide recommendations for achieving process efficiencies.
6. Evaluate value creation opportunities.
7. Develop improved processes, practices, procedures and rules.
8. Evaluate Information Technology (IT) infrastructures, platforms and processes related to business process reviews.
9. Compare the current state of the process with best practices and strategies to identify opportunities for improvement.
10. Develop implementation plans that are appropriate to agency policies and mandates and to statutory requirements.
11. Develop cost benefit analyses designed to provide a calculated Return On Investment (ROI).
12. Capture before and after process metrics to validate the improvement of the process.
13. Provide administrative support resources for projects.
14. Facilitate, record and develop recommendations and plans as a result of process improvement meetings with internal and external stakeholders.
15. Support the agency during implementation of changes. Ensure a solid implementation plan has been developed by the agency team, and that the agency team has a plan to provide regular updates to project sponsors.

B. The State or MiDEAL Members will issue each SOW to all pre-qualified Contractors on Buy4Michigan.com. The SOW 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 SOW. The process for the State or MiDEAL Members issuing and the Contractor(s) responding to an SOW is as follows:

1. Issue an SOW to all pre-qualified Contractors within that service region (and to all statewide Contactors) with a timeline including due dates for questions, due dates for responses, and period of performance.

2. Contractor responses must follow criteria required in each SOW. Contractor pricing must not exceed rates provided in Exhibit C.

3. The State or local unit's selection will be based on a best value evaluation using the criteria identified in the SOW. Other selection criteria or tools which may be in the best interest of the State or local unit may be utilized to make a selection.

D. Program Maintenance:
The State or MiDEAL members will perform a post project review of services delivered by the vendor. The review will be provided to the OGG's program manager and will include recommendations regarding the vendor's continuation on the pre-qualified list. Negative reviews may result in Contractor being removed from the pre-qualification program for a minimum of a one-year period. Contractor may submit a proposal when RFP is re-issued to be added to the pre-qualification program again.

After each year of the Contract, the State of Michigan will evaluate the pre-qualification program as follows:

- If the Contractor did not bid on any Statements of Work in the second tier program, the Contractor will be removed from the pre-qualified program. To be re-added, the Contractor must submit a proposal when the RFP is re-issued.

1.3 Reserved

2. Acceptance

2.1 Acceptance, Inspection and Testing
The State will identify appropriate criteria to determine acceptance in individual Statement of Work:

3. Staffing

3.1 Contractor Representative
The Contractor appoints the following Contractor Representative , 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"):

Dr. Susanne MacMahon Director Business Development 9595 Six Pines Drive The Woodlands, Texas, 77380 832.810.0254 (direct) 909.702.8546 (main) 1.855.874.6221 (toll free)

The Contractor must notify the Contract Administrator at least 30 calendar days before removing or assigning a new Contractor Representative.

3.2 Customer Service Toll-Free Number
The Contractor must specify its toll-free number for the State to make contact with the Contractor Representative. The Contractor Representative must be available for calls during the hours of 8 am to 5 pm EST.

3.4 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.

3.5 Reserved

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

3.7 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.

3.8 Security

The Contractor will be subject the following security procedures:
The Contractor must explain any additional security measures in place to ensure the security of State facilities.
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 Project Plan - Reserved

4.3 Reporting
The Contractor must submit a final report and any interim reports that are described in each individual project's work statement to the Program Manager. The format and content of the reports, the deadline for submittal, and the person to whom they should be submitted will be specified in the project work statement.

5. Ordering
5.1 Authorizing Document
The State will issue a written purchase order which must be approved by the Contract Administrator or the Contract Administrator's designee, to order any services under this prequalification program. All orders are subject to the terms and conditions of the prequalification program and the Contract.

6. Invoice and Payment
6.1 Invoice Requirements
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 in accordance with the details specified in the Statement of Work.
6.3 Reserved

7. Reserved

STATE OF MICHIGAN

Contract No. 071B5500167
Business Process Review (BPR)/Lean Process Improvement (LPI)

EXHIBIT B - RESERVED

STATE OF MICHIGAN

Contract No. 071B5500167
Business Process Review (BPR)/Lean Process Improvement (LPI)

EXHIBIT C
PRICING

Contractor's not-to-exceed prices are below; pricing will be finalized in accordance with the second tier, competitive selection process as a lump sum fixed price based on the hourly rates entered below.

Staff/Role	Hourly Rate
Senior Consultant (Lean Six Sigma Master Black Belt)	$275.00 US

VRI is offering a 1/2% discount on invoices paid within 30 days.

STATE OF MICHIGAN

STANDARD CONTRACT TERMS

These STANDARD CONTRACT ("**Contract**") terms are agreed to between the State of Michigan (the "**State**") and Variance Reduction International, Inc. ("**Contractor**"), a California Corporation. This Contract is effective on July 20, 2015 ("**Effective Date**"), and unless terminated, expires on June 18, 2018.

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

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 material performance and operational standards, and specifications of the applicable Statement of Work (SOW); (c) provide all Contract Activities in good quality, with no material defects in accordance with the warranties stated herein; (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; and (j) comply with all State physical and IT security policies and standards which will be made available upon request.

   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:
Jillian Yeates *DTMB Procurement* *Constitution Hall* *525 W. Allegan, 1st Floor* *Lansing, MI 48913* YeatesJ@*michigan.gov* *(517) 284-7019*	*Maria Milo* *10 Newland Court* *The Woodlands, Texas, 77382* *accounts@variancereduction.com* *713.202.7553*

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**"):

State:	Contractor:
Jillian Yeates *DTMB Procurement, Constitution Hall* *525 W. Allegan, 1st Floor* *Lansing, MI 48933* *YeatesJ@michigan.gov* *(517) 284-7019*	*Maria Milo* *10 Newland Court* *The Woodlands, Texas, 77382* *mariamilo@variancereduction.com* *713.202.7553*

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**"):

State:	Contractor:
Holly Grandy-Miller *611 W. Ottawa* *Lansing, MI 48933* *Millerh1@michigan.gov* *(517) 241-7859*	*Susanne MacMahon* *9595 Six Pines Drive, Suite 8210* *The Woodlands, Texas, 77830* *accounts@variancereduction.com* *832.810.0254*

5. **Performance Guarantee**. Contractor must at all times have financial resources sufficient, in the reasonable 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.

7.

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 (Unless the State waives this maximum)	Contractor must add "the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees, and agents" as additional insureds.
Automobile Liability Insurance	
Minimal Limits: $1,000,000 Per Occurrence	Contractor must have their policy: (1) add "the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees, and agents" as additional insureds; and (2) cover hired and non-owned automobiles.

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: $500,000 Each Accident $500,000 Each Employee by Disease $500,000 Aggregate Disease.	
Privacy and Security Liability (Cyber Liability) Insurance	
Minimal Limits: $1,000,000 Each Occurrence $1,000,000 Annual Aggregate	Contractor must have their policy: (1) add "the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees, and agents" as additional insureds; and (2) cover information security and privacy liability, privacy notification costs, regulatory defense and penalties, and website media content liability. This may be covered under Contractor's Professional Liability policy.
Professional Liability (Errors and Omissions) Insurance	
Minimal Limits: $1,000,000 Each Occurrence $1,000,000 Annual Aggregate Deductible Maximum: $50,000 Per Loss (Unless the State waives this maximum)	

If any of the required policies provide **claim-made** coverage, the Contractor must: (a) provide coverage with a retroactive date before the effective date of the contract or the beginning of Contract Activities; (b) maintain coverage and provide evidence of coverage for at least three (3) years after completion of the Contract Activities; and (c) if coverage is canceled or not renewed, and not replaced with another claims-made policy form with a retroactive date prior to the contract effective date, Contractor must purchase extended reporting coverage for a minimum of three (3) years after completion of work.

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 to the extent of the insurance limits. Failure to maintain the required insurance does not limit this waiver.

This Section is not intended to and is not be construed in any manner as waiving, restricting or limiting the liability of either party for any obligations under this Contract (including any provisions hereof requiring Contractor to indemnify, defend and hold harmless the State).

8. **MiDEAL Administrative Fee and Reporting.** Contractor must pay an administrative fee of 1% on all MiDEAL payments made to Contractor under the Contract. 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.

9. **Extended Purchasing Program.** This 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.

   Any SOW between Contractor and MiDEAL member will be independently negotiated by the parties. Contractor must submit invoices to, and receive payment from, extended purchasing program members on a direct and individual basis.

10. **Independent Contractor.** Contractor is an independent contractor and assumes all rights, obligations and liabilities applicable to Contractor as 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. Contractor hereby acknowledges that, upon full payment thereof, and except for any Contractor Technology contained therein, the State will be the sole and exclusive owner of all right, title, and interest in the Contract Activities which Contractor creates for delivery to the State ("Deliverables") and all associated intellectual property rights, if any. Except for Contractor Technology, such Deliverables are works made for hire as defined in Section 101 of the Copyright Act of 1976. Except for Contractor Technology, to the extent any Deliverables and related intellectual property do not qualify as works made for hire under the Copyright Act, Contractor will, and hereby does, immediately upon full payment thereof, assign, transfer and otherwise convey to the State, irrevocably and in perpetuity, throughout the universe, all right, title and interest in and to the Deliverables, including all intellectual property rights therein, and grants to the State, the right to use, for the State's internal business purposes, any Contractor Technology included in the Deliverables in connection with its use of the Deliverables. Except for the foregoing license grant, Contractor or its licensors retain all rights in and to all Contractor Technology. "Contractor Technology" means all works of authorship, materials, information and other intellectual property created prior to or independently of the performance of the Services, or created by Contractor or its subcontractors as a tool for their use in performing the Services, plus any modifications or enhancements thereto and derivative works based thereon. Any pre-existing software applications of Contractor, whether embedded in a Deliverable or stand alone, will be independently licensed. The State may grant Contractor a license in work made for hire under the terms of the applicable SOW.

11. **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 15 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. If the State requests replacement of a subcontractor, the State must provide written reasonable detail outlining the reasons for the replacement request. Unless the State has requested replacement of the subcontractor due to performance issues, the State agrees to negotiate an equitable adjustment in schedule or other terms that may be affected by the State's required replacement. Any subcontractors listed on the Contractor's second tier bid response will be deemed permitted subcontractors. Further, any affiliate of Contractor will be deemed a permitted subcontractor.

12. **Staffing.** The State's Contract Administrator may require Contractor to remove or reassign personnel by providing a notice to Contractor. If the State removes or reassigns personnel, the State must provide written reasonable detail outlining the reasons for the removal or reassignment request. Unless the State has requested removal or reassignment due to performance issues, the State agrees to negotiate an equitable adjustment in schedule or other terms that may be affected by the State's required removal or reassignment.

13. **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, unless the Contractor's employee has refused to undergo the background check or share the results of such background check, in which case that individual will not be allowed to perform services under the contract. Contractor is responsible for all costs associated with the requested background checks. The State, in its sole discretion, may also perform background checks. The scope of the background check can be adjusted under the applicable second tier SOW.

14. **Assignment.** Contractor may not assign or otherwise transfer any of its rights, or delegate or otherwise transfer any of its obligations or performance, under this Contract, in each case whether voluntarily, involuntarily, by operation of law or otherwise, without the State's prior written consent. However, Contractor may assign the Contract to an Affiliate so long as (a) Contractor provides the State thirty (30) days prior written notice of such assignment, (b) the Affiliate is adequately capitalized and can provide adequate assurances that the Affiliate can perform the Contract and applicable Statement of Work, and (c) a Change Notice will be executed by the parties if necessary under DTMB contracting policies. No delegation or other transfer will relieve Contractor of any of its obligations or performance under this Contract. Any purported assignment, delegation, or transfer in violation of this **Section 13** is void**.**

15. **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.

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

17. **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 do not meet the requirements set forth in the applicable second tier SOW, 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 24, Termination for Cause.
Unless otherwise set forth in the second tier SOW, 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 acceptable Contract Activities to the State in accordance with the requirements of the second tier SOW. 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. If the State cancels the order in whole or in part, the State shall be entitled to the cost of the Deliverable that was rejected, including any costs paid by the State for associated Services. Notwithstanding the foregoing provisions of this section, acceptance of this Contract activity should be deemed given by the State if the State has not delivered to Contractor a notice of deficiencies for such Contract activity prior to the expiration of any period of the State services thereof as set forth in this section.

18. **Delivery. Reserved**

19. **Risk of Loss and Title. Reserved**

20. **Warranty Period**. - **Reserved**

21. **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. If payment for undisputed amounts is not received within forty-five (45) days of receipt of an invoice Contractor may suspend or terminate the Services upon fifteen (15) days' notice if not paid within such notice period. The State is exempt from State sales tax for direct purchases and may be exempt from federal excise tax, if Services purchased under this Agreement are for the State's exclusive use. Notwithstanding the foregoing, all prices are inclusive of taxes, and Contractor is responsible for all sales, use and excise taxes, and any other similar taxes, duties and charges of any kind imposed by any federal, state, or local governmental entity on any amounts payable by the State under this Contract.

The State has the right to withhold payment of any disputed amounts until the parties agree as to the validity of the disputed amount, provided that the State timely pays all undisputed amounts owing to Contractor. The State will notify Contractor of any dispute in writing, within a reasonable time, not to exceed 45 days of the State's receipt of invoice and agrees to work together with the Contractor through the dispute resolution process set forth herein. 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 the second tier SOW, 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.

22. **Liquidated Damages.** Liquidated damages, if applicable, will be assessed as described in the applicable second tier SOW.

23. **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 within 5 business days detailing the suspension. Contractor must comply with the stop work order upon receipt. Within 30 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. Upon resumption the parties may execute a change order to address the impact of such suspension on fees, schedule, staffing, and scope.

24. **Termination for Cause.** The State may terminate this Contract for cause, in whole or in part, if Contractor, as determined by the State: (a) violates the State's security standards; (b) becomes insolvent, petitions for bankruptcy court proceedings, or has an involuntary bankruptcy proceeding filed against it by any creditor; (c) breaches any of its material duties or obligations; or (d) fails to cure a breach within 30 calendar days. 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, subject to the limitation of liability set forth in Section 29.

25. **Termination for Convenience.** The State may terminate this Contract in whole or in part without penalty and for any reason with 15 calendar days prior written notice, 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 26, Transition Responsibilities. If the State terminates this Contract for convenience, the State will pay for completed and accepted work and all reasonable costs, as determined by the State, for State approved Transition Responsibilities. Contractor may terminate the applicable second tier SOW if it is legally obligated to, by giving the State 30 calendar days prior written notice.

26. **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 60 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,

subject to payment of fees for such Transition Responsibilities as agreed to by the parties, in writing and in accordance with the pricing set forth in the second tier SOW; (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.

27. **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 third party claims: (a) any infringement, misappropriation, or other violation of any intellectual property right or other right of any third party; and (b) any bodily injury, death, or damage to real or tangible personal property occurring to the extent 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).
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.

28. **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 the infringing deliverable.

Notwithstanding the preceding paragraph of this Section 28, Contractor will have no liability or obligation regarding infringement arising solely from (a) use of equipment, software, commodity, or service in a manner other than its intended use as reflected in the applicable second tier SOW, (b) Contractor's compliance with any designs, specifications, or instructions of the State, (c) modifications to equipment, software, commodity, or service by the State without the prior knowledge and approval of Contractor, or (d) the State's failure to use modifications or enhancements made available at no cost to the State by Contractor, provided Contractor has given the State written notice and such modification or enhancement will not negatively impact the equipment, software, commodity, or service.

29. Limitation of Liability.

i. Disclaimer of Damages. NEITHER PARTY WILL BE LIABLE, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY OR BY STATUTE OR OTHERWISE, FOR ANY CLAIM RELATED TO OR ARISING UNDER THIS CONTRACT FOR CONSEQUENTIAL, INCIDENTAL, INDIRECT, PUNITIVE, OR SPECIAL DAMAGES, INCLUDING WITHOUT LIMITATION LOST PROFITS AND LOST BUSINESS OPPORTUNITIES.

ii. Limitation of Liability. IN NO EVENT WILL EITHER PARTY'S AGGREGATE LIABILITY TO THE OTHER PARTY UNDER THIS CONTRACT, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY OR BY STATUTE OR OTHERWISE, FOR ANY CLAIM RELATED TO OR ARISING UNDER THIS CONTRACT, EXCEED THE MAXIMUM AMOUNT OF FEES SPECIFIED IN THE APPLICABLE SECOND TIER SOW.

iii. Exceptions. Subsections **Error! Reference source not found.** (Disclaimer of Damages) and ii (Limitation of Liability) above, shall not apply to:

1. Contractor's obligation to indemnify under **Section 27** of this Contract**;**
2. Contractor's obligations under **Section 32** of this Contract (State Data), subject to the Security Breach Indemnity Cap; and
3. damages arising from either party's recklessness, bad faith, or intentional misconduct.

30. Disclosure of Litigation, or Other Proceeding. Contractor must notify the State within 14 calendar days of receiving notice of any litigation, arbitration, or other proceeding that directly affects the Contract (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.

31. Reserved

32. 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 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 five (5) business days 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. Contractor's backup and recovery obligations will be set forth in the applicable second tier SOW.

e. Loss of Data. In the event of any act, error or omission, negligence, misconduct, or breach by Contractor 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 after the State provides contact information for the affected individuals; 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 third party claims (except for fines levied against the State), 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. Notwithstanding anything to the contrary in this section, Contractor's aggregate liability under this section shall be the greater of (i) $1,000,000.00, or (ii) the value of the second tier SOW.

33. **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 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. If Contractor notifies the State of a legal obligation to disclose confidential information, and the State provides written consent, the Contractor may disclose such confidential information to a third party. Further, the parties may disclose confidential information in accordance to the terms of the applicable second tier SOW.

c. Cooperation to Prevent Disclosure of Confidential Information. Each party must use reasonable 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 promptly 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 section 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.

34. **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) protect 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) provide for the proper disposal of State Data; and (e) require 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 at http://www.michigan.gov/dtmb/0,4568,7-150-56355_56579_56755---,00.html.
    b. 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 with 15 days prior written notice. 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 60 calendar days of receipt, an audit questionnaire provided by the State regarding Contractor's data privacy and information security program. To the extent the State uses a third party auditor, the State will not use a direct competitor of the Contractor, unless it is unreasonable not to.
    c. Audit Findings. With respect to State Data, Contractor must implement any required safeguards as identified by the State or by any audit of Contractor's data privacy and information security program.
    d. 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.

35. **Reserved**

36. **Reserved**

37. **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 (other than Contractor's internal costs to provide services) related to the Contract through the term of the Contract and for 4 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 (other than Contractor's internal costs to provide services) 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.

38.
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 knowingly 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 signatory has the authority to enter into this Contract; (f) to Contractor's knowledge, 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 (g) to Contractor's knowledge, 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 material breach of this Section is considered a material breach of this Contract, which entitles the State to terminate this Contract under Section 24, Termination for Cause.

TO THE EXTENT PERMITTED BY LAW, THE CONTRACTOR EXPRESSLY DISCLAIMS ANY WARRANTIES NOT LISTED HEREIN.

39. **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.

40. **Compliance with Laws.** The parties must comply with all federal, state and local laws, rules and regulations in connection with this Contract.

41. **Reserved**

42. **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.

43. **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.

44. **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.

45. **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.

46. **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.

47. **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.

48. **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.

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

50. **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 Contract terms (b) the applicable second tier SOW and (c) any other exhibits.

51. **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.

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

53. **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.

54. **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**").