



**STATE OF MICHIGAN**  
**ENTERPRISE PROCUREMENT**  
 Department of Technology, Management, and Budget  
 525 W. ALLEGAN ST., LANSING, MICHIGAN 48913  
 P.O. BOX 30026 LANSING, MICHIGAN 48909

**CONTRACT CHANGE NOTICE**

Change Notice Number **3**

to

Contract Number **071B3200065**

<b>CONTRACTOR</b>	Truven Health Analytics LLC
	100 Phoenix Drive
	Ann Arbor, MI 48108
	Eric Poston
	502-603-8146
	eric.poston@us.ibm.com`
	*****7923

<b>STATE</b>	<b>Program Manager</b>	Anthony Estell	DTMB
		517-284-4555	
		estella@michigan.gov	
	<b>Contract Administrator</b>	Jillian Yeates	DTMB
		(517) 284-7019	
		yeatesj@michigan.gov	

**CONTRACT SUMMARY**

**HEALTH INSURANCE DATABASE MANAGEMENT SYSTEM CONSULTING**

INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW
January 1, 2013	December 31, 2015	2 - 1 Year	December 31, 2017
PAYMENT TERMS		DELIVERY TIMEFRAME	
Net 45		N/A	
ALTERNATE PAYMENT OPTIONS			EXTENDED PURCHASING
<input type="checkbox"/> P-Card <input type="checkbox"/> Direct Voucher (DV) <input type="checkbox"/> Other			<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No

**MINIMUM DELIVERY REQUIREMENTS**

N/A

**DESCRIPTION OF CHANGE NOTICE**

OPTION	LENGTH OF OPTION	EXTENSION	LENGTH OF EXTENSION	REVISED EXP. DATE
<input type="checkbox"/>		<input type="checkbox"/>		
CURRENT VALUE	VALUE OF CHANGE NOTICE	ESTIMATED AGGREGATE CONTRACT VALUE		
\$1,447,000.00	\$0.00	\$1,447,000.00		

**DESCRIPTION**

Effective January 11, 2017, the Contractor's name has been changed from Truven Health Analytics Inc. to Truven Health Analytics LLC. Please note that the Contractor's primary contact has been changed to Eric Poston.

All other terms, conditions, specifications, and pricing remain the same. Per contractor and agency agreement and DTMB Procurement approval.



# STATE OF MICHIGAN ENTERPRISE PROCUREMENT

Department of Technology, Management, and Budget  
525 W. ALLEGAN ST., LANSING, MICHIGAN 48913  
P.O. BOX 30026 LANSING, MICHIGAN 48909

## CONTRACT CHANGE NOTICE

Change Notice Number 2  
to  
Contract Number 071B3200065

<b>CONTRACTOR</b>	Truven Health Analytics Inc.
	100 Phoenix Drive
	Ann Arbor, MI 48108
	Tom Weatherup
	312-533-3340
	tom.weatherup@truvenhealth.com
	*****7923

<b>STATE</b>	Program Manager	Anthony Estell	DTMB
		517-284-4555	
		estella@michigan.gov	
	Contract Administrator	Jillian Yeates	DTMB
		517-284-7019	
		yeatesj@michigan.gov	

CONTRACT SUMMARY				
<b>DESCRIPTION:</b> Health Insurance Database Management System Consulting				
INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW	
January 1, 2013	December 31, 2015	2 - 1 Year	December 31, 2016	
PAYMENT TERMS		DELIVERY TIMEFRAME		
Net 45		N/A		
ALTERNATE PAYMENT OPTIONS			EXTENDED PURCHASING	
<input type="checkbox"/> P-card <input type="checkbox"/> Direct Voucher (DV) <input type="checkbox"/> Other			<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
MINIMUM DELIVERY REQUIREMENTS				
N/A				
DESCRIPTION OF CHANGE NOTICE				
OPTION	LENGTH OF OPTION	EXTENSION	LENGTH OF EXTENSION	REVISED EXP. DATE
<input checked="" type="checkbox"/>	1 Year	<input type="checkbox"/>		December 31, 2017
CURRENT VALUE		VALUE OF CHANGE NOTICE	ESTIMATED AGGREGATE CONTRACT VALUE	
\$1,254,000.00		\$193,000.00	\$1,447,000.00	

**DESCRIPTION:** Effective June 21, 2016:

1. This Contract is exercising the final option year and is increased by \$193,000.00. The revised contract expiration date is December 31, 2017.
2. The pricing on this contract is hereby increased per the attached revised Attachment A.
3. Section 1.022, D (8) is amended as follows:  
"Provide transportation, lodging, meals, and conference fee for two MPSERS designees to attend an appropriate annual users' conference;"  
Please note that the Program Manager has been changed to Anthony Estell and the Contractor's address has been changed. All other terms, conditions, and specifications remain the same. Per vendor and agency agreement, DTMB Procurement approval, and State Administrative Board Approval on June 21, 2016.

**Revised Attachment A Pricing**

<b>Deliverables</b>	<b>1.022D (Fixed Price) – MPSERS only</b>
Year 1	\$325,000
Year 2	\$325,000
Year 3	\$325,000
Year 4	\$325,000
Year 5	\$334,750

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

**CHANGE NOTICE NO. 1**  
 to  
**CONTRACT NO. 071B3200065**  
 between  
**THE STATE OF MICHIGAN**  
 and

NAME & ADDRESS OF CONTRACTOR	PRIMARY CONTACT	EMAIL
Truven Health Analytics Inc. 777 E Eisenhower Parkway Ann Arbor MI, 48108	Tom Weatherup	tom.weatherup@truvenhealth.com
	PHONE	CONTRACTOR'S TAX ID NO. (LAST FOUR DIGITS ONLY)
	312-533-3340	7923

STATE CONTACTS	AGENCY	NAME	PHONE	EMAIL
PROGRAM MANAGER / CCI	DTMB	Kerrie Vanden Bosch	517-636-6104	vandenboschk@michigan.gov
CONTRACT ADMINISTRATOR	DTMB	Jillian Yeates	(517) 284-7019	yeatesj@michigan.gov

CONTRACT SUMMARY			
<b>DESCRIPTION:</b> Health Insurance Database Management System Consulting			
INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW
January 1, 2013	December 31, 2015	2 - 1 Year	December 31, 2015
PAYMENT TERMS		DELIVERY TIMEFRAME	
NET 45		N/A	
ALTERNATE PAYMENT OPTIONS			EXTENDED PURCHASING
<input type="checkbox"/> P-card <input type="checkbox"/> Direct Voucher (DV) <input type="checkbox"/> Other			<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
MINIMUM DELIVERY REQUIREMENTS			
N/A			

DESCRIPTION OF CHANGE NOTICE				
EXERCISE OPTION?	LENGTH OF OPTION	EXERCISE EXTENSION?	LENGTH OF EXTENSION	REVISED EXP. DATE
<input checked="" type="checkbox"/>	1 Year	<input type="checkbox"/>		December 31, 2016
CURRENT VALUE		VALUE OF CHANGE NOTICE	ESTIMATED AGGREGATE CONTRACT VALUE	
\$1,254,000.00		\$ 0.00	\$1,254,000.00	

**DESCRIPTION:** Effective October 15, 2015, the first option year on this Contract is hereby exercised. The revised Contract expiration date is December 31, 2016. Please note the Contract Administrator has been changed to Jillian Yeates. All other terms, conditions, specifications and pricing remain the same. Per vendor and agency agreement and DTMB Procurement approval.

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

**NOTICE  
 OF  
 CONTRACT NO. 071B3200065**  
 between  
**THE STATE OF MICHIGAN**  
 and

NAME & ADDRESS OF CONTRACTOR:	PRIMARY CONTACT	EMAIL
Truven Health Analytics Inc. 777 E. Eisenhower Parkway Ann Arbor, MI 48108	Tom Weatherup	<a href="mailto:tom.weatherup@truvenhealth.com">tom.weatherup@truvenhealth.com</a>
	TELEPHONE	CONTRACTOR #, MAIL CODE
	(312) 533-3340	

STATE CONTACTS	AGENCY	NAME	PHONE	EMAIL
CONTRACT COMPLIANCE INSPECTOR:	DTMB	Kerrie Vanden Bosch	(517) 636-6104	VandenboschK@michigan.gov
BUYER:	DTMB	Angela Buren	(517) 373-0325	Burena@michigan.gov

CONTRACT SUMMARY:			
DESCRIPTION:			
Health Insurance Database Management System and Consulting			
INITIAL TERM	EFFECTIVE DATE	INITIAL EXPIRATION DATE	AVAILABLE OPTIONS
3 Years	01/01/2013	12/31/2015	Two, One-Year
PAYMENT TERMS	F.O.B	SHIPPED	SHIPPED FROM
Net 45	Shipment	N/A	N/A
ALTERNATE PAYMENT OPTIONS:			AVAILABLE TO MiDEAL PARTICIPANTS
<input type="checkbox"/> P-card <input type="checkbox"/> Direct Voucher (DV) <input type="checkbox"/> Other			<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO
MINIMUM DELIVERY REQUIREMENTS:			
N/A			
MISCELLANEOUS INFORMATION:			
N/A			
ESTIMATED CONTRACT VALUE AT TIME OF EXECUTION:			<b>\$1,254,000.00</b>

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

**CONTRACT NO. 071B3200065**  
 between  
**THE STATE OF MICHIGAN**  
 and

NAME & ADDRESS OF CONTRACTOR:	PRIMARY CONTACT	EMAIL
Truven Health Analytics Inc. 777 E. Eisenhower Parkway Ann Arbor, MI 48108	Tom Weatherup	<a href="mailto:tom.weatherup@truvenhealth.com">tom.weatherup@truvenhealth.com</a>
	TELEPHONE	CONTRACTOR #, MAIL CODE
	(312) 533-3340	

STATE CONTACTS	AGENCY	NAME	PHONE	EMAIL
CONTRACT COMPLIANCE INSPECTOR:	DTMB	Kerrie Vanden Bosch	(517) 636-6104	VandenboschK@michigan.gov
BUYER:	DTMB	Angela Buren	(517) 373-0325	Burena@michigan.gov

CONTRACT SUMMARY:			
<b>DESCRIPTION:</b>			
Health Insurance Database Management System and Consulting			
INITIAL TERM	EFFECTIVE DATE	INITIAL EXPIRATION DATE	AVAILABLE OPTIONS
3 Years	01/01/2013	12/31/2015	Two, One-Year
PAYMENT TERMS	F.O.B	SHIPPED	SHIPPED FROM
Net 45	Shipment	N/A	N/A
<b>ALTERNATE PAYMENT OPTIONS:</b>			<b>AVAILABLE TO MiDEAL PARTICIPANTS</b>
<input type="checkbox"/> P-card <input type="checkbox"/> Direct Voucher (DV) <input type="checkbox"/> Other			<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO
<b>MINIMUM DELIVERY REQUIREMENTS:</b>			
N/A			
<b>MISCELLANEOUS INFORMATION:</b>			
N/A			
<b>ESTIMATED CONTRACT VALUE AT TIME OF EXECUTION:</b>			<b>\$1,254,000.00</b>

**THIS IS NOT AN ORDER:** This Contract Agreement is awarded on the basis of our inquiry bearing the solicitation #07112200193. Orders for delivery may be issued directly by the Department of Technology, Management and Budget through the issuance of a Purchase Order Form.

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**FOR THE CONTRACTOR:**

**Truven Health Analytics Inc.**

Firm Name

Authorized Agent Signature

Authorized Agent (Print or Type)

Date

---

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**FOR THE STATE:**

Signature

**Jeff Brownlee, Chief Procurement Officer**

Name/Title

**DTMB, Procurement**

Enter Name of Agency

Date



**STATE OF MICHIGAN**  
**Department of Technology Management and Budget**  
**DTMB-Procurement**

CONTRACT #071B3200065  
Health Insurance Database Management System and Consulting  
For the Department of Technology, Management and Budget

Buyer Name: Angela Buren  
Telephone Number: (517) 373-0325  
E-Mail Address: Burena@michigan.gov



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**ATTACHMENTS:**

Attachment A – Pricing

Attachment B – Organizational Chart



## DEFINITIONS

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

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

**Aggregate Data** means data that has been collected and grouped by a common element.

**Analytical Software** means a software program developed as a means for the user to access and run analysis on the database created by the Contractor as part of this Contract.

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

**Bad Data** means data which is incomplete, missing fields, inaccurate, not timely, and/or not reliable.

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

**Business Day** (whether capitalized or not) must mean any day other than a Saturday, Sunday or State-recognized legal holiday from 8:00am EST through 5:00pm EST unless otherwise stated.

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

**Center for Medicare and Medicaid Services (CMS)** means the federal agency that administers and oversees the Medicare and Medicaid programs

**Claim** means an electronic record of an interaction between a healthcare professional and a health insurance provider in which the healthcare professional submits a request for payment for services rendered.

**Claims Processors** means the Retirement System's hospital/medical, PBM, HMO, Vision and Dental plan administrators.

**Coinsurance** means the percentage portion of the charge for Covered Services which must be paid by Members pursuant to the Plan Design.

**Contract Holder** means a Retirant, pension beneficiary or COBRA participant who satisfies all of the eligibility criteria necessary to receive hospital/medical coverage through the Plan Sponsor.

**Contractor** means the organization selected to provide Database Management Services and consulting services to the MPSERS.

**Conversion** means to transform data from one format to another.

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

**Customer Assistance** or **Customer Service** means assistance provided to MPSERS staff and/or contractors in regards to software, analysis, and product support.

**Customized Programming** means modifications or updates made to the existing programming to allow for new features and/or functionality.

**Dashboard Reporting** means a group of reports that can be run after each database update.

**Data Communications** means communications with the intent to assess quality of data or relay information regarding database uploads.

**Data Format** means the structure that data will be transmitted in. The data format will need to be agreed upon by both Contractor and Client



**Database Management System or DBMS** means a system that provides all aspects of data management including standardization, conversion, and interpretation of data as well as supports consulting services and analysis. It includes the data, databases and all other tangible and intangible information used, developed or provided by Contractor pursuant to the Contract, including without limitation, operating systems, application programs, applications, database systems and, for purposes of this Contract, Third Party Licensor products, together with all related specifications, documentation, methodologies, techniques, ideas and formulas and any enhancements, formatting and modifications thereto.

**Data Modeling** means a tool that utilizes actuarial models and claims-based sampling to simulate plan design scenarios and to forecast changes in migration and cost.

**Data Quality** means data that is timely and accurate to the best of the Contractor's knowledge that can be used with confidence.

**Days** mean calendar days unless otherwise specified.

**Deductible** means a predetermined amount of money that a Member must pay before coverages are eligible for payment as stated in the Plan Sponsor's Plan Design.

**Dental Plan** means a plan that covers services provided in dentists' offices to sound natural teeth.

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

**Disruption Analysis** means the identification of members who are obtaining their medical care from Providers that are not participating in the new Contactor's Provider Network and any proposed remediation to mitigate the disruption.

**DTMB** means the Michigan Department of Technology, Management & Budget.

**Episode** means a patient's complete course of care for a single illness or condition.

**Fixed Price** means the cost of services and products combined as a single and pre-determined administrative fee, inclusive of any/all implementation costs.

**Good Data** means data which has all necessary fields, has correct and accurate information, and that can be accurately and completely uploaded.

**Health Maintenance Organization (HMO)** means a type of managed care organization (MCO) that provides a form of health care coverage that is fulfilled through hospitals, doctors, and other providers with which the HMO has a contract.

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

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

**Key Personnel** means any Personnel identified in **Section 1.031** as Key Personnel; also see Section 2.062.

**Master Health Care Plan** means the self-funded hospital and medical coverage, which is administered by a third party and is offered to Retirants and Eligible Dependents.

**Medicare Advantage (MA) Plan** means any plan which is available to Medicare beneficiaries and that is operated by an entity that has been approved by CMS

**Medicare Supplemental Plan** means a health coverage plan that provides payment for services, in addition to what Medicare pays, after Medicare has made its payment.

**Member** means each Contract Holder and eligible Dependent.

**MPSERS** means the Michigan Public School Employees Retirement System.



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

**ORS** means Office of Retirement Services.

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

**Plan** means the Plan Sponsor's program which provides hospital and medical coverage to Members.

**Plan Design** means a description of the Plan Sponsor's Plan related to medical coverages and limitations thereto, including the framework of policies, interpretations, rules, practices and procedures applicable to such coverages, required and signed by the Plan Sponsor and submitted to Contractor.

**Plan Sponsor** means the Office of Retirement Services.

**Plan Year** means a calendar year, from January 1<sup>st</sup> through December 31<sup>st</sup>.

**Preferred Provider Organization (PPO)** means a network of providers under contract with the Contractor to provide healthcare services to Members.

**Prescription Drug Plan (PDP)** means the stand-alone Medicare Part D Prescription drug coverage provided for Medicare recipients.

**Product Support** means a service provided by a retailer of the product that provides the end user with a resource or information regarding the product or service.

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

**Provider** means a health care professional or a health care facility that provides medical services to Members.

**Purge** means to remove data from the active database that is older than the agreed upon length of active data storage.

**Reconciliation** means to look at any variances or anomalies in data and to come to an agreeable solution for providing quality data or improving the quality of the data.

**Retirant** means a member who retires with a retirement allowance payable from reserves of the Retirement System (The Public School Employees Retirement Act, MCL 38.1307(4)).

**RFP** means a Request for Proposal used to solicit proposals for services.

**Self-Insured** means that the Plan Sponsor has financial responsibility for providing the funds used to pay Eligible Claims.

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

**Solicitation Materials** means materials produced by the Contractor that describe the Plan to Members or eligible individuals.

**Standardization** means the process of establishing a single format for all data received by the Contractor to allow for ease of interpretation of data from multiple vendors.

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

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



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

**Third Party Licensor** means any third party vendor from whom Contractor has acquired, or may acquire, the right to license, sublicense or distribute software, data, documentation or other information for use in or in connection with the System.

**Transparency** means the complete and full access available to the Plan Sponsor to all information necessary to determine and verify that the Contractor has met all terms of this Contract.

**Trend Analysis** means providing objective criteria for identifying and quantifying excessive variation.

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

**Unit Price** means the cost or price of an item of supply based on the unit of issue.

**Upload** means to transfer data from one source to another.

**Validation** means to check for reasonability and accuracy of data.

**Vision Plan** means a plan to provide for vision screening, eye glasses and contact lenses.

**Web-based services** means analysis and informational tools provided via the internet.

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

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



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

### **1.010 Project Identification**

#### **1.011 Project Request**

This Contract is for a database management system (DBMS) partner and related health insurance data management consulting services on an as-needed basis for the Department of Technology, Management and Budget (DTMB), Office of Retirement Services (ORS). No payment will be made to the Contractor during the implementation period.

#### **1.012 Background**

The Michigan Public School Employees Retirement System (MPSERS) began actively addressing the rising costs of funding health benefits for retirees in the late 1980s. The efforts began with a move to self-insuring the plan to allow greater flexibility and engaging consulting services to assist in strategic planning. As of December 31, 2011, there were 141,257 contracts for health care plan coverage. This translates to 222,961 covered individuals, including dependents (65% are Medicare age). Non-Medicare Members currently participate in a commercial PPO, administered by Blue Cross Blue Shield of Michigan and a prescription drug plan, administered by Catalyst Rx. Medicare eligible members currently participate in a Medicare Advantage plan and Part D (PDP) for prescription drugs (sponsored and administered by Medco Health Solutions).

92% of the plans members currently participate in a self-insured national PPO administered by Blue Cross Blue Shield of Michigan (BCBSM) and the self-insured prescription drug coverage (non-Medicare or PDP). The remaining 8% participate in a Health Maintenance Organization (HMO) program involving three HMO's in the State of Michigan. Dental and vision services are provided by Delta Dental and EyeMed respectively. As of December 31, 2011, there were 151,752 contracts for dental and vision coverage. This translates to 243,381 covered individuals, including dependents.

### **1.020 Scope of Work and Deliverables**

#### **1.021 Scope**

The Contractor must provide a database management system (DBMS). This system must receive historical and ongoing claims data from the above-described plan and allow the MPSERS and its DBMS vendor (hereafter referred to as "data management vendor") to perform on-line, interactive, information retrieval and manipulation. The DBMS must also provide normative data for comparisons and provide extensive reporting features, as described below. The State may, at some future date, be interested in adding other State departments.

#### **1.022 Work and Deliverables**

Contractor must provide all deliverables, services, and staff, and must do all things necessary for or incidental to, the performance of the work set forth below:

##### **(A) Database Services**

- (1) Contractor must standardize, convert, and accurately interpret data from multiple administrators or claims systems.
- (2) Contractor must maintain inpatient and outpatient (hospital, physician, laboratory, pharmacy, dental, vision, and other professional) data for self-funded and HMO record-specific detail to provide an audit trail back to the original claim and be able to:
  - a. Integrate enrollment data with claims data; e.g., x-number of hospital admissions per 1000 plan participants
  - b. Reconstruct inpatient cases to include lagging claims
  - c. Track individual patient and family experience
  - d. Standardize data so that clinical, financial, and provider information can be compared to norms
  - e. Perform comprehensive data quality edits and provide progress for use in conducting ongoing program improvement



- f. Classify claims data for analysis according to clinical classifications, including:
  - 1) Inpatient: major diagnostic categories (MDC) and diagnosis-related groups (DRG)
  - 2) Outpatient: MDC and procedure groups
- g. Aggregate all claims consisting of outpatient surgical episode to comparison with inpatient surgical episodes
- h. Track a patient's complete health care experience by linking inpatient, outpatient , pharmacy, dental, and vision claims
- i. Create episodes of illness or injury, taking in all fields of claim data appropriate to condition treatments

Contractor must meet the stated Requirements in the table below:

Requirement
A. Database Services
1. Standardize, convert, interpret data accurately
2. Maintain all Plan data detail

**(B) Analytical Software**

- (1) Contractor's software must accept all fields provided by health care contractors.
- (2) Contractor's software must have capability to build calculated fields upon request of Plan Sponsor.
- (3) In addition, Contractor's software must have the ability to generate, at a minimum, the following:
  - a. Report on total cost of care by clinical condition where prevalence, severity, risk and compliance to best practices are demonstrated;
  - b. Utilization and cost trend analysis for specified health care service;
  - c. Hospital and physician comparisons on a case-mix-adjusted basis;
  - d. Breakdowns of claims by line of service should include, but not be limited to the following (health care, retail and mail order pharmacy, HMO's and clinical groupings; e.g., MDC, DRG, procedure group);
  - e. Provider and patient specific analysis;
  - f. Evaluation of carrier/claims payer performance on claims payment, pricing policies, and coordination of benefits recovery;
  - g. Advanced sub setting allowing specific time dependent analysis around a study population;
  - h. Quality of care screening reports, including readmission patterns, outliers, deaths, complications of treatment, and discretionary admission of medical and surgical cases;
  - i. Analysis of overall frequency of inpatient and outpatient surgeries, appropriateness of site of care, and total cost of both inpatient and outpatient surgeries;
  - j. Distribution of Medical net and Prescription Drug net payments, days, admissions, services, etc., by family or individual;
  - k. Listing of cases which meet criteria for classification as "catastrophic";



- l. Statistics (mean, median, standard deviation, etc.) for user-selected data;
- m. Capability to produce custom (ad hoc) reports from information in the existing database(s) without additional programming;
- n. Ability to model appropriate costs for HMO enrollees using indemnity plan data;
- o. Ability to build an HMO database and to analyze HMO data in a manner similar to indemnity plan data;
- p. Ability to model indemnity, point-of-service, and HMO plan designs using advanced actuarial models and claims-based sampling techniques to simulate plan design scenarios and forecast changes in migration and cost. Ability to project migration in response to changes in contributions and plan design. Ability to model changes in Medicare rules and impact on retiree cost trend analysis;
- q. Provide database tool for the analysis of medical and prescription drug information by episode of care where expenditures and utilization of health care resources are analyzed by specific time windows with severity, risk and compliance to best practices;
- r. Provide database tool for automatic audit of medical and prescription drug claims information and provide detailed synopsis of anomalies and/or outliers involving quality assurance;
- s. Claims-based benefit simulation and modeling capability to evaluate impact of different benefit designs, including various changes in inflation, demographics, utilization, deductible levels, co-insurance, fourth-quarter carrier provisions, and out-of-pocket maximums;
- t. Ability to display inpatient and outpatient claims data for groups and individuals;
- u. Ability to display medical and prescription drugs in-network and out-of-network data for an individual together as well as separately;
- v. System-user capability to access and report on any selected subset of the total database, with the ability to define subsets by any selected field or combination of fields;
- w. Aggregate link medical data, HMO data and prescription drug data plan types and for groups such as Non Medicare and Medicare;
- x. Ability to design ad-hoc distribution reports of any measure by individual, claim, etc.;
- y. Provide statistically valid normative data on retired populations in Michigan and across the United States on-line for comparison purposes and to standardize norms for demographic differences by making age-sex adjustments and illness burden;
- z. Ability to create customized norms as requested by MPSERS;

Contractor must meet the stated Requirements in the table below:

Requirement
B. Analytical Software
1. Acceptance of all fields
2. Calculated Fields
3. Reporting Capabilities (a-z)

**(C) Additional Technical Requirements**

- (1) Contractor's database must have, at a minimum:



- a. A PC-based user interface, compatible with Microsoft Windows, providing non-programming, menu-driven access to data and reporting capabilities, fully integrated with an on-line help system;
- b. The ability to download data to consultant-furnished graphics and spreadsheet packages;
- c. The ability to process multiple-year claims transactions (at least 60 months) and generate reports for the user within a reasonable time frame; i.e., 30 minutes for 90% of reports;
- d. The ability to combine data from multiple plan sponsors for purposes of collaborative projects;
- e. The ability to download database extracts of unlimited size in delimited plain text format; and
- f. The ability to store in the active database at least five years of historical Plan Sponsor data.

Contractor must meet the stated Requirements in the table below:

Requirement
C. Additional Technical Requirements
1. Database Minimum Requirement
a. Window-compatible PC-based user interface
b. Graphics and Spreadsheet packages
c. Ability to process multi-year claim transactions
d. Ability to combine data from multiple plan sponsors
e. Ability to download database extracts of unlimited size
f. Ability to retain and store at least 5 years of historical data

**(D) Contractor Responsibilities—Fixed Price**

The following services and elements must be provided by the Contractor to the Plan Sponsor at a fixed cost:

- (1) Design and create the MPSERS database(s) and provide analytical software and additional technical requirements:
  - a. Enter existing MPSERS enrollment and claims data into the database(s)
  - b. The Contractor must be able to accept data in the format specified in the MPSERS contracts with its claims processors; and
  - c. Historical data from the incumbent Database Management System goes back to the 1990's. The Contractor must receive data tapes from the incumbent Database Management System and convert and save all the historical data into its own proprietary database format. This will permit future uploading for purposes of studies of data, which go back further than is maintained in the current, on-line database. The historical data are in the Blue Cross Blue Shield of Michigan's standard record layout. The historical data must be converted and saved at the beginning of this Contract so that they can be available in a few days when the need for a study arises.
- (2) Update the database(s) with current data at least monthly. Purged data must be saved in database format for easy retrieval;
- (3) Provide periodic proactive analysis demonstrating newly identified medical or prescription drug issues;



- (4) Provide real time access to the information management system to MPSERS' health insurance consultant;
- (5) Data communications costs are to be included in this Contract;
- (6) Provide initial training on the information management system to a maximum of 12 MPSERS staff and consultants during the life of this Contract. Also, provide additional training as new releases of the software are implemented;
- (7) Provide up to 10 days of annual on-site, hands-on assistance during the course of this Contract. Alternatively, MPSERS may choose to send staff/consultants to the Contactor's location for up to 10 days of annual personalized assistance;
- (8) Provide transportation, lodging, meals, and conference fee for one MPSERS designee to attend an appropriate annual users' conference;
- (9) Provide telephone support 8:00 a.m. to 5:00 p.m. at no additional cost;
- (10) Provide a master health care plan management report annually (50 copies). The report must be updated periodically to monitor additional health care initiatives authorized by the MPSERS Board and to focus on areas of special interest in the health care plan;
- (11) Provide a comprehensive analysis of the annual management report. Provide the MPSERS with analysis and suggestions on future steps;
- (12) Provide presentations to MPSERS' Board as needed;
- (13) Provide a list of standard reports with each update of the database(s), which show performance and trends. Standard reports should include, but not be limited to the following areas:
  - a. Net pay per participant
  - b. Inpatient and outpatient payments
  - c. Basic indicators of inpatient price and use
  - d. Trend analysis for key geographic or divisional subgroups
  - e. Performance in focus areas
- (14) Provide a dashboard with each update of the database(s), which shows performance and trend analysis. Dashboards should include, but not be limited to the following areas:
  - a. Net pay per participant
  - b. Inpatient and outpatient payments
  - c. Basic indicators of inpatient price and use
  - d. Trend analysis for key geographic or divisional subgroups
  - e. Performance in focus areas
- (15) Provide a quarterly report with each update of the database(s), which shows performance and trends. The quarterly report should include, but not be limited to the following areas:
  - a. Net pay per participant
  - b. Inpatient and outpatient payments
  - c. Basic indicators of inpatient price and use
  - d. Trend analysis for key geographic or divisional subgroups
  - e. Performance in focus areas
- (16) Besides the initial creation of the database(s), the Contractor must accommodate any changes in vendor partnerships that result from the re-contracting of those services currently provided to the Plan Sponsor, as outlined in section 1.012. Additionally, the Contractor must accommodate up to three additional carve-out components that result from the addition of any vendor partners;
- (17) Provide education and networking opportunities for advanced users of all database tools to discuss best practices.



**(E) Contractor Responsibilities—Unit Price**

The Contractor must:

- (1) Provide consulting, research, and report-writing services, within the context of the information management system, on an as-needed basis. These services would be in addition to those outlined in Section D—Fixed Price;
- (2) Provide any new stand-alone, health-related information management system software products to the Plan Sponsor at a cost congruent with and not to exceed the lowest price paid by any other Contractor client; and
- (3) Have the ability to make data submissions on behalf of Plan Sponsor for the purpose of maximizing federal reinsurance monies;
- (4) The Plan Sponsor may become interested in providing—through this Contract--its members a secure, interactive, web-based pricing tool that would allow them to comparison shop, the purpose of which is to aide them in achieving the lowest net cost in the lowest cost setting for medical services.
- (5) The Plan Sponsor may become interested in utilizing a tool designed to identify potential fraud, waste, and abuse.
- (6) Plan Sponsor may wish to engage Contractor in a full audit of any of their vendor partners.
- (7) Plan Sponsor may wish to include the data of other State health plans in the future. This data would be provided directly to Contractor by the relevant vendors, but would be handled under the control of Plan Sponsor and this Contract.

**(F) Time Frames**

- (1) Historical data being given to Contractor must be converted to Contractor's database format and available for use within 120 calendar days from the receipt of the data. If the incumbent database management vendor is awarded this Contract, the database(s) and all user functions required by this Contract must be in place and available for use within 30 days of the Contract start date.
- (2) Data must be uploaded and purged from the database(s) at one month intervals. Monthly data updates must be on-line within 30 calendar days of receipt of good data from the Plan Sponsor's health plan administrators. Data reconciliation meetings must occur with the health plan administrators within five days of the data transfer, the results of which must be reported back to the Plan Sponsor.
- (3) Contractor must agree to meet with the Plan Sponsor and representatives of its health plan administrators upon request, the purpose of which is to identify, discuss, and resolve any data sharing issues that are occurring.
- (4) Continuous liaising and collaboration is expected between the Contractor, Plan Sponsor, and the Plan Sponsor's health care administrators throughout this Contract year to ensure data issues occurring outside of the monthly meetings are being resolved expeditiously and to the satisfaction of all parties.

Contractor must meet the stated Requirements in the table below:

Requirement
F. Time Frames
1. Data available for use within 120 days
2. Monthly upload and purge
3. Agreement to meet with Plan Sponsor and other vendors to discuss data quality issues
4. Continuous liaising and collaboration with Plan Sponsor and other vendors

**(G) Performance Guarantees/Service Level Agreements (SLAs)**



Contractor must ensure that the SLAs are quantifiable, subject to the Plan Sponsor approval. The Plan Sponsor reserves the right to independently verify the Contractor’s assessment of its performance, either by Plan Sponsor employee or third party review. Disagreements regarding SLAs will be subject to Dispute Resolution (§2.190).

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

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

<b>SLA #1</b>
Account Management and Vendor Collaboration Satisfaction Survey
<b>Guarantee</b>
Plan Sponsor must complete an annual satisfaction survey using a mutually-agreed upon survey tool, respective to the preceding year. In addition to measuring Account Management Satisfaction, this survey will also be used to a) gauge Contractor’s partnership in data sharing with the Plan Sponsor’s health care vendor partners and b) collaboratively identify areas of organizational or process improvement. A 5-point scale will be utilized. Contractor’s account management team must score at least 4.00. A score under 3.50 will result in an additional penalty.
<b>Penalties</b>
Failure to achieve a score of 4.00 or higher will result in a financial penalty being assessed at 2.0% of Contractor’s annual fixed price. For every .50 scored below 4.00, an additional .5% will be assessed.

<b>SLA #2</b>
Timely Resolution of Data That is Not Timely, Accurate and Reliable (Bad Data)
<b>Guarantee</b>
Contractor must fully resolve---or, in the absence of a resolution, must have a project plan for resolution—which addresses any issues with the receipt data that is not timely, accurate and reliable from Plan Sponsor’s health care vendor partners within 30 days of receipt of such data. This must be measured on a monthly basis. Any project plan developed in the absence of full resolution must be approved by the Plan Sponsor.
<b>Penalty</b>
The metrics for measurement of this SLA will be collaboratively determined by Plan Sponsor and Contractor. Failure to meet this requirement will result in a financial penalty being assessed at 3.0% of the monthly fixed price.



<b>SLA #3</b>
Timely Availability of Data to Plan Sponsor
<b>Guarantee</b>
Pursuant to Section F, Contractor must ensure timely, accurate and reliable data is available for use by Plan Sponsor within 30 days of receipt.  Contractor must measure its performance on this SLA on a monthly basis and report on it monthly.
<b>Penalty</b>
Failure to ensure Plan Sponsor data is available for use by Plan Sponsor within 30 days of receipt will result in a financial penalty of 3.0% of the monthly fixed price.

**1.030 Roles and Responsibilities**

**1.031 Contractor Staff, Roles, and Responsibilities**

Pursuant to § 2.060, *Contract Management*, Contractor **must** provide sufficient staffing resources for completion of the tasks and services as defined in this Contract. Contractor must also provide a detailed description of its company accreditations, licenses, and requirements listed below, and a detailed description of its key personnel, additional staff, and its subcontractors as related to this project.

**(A) Key Personnel / Staff:**

Key Personnel who are NOT located in Michigan must be made available to the Plan Sponsor at Contractor’s Michigan office (or at another location in Michigan as approved by Plan Sponsor or CCI, as designated by the State) on a reasonably frequent basis (as determined or scheduled by Plan Sponsor or CCI, as designated by the State). The Michigan staffed office shall have assigned not less than the following key-staff:

**(1) One Senior Account Manager (SAM)’s role and responsibilities must include:**

- Serving as the single point of accountability for all projects initiated between the Contractor and the Plan Sponsor for management of the Contractor’s Account Team;
- Availability, at a location in Michigan, to be determined by the Plan Sponsor and availability upon Plan Sponsor’s request;
- Authority to make day-to-day decisions regarding service issues;
- Ability within the Contractor’s organization to obtain the use of Contractor’s resources, both direct and indirect, as are necessary; and
- Designating one Back-up to the SAM, whose role and responsibilities must include: involvement in account management and who is capable of performing the responsibilities of the SAM in the event that the SAM is unavailable; the Contractor’s SAM back-up must be familiar with all specific requirements of this Contract; this back-up role may be filled by another key-staff person.

**(2) Other Key Staff:** These positions are also considered Key Personnel for purposes of this Contract and will work under the direction of the Plan Sponsor:

- A Senior Consultant, responsible for the oversight of the Contractor’s Database Management Consultants;
- Database Management Analysts; and
- Programmers.

**(B) Additional Staff:**

Additional staff assignments are not considered key, but their roles are considered an integral compliment to the roles, responsibilities, and abilities of the Contractor’s key-staff.

**(C) Subcontractor(s):**

Sub-Contractors are not considered key, but their roles are considered an integral compliment to the roles, responsibilities, and abilities of the Contractor’s key-staff and additional staff. Pursuant to § 2.044, *Subcontracting*



by Contractor, delegation of any portion of the services is subject to written, pre-approval by the State, and Contractor must include a detailed description of these roles and responsibilities in its project / implementation plan.

See Attachment B Organizational Chart for Key Personnel.

### **1.040 Contract Implementation & Reporting**

#### **1.041 Contract Implementation Management**

(A) Contractor will carry out this project under the direction and control of the Plan Sponsor; all transition and implementation plans are subject to the approval of the Plan Sponsor.

(B) There must be continuous liaising with the Contractor during this Contract and particularly during any process involving the Plan Sponsor. The Plan Sponsor will meet with the Contractor's SAM for initial review of the Contractor's work plan prior to beginning service delivery and then periodically, as needed. The meetings will provide for reviewing progress and providing necessary guidance to the Contractor regarding the timing of activities and solving issues or problems.

(C) The project plan (also referred to as the *implementation-plan or the work plan*) **and** the corresponding timeline or calendar must describe in detail: all major project milestones; the anticipated outcomes for each milestone; and, all tasks, duties, or responsibilities associated with implementation, including a detailed discussion on how to manage a possible transition process from the prior or to the next vendor.

(D) The plan must also describe in detail not less than:

- (1) Contractor's project management approach, and discuss in detail any identifying methods, tools, and processes, intended for oversight and completion of the implementation, including an updated description of its staff, roles, and responsibilities.
- (2) Full disclosure for any anticipated issues or changes, when they may arise, and how those will be conveyed to the appropriate State staff, and include suggested resolution or risk mitigation strategies.
- (3) A detailed protocol and escalation communication process; the plan must also provide escalation procedures and contact information for issues that may need to be escalated above the SAM.
- (4) Any additional information or considerations for implementation to begin January 1, 2013, and continue thereafter for the life of this Contract.
- (5) Key Personnel/Staff must not deviate from Contractor's response to Section 1.031 of the RFP.

(E) At minimum, the following milestones and timeframe(s) will be accomplished and completed by Contractor, unless otherwise approved by the State's CCI (via the implementation plan, etc.):

- (1) Final draft of Implementation / Work Plan submitted to CCI and Plan Sponsor within five State-business days from the Contract start date;
- (2) Final approval of Implementation Plan obtained from CCI 14-days after submission of draft;
- (3) Implementation and service begins January 1, 2013.

#### **1.042 Reports/Data**

See Section 1.022 (B) (3) h., m., and x.; (C) (1) c.; and (D) (13)

### **1.050 Acceptance**

#### **1.051 Criteria**

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

- Timeliness of meetings and report completion;
- Adherence to Implementation Plan and approved calendar;



- Adherence to Performance Guarantees / Service Level Agreements; and
- Demonstrated considerable knowledge and expertise of health care administration programs.

## **1.052 Final Acceptance – Deleted/Not Applicable**

### **1.060 Contract Pricing**

#### **1.061 Contract Pricing**

**(A)** Contractor will be paid according to the approved *Price Quotation* (forms) in **Attachment A**.

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

**(C)** Pursuant to the State of Michigan's Administrative Guide *POLICY 0420: Travel*, issued January 1, 1994, "Travel: Classified and non-classified State employees who incur travel expenses in connection with official State business, and authorized non-State employee consultants, contractors, and advisors, shall comply with the Standardized Travel Regulations and associated rate schedules for reimbursement of applicable travel expenses, pursuant to the *Michigan Constitution, Article XI, §5* and *The Management and Budget Act, Public Act 431 of 1984, as amended, §217*.

For authorized Services and Price List, see Attachment A.

#### **1.062 Price Term**

Prices quoted are firm for the entire length of this Contract.

#### **1.063 Tax Excluded from Price**

(a) Sales Tax: For purchases made directly by the State, the State is exempt from State and Local Sales Tax. Prices must not include the taxes. Exemption Certificates for State Sales Tax will be furnished upon request.

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

#### **1.064 Holdback – Deleted/Not Applicable**

#### **1.070 Additional Requirements – Deleted/Not Applicable**



## **Article 2, Terms and Conditions**

### **2.000 Contract Structure and Term**

#### **2.001 Contract Term**

This Contract is for a period of three years beginning January 1, 2013 through December 31, 2015. All outstanding Purchase Orders must also expire upon the termination (cancellation for any of the reasons listed in **Section 2.150**) of this Contract, unless otherwise extended under this Contract. Absent an early termination for any reason, Purchase Orders issued but not expired, by the end of this Contract's stated term, will remain in effect for the balance of the fiscal year for which they were issued.

#### **2.002 Options to Renew**

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

#### **2.003 Legal Effect**

Contractor must show acceptance of the Contract by signing two (2) copies of the Contract and returning them to the Contract Administrator. The Contractor must not proceed with the performance of the work to be done under the Contract, including the purchase of necessary materials, until both parties have signed the Contract to show acceptance of its terms, and the Contractor receives a Contract release/purchase order that authorizes and defines specific performance requirements.

Except as otherwise agreed in writing by the parties, the State assumes no liability for costs incurred by Contractor or payment under the Contract, until Contractor is notified in writing that the Contract (or Change Order) has been approved by the State Administrative Board (if required), approved and signed by all the parties, and a Purchase Order against the Contract has been issued.

#### **2.004 Attachments & Exhibits**

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

#### **2.005 Ordering**

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

#### **2.006 Order of Precedence**

(a) The Contract, including any Statements of Work and Exhibits, to the extent not contrary to the Contract, each of which is incorporated for all purposes, constitutes the entire agreement between the parties with respect to the subject matter and supersedes all prior agreements, whether written or oral, with respect to the subject matter and as additional terms and conditions on the purchase order must apply as limited by **Section 2.005**.

(b) In the event of any inconsistency between the terms of the Contract and a Statement of Work, the terms of the Statement of Work will take precedence (as to that Statement of Work only); provided, however, that a Statement of Work may not modify or amend the terms of the Contract, which may be modified or amended only by a formal Contract amendment.

#### **2.007 Headings**

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



### **2.008 Form, Function & Utility**

If the Contract is for use of more than one State agency and if the Deliverable/Service does not meet the form, function, and utility required by that State agency, that agency may, subject to State purchasing policies, procure the Deliverable/Service from another source.

### **2.009 Reformation and Severability**

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

### **2.010 Consents and Approvals**

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

### **2.011 No Waiver of Default**

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

### **2.012 Survival**

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

## **2.020 Contract Administration**

### **2.021 Issuing Office**

The Contract is issued by the Department of Technology, Management and Budget, DTMB-Procurement and the Office of Retirement Services (collectively, including all other relevant State of Michigan departments and agencies, the "State"). DTMB-Procurement is the sole point of contact in the State with regard to all procurement and contractual matters relating to the Contract. DTMB-Procurement **is the only State office authorized to change, modify, amend, alter or clarify the prices, specifications, terms and conditions of the Contract.** The Contractor Administrator within DTMB-Procurement for the Contract is:

Angela Buren, Buyer  
Procurement  
Department of Technology Management and Budget  
Mason Bldg., 2nd Floor  
PO Box 30026  
Lansing, MI 48909  
Email: [Burena@michigan.gov](mailto:Burena@michigan.gov)  
Phone: (517) 373-0325

### **2.022 Contract Compliance Inspector**

After DTMB-Procurement receives the properly executed Contract, it is anticipated that the Director of DTMB-Procurement, in consultation with the Office of Retirement Services, will direct the person named below, or any other person so designated, to monitor and coordinate the activities for the Contract on a day-to-day basis during its term. However, monitoring of the Contract implies **no authority to change, modify, clarify, amend, or otherwise alter the prices, terms, conditions and specifications of the Contract as that authority is retained by DTMB Procurement.** The CCI for the Contract is:

Kerrie Vanden Bosch  
Business Process Owner  
Office of Retirement Services--Benefit Plan Design  
7150 Harris Drive  
Dimondale, MI 48221  
Email: [VandenboschK@michigan.gov](mailto:VandenboschK@michigan.gov)  
Phone: (517) 636-6104  
Fax: (517) 322-6145



## **2.023 Project Manager – Deleted/Not Applicable**

### **2.024 Change Requests**

The State reserves the right to request, from time to time, any changes to the requirements and specifications of the Contract and the work to be performed by the Contractor under the Contract. During the course of ordinary business, it may become necessary for the State to discontinue certain business practices or create Additional Services/Deliverables. At a minimum, to the extent applicable, the State would like the Contractor to provide a detailed outline of all work to be done, including tasks necessary to accomplish the services/deliverables, timeframes, listing of key personnel assigned, estimated hours for each individual per task, and a complete and detailed cost justification.

If the Contractor does not so notify the State, the Contractor has no right to claim thereafter that it is entitled to additional compensation for performing that service or providing that deliverable.

#### **Change Requests:**

- (a) By giving Contractor written notice within a reasonable time, the State must be entitled to accept a Contractor proposal for Change, to reject it, or to reach another agreement with Contractor. Should the parties agree on carrying out a Change, a written Contract Change Notice must be prepared and issued under the Contract, describing the Change and its effects on the Services and any affected components of the Contract (a "Contract Change Notice").
- (b) No proposed Change may be performed until the proposed Change has been specified in a duly executed Contract Change Notice issued by the DTMB-Procurement.
- (c) If the State requests or directs the Contractor to perform any activities that Contractor believes constitute a Change, the Contractor must notify the State that it believes the requested activities are a Change before beginning to work on the requested activities. If the Contractor fails to notify the State before beginning to work on the requested activities, then the Contractor waives any right to assert any claim for additional compensation or time for performing the requested activities. If the Contractor commences performing work outside the scope of the Contract and then ceases performing that work, the Contractor must, at the request of the State, retract any out-of-scope work that would adversely affect the Contract.

### **2.025 Notices**

Any notice given to a party under the Contract must be deemed effective, if addressed to the State contact as noted in Section 2.021 and the Contractor's contact as noted on the cover page of the contract, upon: (i) delivery, if hand delivered; (ii) receipt of a confirmed transmission by facsimile if a copy of the notice is sent by another means specified in this Section; (iii) the third Business Day after being sent by U.S. mail, postage pre-paid, return receipt requested; or (iv) the next Business Day after being sent by a nationally recognized overnight express courier with a reliable tracking system.

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

### **2.026 Binding Commitments**

Representatives of Contractor must have the authority to make binding commitments on Contractor's behalf within the bounds set forth in the Contract. Contractor may change the representatives from time to time upon written notice.

### **2.027 Relationship of the Parties**

The relationship between the State and Contractor is that of client and independent contractor. No agent, employee, or servant of Contractor or any of its Subcontractors must be deemed to be an employee, agent or servant of the State for any reason. Contractor is solely and entirely responsible for its acts and the acts of its agents, employees, servants and Subcontractors during the performance of the Contract.

### **2.028 Covenant of Good Faith**

Each party must act reasonably and in good faith. Unless stated otherwise in the Contract, the parties must not unreasonably delay, condition, or withhold the giving of any consent, decision, or approval that is either requested or reasonably required of them in order for the other party to perform its responsibilities under the Contract.

### **2.029 Assignments**

(a) Neither party may assign the Contract, or assign or delegate any of its duties or obligations under the Contract, to any other party (whether by operation of law or otherwise), without the prior written consent of the other party; provided, however, that the State may assign the Contract to any other State agency, department, division or department without the prior consent of Contractor and Contractor may assign the Contract to an affiliate so long as the affiliate is adequately capitalized and can provide adequate assurances that the affiliate can perform the requirements of the Contract.



The State may withhold consent from proposed assignments, subcontracts, or novations when the transfer of responsibility would operate to decrease the State's likelihood of receiving performance on the Contract or the State's ability to recover damages.

(b) Contractor may not, without the prior written approval of the State, assign its right to receive payments due under the Contract. If the State permits an assignment, the Contractor is not relieved of its responsibility to perform any of its contractual duties, and the requirement under the Contract that all payments must be made to one (1) entity continues.

(c) If the Contractor intends to assign the Contract or any of the Contractor's rights or duties under the Contract, the Contractor must notify the State in writing at least 90 days before the assignment. The Contractor also must provide the State with adequate information about the assignee within a reasonable amount of time before the assignment for the State to determine whether to approve the assignment.

## **2.030 General Provisions**

### **2.031 Media Releases**

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

### **2.032 Contract Distribution**

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

### **2.033 Permits**

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

### **2.034 Website Incorporation**

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

### **2.035 Future Bidding Preclusion**

Contractor acknowledges that, to the extent the Contract involves the creation, research, investigation or generation of a future RFP, it may be precluded from bidding on the subsequent RFP. The State reserves the right to disqualify any bidder if the State determines that the bidder has used its position (whether as an incumbent Contractor, or as a Contractor hired to assist with the RFP development, or as a Vendor offering free assistance) to gain a competitive advantage on the RFP

### **2.036 Freedom of Information**

All information in any proposal submitted to the State by Contractor and the Contract is subject to the provisions of the Michigan Freedom of Information Act, 1976 PA 442, MCL 15.231, et seq (the "FOIA").

### **2.037 Disaster Recovery**

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



## **2.040 Financial Provisions**

### **2.041 Fixed Prices for Services/Deliverables**

Each Statement of Work or Purchase Order issued under the Contract must specify (or indicate by reference to the appropriate Contract Exhibit) the firm, fixed prices for all Services/Deliverables, and the associated payment milestones and payment amounts. The State may make progress payments to the Contractor when requested as work progresses, but not more frequently than monthly, in amounts approved by the Contract Administrator, after negotiation. Contractor must show verification of measurable progress at the time of requesting progress payments.

### **2.042 Adjustments for Reductions in Scope of Services/Deliverables**

If the scope of the Services/Deliverables under any Statement of Work issued under the Contract is subsequently reduced by the State, the parties must negotiate an equitable reduction in Contractor's charges under such Statement of Work commensurate with the reduction in scope.

### **2.043 Services/Deliverables Covered**

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

### **2.044 Invoicing and Payment – In General**

- (a) Each Statement of Work issued under the Contract must list (or indicate by reference to the appropriate Contract Exhibit) the prices for all Services/Deliverables, equipment and commodities to be provided, and the associated payment milestones and payment amounts.
- (b) Each Contractor invoice must show details as to charges by Service/Deliverable component and location at a level of detail reasonably necessary to satisfy the State's accounting and charge-back requirements. Invoices for Services performed on a time and materials basis must show, for each individual, the number of hours of Services performed during the billing period, the billable skill/labor category for such person and the applicable hourly billing rate. Prompt payment by the State is contingent on the Contractor's invoices showing the amount owed by the State minus any holdback amount to be retained by the State in accordance with **Section 1.064**.
- (c) Correct invoices will be due and payable by the State, in accordance with the State's standard payment procedure as specified in 1984 PA 279, MCL 17.51 et seq., within 45 days after receipt, provided the State determines that the invoice was properly rendered.
- (d) All invoices should reflect actual work done. Specific details of invoices and payments will be agreed upon between the CCI and the Contractor.
- (e) The specific payment schedule for any Contract(s) entered into, as the State and the Contractor(s) must mutually agree upon. The schedule must show payment amount and must reflect actual work done by the payment dates, less any penalty cost charges accrued by those dates. As a general policy, statements must be forwarded to the designated representative by the 15th day of the following month.

### **2.045 Pro-ration**

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

### **2.046 Antitrust Assignment**

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

### **2.047 Final Payment**

The making of final payment by the State to Contractor does not constitute a waiver by either party of any rights or other claims as to the other party's continuing obligations under the Contract, nor will it constitute a waiver of any claims by one (1) party against the other arising from unsettled claims or failure by a party to comply with the Contract, including claims for Services and Deliverables not reasonably known until after acceptance to be defective or substandard. Contractor's acceptance of final payment by the State under the Contract must constitute a waiver of all claims by Contractor against the State for payment under the Contract, other than those claims previously filed in writing on a timely basis and still unsettled.



## **2.048 Electronic Payment Requirement**

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

## **2.050 Taxes**

### **2.051 Employment Taxes**

Contractors are expected to collect and pay all applicable federal, state, and local employment taxes.

### **2.052 Sales and Use Taxes**

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

## **2.060 Contract Management**

### **2.061 Contractor Personnel Qualifications**

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

### **2.062 Contractor Key Personnel**

(a) The Contractor must provide the CCI with the names of the Key Personnel.

(b) Key Personnel must be dedicated as defined in the Statement of Work to the Project for its duration in the applicable Statement of Work with respect to other individuals designated as Key Personnel for that Statement of Work.

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

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



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

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

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

**2.064 Contractor Personnel Location**

All staff assigned by Contractor to work on the Contract must perform their duties either primarily at Contractor’s offices and facilities or at State facilities. Without limiting the generality of the foregoing, Key Personnel must, at a minimum, spend at least the amount of time on-site at State facilities as indicated in the applicable Statement of Work. Subject to availability, selected Contractor personnel may be assigned office space to be shared with State personnel.

**2.065 Contractor Identification**

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

**2.066 Cooperation with Third Parties**

Contractor must cause its personnel and the personnel of any Subcontractors to cooperate with the State and its agents and other contractors including the State’s Quality Assurance personnel. As reasonably requested by the State in writing, the Contractor must provide to the State’s agents and other contractors reasonable access to Contractor’s Project personnel, systems and facilities to the extent the access relates to activities specifically associated with the Contract and will not interfere or jeopardize the safety or operation of the systems or facilities. The State acknowledges that Contractor’s time schedule for the Contract is very specific and must not unnecessarily or unreasonably interfere with, delay, or otherwise impede Contractor’s performance under the Contract with the requests for access.

**2.067 Contractor Return of State Equipment/Resources**

The Contractor must return to the State any State-furnished equipment, facilities, and other resources when no longer required for the Contract in the same condition as when provided by the State, reasonable wear and tear excepted.

**2.068 Contract Management Responsibilities**

The Contractor must assume responsibility for all contractual activities, whether or not that Contractor performs them. Further, the State considers the Contractor to be the sole point of contact with regard to contractual matters, including payment of any and all charges resulting from the anticipated Contract. If any part of the work is to be subcontracted, the Contract must include a list of Subcontractors, including firm name and address, contact person and a complete description of work to be subcontracted. The State reserves the right to approve Subcontractors and to require the Contractor to replace Subcontractors found to be unacceptable. The Contractor is totally responsible for adherence by the Subcontractor to all provisions of the Contract. Any change in Subcontractors must be approved by the State, in writing, prior to such change.

**2.070 Subcontracting by Contractor**

**2.071 Contractor Full Responsibility**

Contractor has full responsibility for the successful performance and completion of all of the Services and Deliverables. The State will consider Contractor to be the sole point of contact with regard to all contractual matters under the Contract, including payment of any and all charges for Services and Deliverables.



### **2.072 State Consent to Delegation**

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

### **2.073 Subcontractor Bound to Contract**

In any subcontracts entered into by Contractor for the performance of the Services, Contractor must require the Subcontractor, to the extent of the Services to be performed by the Subcontractor, to be bound to Contractor by the terms of the Contract and to assume toward Contractor all of the obligations and responsibilities that Contractor, by the Contract, assumes toward the State. The State reserves the right to receive copies of and review all subcontracts, although Contractor may delete or mask any proprietary information, including pricing, contained in such contracts before providing them to the State. The management of any Subcontractor is the responsibility of Contractor, and Contractor must remain responsible for the performance of its Subcontractors to the same extent as if Contractor had not subcontracted such performance. Contractor must make all payments to Subcontractors or suppliers of Contractor. Except as otherwise agreed in writing by the State and Contractor, the State will not be obligated to direct payments for the Services other than to Contractor. The State's written approval of any Subcontractor engaged by Contractor to perform any obligation under the Contract will not relieve Contractor of any obligations or performance required under the Contract.

### **2.074 Flow Down**

Except where specifically approved in writing by the State on a case-by-case basis, Contractor must flow down the obligations in **Sections 2.031, 2.060, 2.100, 2.110, 2.120, 2.130, 2.200** in all of its agreements with any Subcontractors.

### **2.075 Competitive Selection**

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

## **2.080 State Responsibilities**

### **2.081 Equipment**

The State must provide only the equipment and resources identified in the Statements of Work and other Contract Exhibits.

### **2.082 Facilities**

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

## **2.090 Security**

### **2.091 Background Checks**

On a case-by-case basis, the State may investigate the Contractor's personnel before they may have access to State facilities and systems. The scope of the background check is at the discretion of the State and the results will be used to determine Contractor personnel eligibility for working within State facilities and systems.



The investigations will include Michigan State Police Background checks (ICHAT) and may include the National Crime Information Center (NCIC) Finger Prints. Proposed Contractor personnel may be required to complete and submit an RI-8 Fingerprint Card for the NCIC Finger Print Check. Any request for background checks will be initiated by the State and will be reasonably related to the type of work requested.

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

### **2.092 Security Breach Notification**

If the Contractor breaches this Section, the Contractor must (i) promptly cure any deficiencies and (ii) comply with any applicable federal and state laws and regulations pertaining to unauthorized disclosures. Contractor and the State will cooperate to mitigate, to the extent practicable, the effects of any breach, intrusion, or unauthorized use or disclosure. Contractor must report to the State, in writing, any use or disclosure of Confidential Information, whether suspected or actual, other than as provided for by the Contract within 10 days of becoming aware of the use or disclosure or the shorter time period as is reasonable under the circumstances.

### **2.093 PCI Data Security Standard**

(a) Contractors that process, transmit or store credit/debit cardholder data, must adhere to the Payment Card Industry (PCI) Data Security Standards. The Contractor is responsible for the security of cardholder data in its possession. The data may only be used to assist the State or for other uses specifically authorized by law.

(b) The Contractor must notify the CCI (within 72 hours of discovery) of any breaches in security where cardholder data has been compromised. In that event, the Contractor must provide full cooperation to the Visa, MasterCard, Discover and state Acquirer representative(s), and/or a PCI approved third party to conduct a thorough security review. The Contractor must make the forensic report available within two weeks of completion. The review must validate compliance with the current PCI Data Security Standards for protecting cardholder data.

(c) The Contractor must properly dispose of cardholder data, in compliance with DTMB policy, when it is no longer needed. The Contractor must continue to treat cardholder data as confidential upon contract termination.

(d) The Contractor must provide the CCI with an annual Attestation of Compliance (AOC) or a Report on Compliance (ROC) showing the contractor is in compliance with the PCI Data Security Standards. The Contractor must notify the CCI of all failures to comply with the PCI Data Security Standard.

## **2.100 Confidentiality**

### **2.101 Confidentiality**

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

### **2.102 Protection and Destruction of Confidential Information**

The State and Contractor must each use at least the same degree of care to prevent disclosing to third parties the Confidential Information of the other as it employs to avoid unauthorized disclosure, publication, or dissemination of its own confidential information of like character, but in no event less than reasonable care. Neither Contractor nor the State will (i) make any use of the Confidential Information of the other except as contemplated by the Contract, (ii) acquire any right in or assert any lien against the Confidential Information of the other,



or (iii) if requested to do so, refuse for any reason to promptly return the other party's Confidential Information to the other party. Each party must limit disclosure of the other party's Confidential Information to employees and Subcontractors who must have access to fulfill the purposes of the Contract. Disclosure to, and use by, a Subcontractor is permissible where (A) use of a Subcontractor is authorized under the Contract, (B) the disclosure is necessary or otherwise naturally occurs in connection with work that is within the Subcontractor's scope of responsibility, and (C) Contractor obligates the Subcontractor in a written Contract to maintain the State's Confidential Information in confidence. At the State's request, any employee of Contractor and of any Subcontractor having access or continued access to the State's Confidential Information may be required to execute an acknowledgment that the employee has been advised of Contractor's and the Subcontractor's obligations under this Section and of the employee's obligation to Contractor or Subcontractor, as the case may be, to protect the Confidential Information from unauthorized use or disclosure.

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

### **2.103 Exclusions**

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

### **2.104 No Implied Rights**

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

### **2.105 Respective Obligations**

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

## **2.110 Records and Inspections**

### **2.111 Inspection of Work Performed**

The State's authorized representatives must at all reasonable times and with 10 days prior written request, have the right to enter Contractor's premises, or any other places, where the Services are being performed, and must have access, upon reasonable request, to interim drafts of Deliverables or work-in-progress. Upon 10 Days prior written notice and at all reasonable times, the State's representatives must be allowed to inspect, monitor, or otherwise evaluate the work being performed and to the extent that the access will not reasonably interfere or jeopardize the safety or operation of the systems or facilities. Contractor must provide all reasonable facilities and assistance for the State's representatives.

### **2.112 Examination of Records**

(a) For seven (7) years after the Contractor provides any work under the Contract (the "Audit Period"), the State may examine and copy any of Contractor's books, records, documents and papers pertinent to establishing Contractor's compliance with the Contract and with applicable laws and rules. The State must notify the Contractor 20 days before examining the Contractor's books and records. The State does not have the right to review any information deemed confidential by the Contractor to the extent access would require the confidential information to become publicly available. This provision also applies to the books, records, accounts, documents and papers, in print or electronic form, of any parent, affiliated or subsidiary organization of Contractor, or any Subcontractor of Contractor performing services in connection with the Contract.

(b) In addition to the rights conferred upon the State in paragraph (a) of this section and in accordance with MCL 18.1470, DTMB or its designee may audit the Contractor to verify compliance with the Contract. The financial and accounting records associated with the Contract shall be made available to DTMB or its designee and the auditor general,



upon request, during the term of the Contract and any extension of the Contract and for 3 years after the later of the expiration date or final payment under the Contract.

### **2.113 Retention of Records**

Contractor must maintain at least until the end of the Audit Period, all pertinent financial and accounting records (including time sheets and payroll records, information pertaining to the Contract, and to the Services, equipment, and commodities provided under the Contract) pertaining to the Contract according to generally accepted accounting principles and other procedures specified in this Section. Financial and accounting records must be made available, upon request, to the State at any time during the Audit Period. If an audit, litigation, or other action involving Contractor's records is initiated before the end of the Audit Period, the records must be retained until all issues arising out of the audit, litigation, or other action are resolved or until the end of the Audit Period, whichever is later.

### **2.114 Audit Resolution**

If necessary, the Contractor and the State will meet to review each audit report promptly after issuance. The Contractor must respond to each audit report in writing within 30 days from receipt of the report, unless a shorter response time is specified in the report. The Contractor and the State must develop, agree upon and monitor an action plan to promptly address and resolve any deficiencies, concerns, and/or recommendations in the audit report.

### **2.115 Errors**

(a) If the audit demonstrates any errors in the documents provided to the State, then the amount in error must be reflected as a credit or debit on the next invoice and in subsequent invoices until the amount is paid or refunded in full. However, a credit or debit may not be carried for more than four invoices. If a balance remains after four (4) invoices, then the remaining amount will be due as a payment or refund within 45 days of the last quarterly invoice that the balance appeared on or termination of the Contract, whichever is earlier.

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

## **2.120 Warranties**

### **2.121 Warranties and Representations**

The Contractor represents and warrants:

(a) It is capable in all respects of fulfilling and must fulfill all of its obligations under the Contract. The performance of all obligations under the Contract must be provided in a timely, professional, and workman-like manner and must meet the performance and operational standards required under the Contract.

(b) The Contract Appendices, Attachments and Exhibits identify the equipment and software and services necessary for the Deliverable(s) to perform and Services to operate in compliance with the Contract's requirements and other standards of performance.

(c) It is the lawful owner or licensee of any Deliverable licensed or sold to the State by Contractor or developed by Contractor under the Contract, and Contractor has all of the rights necessary to convey to the State the ownership rights or licensed use, as applicable, of any and all Deliverables. None of the Deliverables provided by Contractor to the State under the Contract, nor their use by the State, will infringe the patent, copyright, trade secret, or other proprietary rights of any third party.

(d) If, under the Contract, Contractor procures any equipment, software or other Deliverable for the State (including equipment, software and other Deliverables manufactured, re-marketed or otherwise sold by Contractor under Contractor's name), then in addition to Contractor's other responsibilities with respect to the items in the Contract, Contractor must assign or otherwise transfer to the State or its designees, or afford the State the benefits of, any manufacturer's warranty for the Deliverable.

(e) The Contract signatory has the power and authority, including any necessary corporate authorizations, necessary to enter into the Contract, on behalf of Contractor.

(f) It is qualified and registered to transact business in all locations where required.



(g) Neither the Contractor nor any affiliates, nor any employee of either, has, must have, or must acquire, any contractual, financial, business, or other interest, direct or indirect, that would conflict in any manner or degree with Contractor's performance of its duties and responsibilities to the State under the Contract or otherwise create an appearance of impropriety with respect to the award or performance of this Agreement. Contractor must notify the State about the nature of the conflict or appearance of impropriety within two (2) days of learning about it.

(h) If any of the certifications, representations, or disclosures made in the Contractor's original bid response change after the Contract start date, the Contractor must report those changes immediately to DTMB-Procurement.

**2.122 Warranty of Merchantability**

Goods provided by Contractor under this agreement must be merchantable. All goods provided under the Contract must be of good quality within the description given by the State, must be fit for their ordinary purpose, must be adequately contained and packaged within the description given by the State, must conform to the agreed upon specifications, and must conform to the affirmations of fact made by the Contractor or on the container or label.

**2.123 Warranty of Fitness for a Particular Purpose**

When the Contractor has reason to know or knows any particular purpose for which the goods are required, and the State is relying on the Contractor's skill or judgment to select or furnish suitable goods, there is a warranty that the goods are fit for such purpose.

**2.124 Warranty of Title**

Contractor must, in providing goods to the State, convey good title in those goods, whose transfer is right and lawful. All goods provided by Contractor must be delivered free from any security interest, lien, or encumbrance of which the State, at the time of contracting, has no knowledge. Goods provided by Contractor, under the Contract, must be delivered free of any rightful claim of any third person by of infringement or the like.

**2.125 Equipment Warranty – Deleted/Not Applicable**

**2.126 Equipment to be New**

If applicable, all equipment provided under the Contract by Contractor must be new where Contractor has knowledge regarding whether the equipment is new or assembled from new or serviceable used parts that are like new in performance or has the option of selecting one or the other. Equipment that is assembled from new or serviceable used parts that are like new in performance is acceptable where Contractor does not have knowledge or the ability to select one or other, unless specifically agreed otherwise in writing by the State.

**2.127 Prohibited Products**

The State will not accept salvage, distressed, outdated or discontinued merchandise. Shipping of such merchandise to any State agency, as a result of an order placed against the Contract, is considered default by the Contractor of the terms and conditions of the Contract and may result in cancellation of the Contract by the State. The brand and product number offered for all items must remain consistent for the term of the Contract, unless DTMB-Procurement has approved a change order pursuant to **Section 2.024**.

**2.128 Consequences For Breach**

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

**2.130 Insurance**

**2.131 Liability Insurance**

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

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



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

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

The insurers selected by Contractor must have an A.M. Best rating of A or better, or as otherwise approved in writing by the State, or if the ratings are no longer available, with a comparable rating from a recognized insurance rating agency. All policies of insurance required in the Contract must be issued by companies that have been approved to do business in the State. See [www.michigan.gov/deleg](http://www.michigan.gov/deleg).

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

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

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

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

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

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

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

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

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

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

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

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



7. Professional Liability (Errors and Omissions) Insurance with the following minimum coverage: \$3,000,000.00 each occurrence and \$3,000,000.00 annual aggregate.

8. Fire and Personal Property Insurance covering against any loss or damage to the office space used by Contractor for any reason under the Contract, and the equipment, software and other contents of the office space, including without limitation, those contents used by Contractor to provide the Services to the State, up to its replacement value, where the office space and its contents are under the care, custody and control of Contractor. The policy must cover all risks of direct physical loss or damage, including without limitation, flood and earthquake coverage and coverage for computer hardware and software. The State must be endorsed on the policy as a loss payee as its interests appear.

### **2.132 Subcontractor Insurance Coverage**

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

### **2.133 Certificates of Insurance and Other Requirements**

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

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

### **2.140 Indemnification**

#### **2.141 General Indemnification**

To the extent permitted by law, the Contractor must indemnify, defend and hold harmless the State from liability, including all claims and losses, and all related costs and expenses (including reasonable attorneys' fees and costs of investigation, litigation, settlement, judgments, interest and penalties), accruing or resulting to any person, firm or corporation that may be injured or damaged by the Contractor in the performance of the Contract and that are attributable to the negligence or tortious acts of the Contractor or any of its Subcontractors, or by anyone else for whose acts any of them may be liable.

#### **2.142 Code Indemnification**

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



### **2.143 Employee Indemnification**

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

### **2.144 Patent/Copyright Infringement Indemnification**

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

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

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

### **2.145 Continuation of Indemnification Obligations**

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

### **2.146 Indemnification Procedures**

The procedures set forth below must apply to all indemnity obligations under the Contract.

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

(b) If Contractor delivers a Notice of Election relating to any claim: (i) the State is entitled to participate in the defense of the claim and to employ counsel at its own expense to assist in the handling of the claim and to monitor and advise the State about the status and progress of the defense; (ii) the Contractor must, at the request of the State, demonstrate to the reasonable satisfaction of the State, the Contractor's financial ability to carry out its defense and indemnity obligations under the Contract; (iii) the Contractor must periodically advise the State about the status and progress of the defense and must obtain the prior written approval of the State before entering into any settlement of the claim or ceasing to defend against the claim



and (iv) to the extent that any principles of Michigan governmental or public law may be involved or challenged, the State has the right, at its own expense, to control the defense of that portion of the claim involving the principles of Michigan governmental or public law. But the State may retain control of the defense and settlement of a claim by notifying the Contractor in writing within 10 days after the State's receipt of Contractor's information requested by the State under clause (ii) of this paragraph if the State determines that the Contractor has failed to demonstrate to the reasonable satisfaction of the State the Contractor's financial ability to carry out its defense and indemnity obligations under this Section. Any litigation activity on behalf of the State, or any of its subdivisions under this Section, must be coordinated with the Department of Attorney General. In the event the insurer's attorney represents the State under this Section, the insurer's attorney may be required to be designated as a Special Assistant Attorney General by the Attorney General of the State of Michigan.

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

## **2.150 Termination/Cancellation**

### **2.151 Notice and Right to Cure**

If the Contractor breaches the Contract, and the State, in its sole discretion, determines that the breach is curable, then the State must provide the Contractor with written notice of the breach and a time period (not less than 30 days) to cure the Breach. The notice of breach and opportunity to cure is inapplicable for successive or repeated breaches or if the State determines in its sole discretion that the breach poses a serious and imminent threat to the health or safety of any person or the imminent loss, damage, or destruction of any real or tangible personal property.

### **2.152 Termination for Cause**

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

(b) If the Contract is terminated for cause, the Contractor must pay all costs incurred by the State in terminating the Contract, including but not limited to, State administrative costs, reasonable attorneys' fees and court costs, and any reasonable additional costs the State may incur to procure the Services/Deliverables required by the Contract from other sources. Re-procurement costs are not consequential, indirect or incidental damages, and cannot be excluded by any other terms otherwise included in the Contract, provided the costs are not in excess of 50% more than the prices for the Service/Deliverables provided under the Contract.

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

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

### **2.153 Termination for Convenience**

The State may terminate the Contract for its convenience, in whole or part, if the State determines that a termination is in the State's best interest. Reasons for the termination must be left to the sole discretion of the State and may include, but not necessarily be limited to (a) the State no longer needs the Services or products specified in the Contract, (b) relocation of office, program changes, changes in laws, rules, or regulations make implementation of the Services no longer practical or feasible, (c) unacceptable prices for Additional Services or New Work requested by the State, or (d) falsification or misrepresentation, by inclusion or non-inclusion, of information material to a response to any RFP issued by the State. The State may terminate the Contract for its convenience, in whole or in part, by giving Contractor written notice at least 30 days before the date of termination. If the State chooses to terminate the Contract in part, the charges payable under the Contract must be equitably adjusted to reflect those Services/Deliverables that are terminated. Services and related provisions of the Contract that are terminated for cause must cease on the effective date of the termination.



#### **2.154 Termination for Non-Appropriation**

(a) Contractor acknowledges that, if the Contract extends for several fiscal years, continuation of the Contract is subject to appropriation or availability of funds for the Contract. If funds to enable the State to effect continued payment under the Contract are not appropriated or otherwise made available, the State must terminate the Contract and all affected Statements of Work, in whole or in part, at the end of the last period for which funds have been appropriated or otherwise made available by giving written notice of termination to Contractor. The State must give Contractor at least 30 days advance written notice of termination for non-appropriation or unavailability (or the time as is available if the State receives notice of the final decision less than 30 days before the funding cutoff).

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

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

#### **2.155 Termination for Criminal Conviction**

The State may terminate the Contract immediately and without further liability or penalty in the event Contractor, an officer of Contractor, or an owner of a 25% or greater share of Contractor is convicted of a criminal offense related to a State, public or private Contract or subcontract.

#### **2.156 Termination for Approvals Rescinded**

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

#### **2.157 Rights and Obligations upon Termination**

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

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

(c) Upon a good faith termination, the State may assume, at its option, any subcontracts and agreements for Services and Deliverables provided under the Contract, and may further pursue completion of the Services/Deliverables under the Contract by replacement contract or otherwise as the State may in its sole judgment deem expedient.



## **2.158 Reservation of Rights**

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

## **2.160 Termination by Contractor**

### **2.161 Termination by Contractor**

If the State breaches the Contract, and the Contractor in its sole discretion determines that the breach is curable, then the Contractor will provide the State with written notice of the breach and a time period (not less than 30 days) to cure the breach. The Notice of Breach and opportunity to cure is inapplicable for successive and repeated breaches.

The Contractor may terminate the Contract if the State (i) materially breaches its obligation to pay the Contractor undisputed amounts due and owing under the Contract, (ii) breaches its other obligations under the Contract to an extent that makes it impossible or commercially impractical for the Contractor to perform the Services, or (iii) does not cure the breach within the time period specified in a written notice of breach. But the Contractor must discharge its obligations under **Section 2.190** before it terminates the Contract.

## **2.170 Transition Responsibilities**

### **2.171 Contractor Transition Responsibilities**

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

### **2.172 Contractor Personnel Transition**

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

### **2.173 Contractor Information Transition**

The Contractor agrees to provide reasonable detailed specifications for all Services/Deliverables needed by the State, or specified third party, to properly provide the Services/Deliverables required under the Contract. The Contractor must provide the State with asset management data generated from the inception of the Contract through the date on which the Contractor is terminated in a comma-delineated format unless otherwise requested by the State. The Contractor must deliver to the State any remaining owed reports and documentation still in Contractor's possession subject to appropriate payment by the State.

### **2.174 Contractor Software Transition**

If the State transfers any software licenses to the Contractor, those licenses must, upon expiration of the Contract, transfer back to the State at their current revision level. Upon notification by the State, Contractor may be required to freeze all non-critical changes to Deliverables/Services.

### **2.175 Transition Payments**

If the transition results from a termination for any reason, reimbursement must be governed by the termination provisions of the Contract. If the transition results from expiration, the Contractor will be reimbursed for all reasonable transition costs (i.e. costs incurred within the agreed period after contract expiration that result from transition operations) at the rates agreed upon by the State. The Contractor must prepare an accurate accounting from which the State and Contractor may reconcile all outstanding accounts.



## **2.176 State Transition Responsibilities**

In the event that the Contract is terminated, dissolved, voided, rescinded, nullified, or otherwise rendered unenforceable, the State agrees to perform the following obligations, and any others upon which the State and the Contractor agree:

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

## **2.180 Stop Work**

### **2.181 Stop Work Orders**

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

### **2.182 Cancellation or Expiration of Stop Work Order**

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

### **2.183 Allowance of Contractor Costs**

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

## **2.190 Dispute Resolution**

### **2.191 In General**

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

### **2.192 Informal Dispute Resolution**

- (a) All disputes between the parties must be resolved under the Contract Management procedures in the Contract. If the parties are unable to resolve any disputes after compliance with the processes, the parties must meet with the Director of Procurement, DTMB, or designee, for the purpose of attempting to resolve the dispute without the need for formal legal proceedings, as follows:
  - (i) The representatives of Contractor and the State must meet as often as the parties reasonably deem necessary to gather and furnish to each other all information with respect to the matter in issue which the parties believe to be appropriate and germane in connection with its resolution. The representatives must discuss the problem and negotiate in good faith in an effort to resolve the dispute without the necessity of any formal proceeding.
  - (ii) During the course of negotiations, all reasonable requests made by one (1) party to another for non-privileged information reasonably related to the Contract must be honored in order that each of the parties may be fully advised of the other's position.



(iii) The specific format for the discussions will be left to the discretion of the designated State and Contractor representatives, but may include the preparation of agreed upon statements of fact or written statements of position.

(iv) Following the completion of this process within 60 calendar days, the Director of Procurement, DTMB, or designee, must issue a written opinion regarding the issue(s) in dispute within 30 calendar days. The opinion regarding the dispute must be considered the State's final action and the exhaustion of administrative remedies.

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

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

### **2.193 Injunctive Relief**

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

### **2.194 Continued Performance**

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

## **2.200 Federal and State Contract Requirements**

### **2.201 Nondiscrimination**

In the performance of the Contract, Contractor agrees not to discriminate against any employee or applicant for employment, with respect to his or her hire, tenure, terms, conditions or privileges of employment, or any matter directly or indirectly related to employment, because of race, color, religion, national origin, ancestry, age, sex, height, weight, marital status, or physical or mental disability. Contractor further agrees that every subcontract entered into for the performance of the Contract or any purchase order resulting from the Contract must contain a provision requiring non-discrimination in employment, as specified here, binding upon each Subcontractor. This covenant is required under the Elliot Larsen Civil Rights Act, 1976 PA 453, MCL 37.2101, et seq., and the Persons with Disabilities Civil Rights Act, 1976 PA 220, MCL 37.1101, et seq., and any breach of this provision may be regarded as a material breach of the Contract.

### **2.202 Unfair Labor Practices**

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

### **2.203 Workplace Safety and Discriminatory Harassment**

In performing Services for the State, the Contractor must comply with the Department of Civil Services Rule 2-20 regarding Workplace Safety and Rule 1-8.3 regarding Discriminatory Harassment. In addition, the Contractor must comply with Civil Service regulations and any applicable agency rules provided to the Contractor. For Civil Service Rules, see <http://www.mi.gov/mdcs/0,1607,7-147-6877---,00.html>.

### **2.204 Prevailing Wage – Deleted/Not Applicable**



## **2.210 Governing Law**

### **2.211 Governing Law**

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

### **2.212 Compliance with Laws**

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

### **2.213 Jurisdiction**

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

## **2.220 Limitation of Liability**

### **2.221 Limitation of Liability**

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

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

## **2.230 Disclosure Responsibilities**

### **2.231 Disclosure of Litigation**

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

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

- (i) the ability of Contractor (or a Subcontractor) to continue to perform the Contract according to its terms and conditions, or
- (ii) whether Contractor (or a Subcontractor) in performing Services for the State is engaged in conduct which is similar in nature to conduct alleged in the Proceeding, which conduct would constitute a breach of the Contract or a violation of Michigan law, regulations or public policy, then the Contractor must provide the State all reasonable assurances requested by the State to demonstrate that:



- (a) Contractor and its Subcontractors must be able to continue to perform the Contract and any Statements of Work according to its terms and conditions, and
- (b) Contractor and its Subcontractors have not and will not engage in conduct in performing the Services which is similar in nature to the conduct alleged in the Proceeding.

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

### **2.232 Call Center Disclosure**

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

### **2.233 Bankruptcy**

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

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

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

## **2.240 Performance**

### **2.241 Time of Performance**

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

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

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

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

- (a) SLAs will be completed with the following operational considerations:
  - (i) SLAs will not be calculated for individual Incidents where any event of Excusable Failure has been determined; Incident means any interruption in Services.
  - (ii) SLAs will not be calculated for individual Incidents where loss of service is planned and where the State has received prior notification or coordination.



(iii) SLAs will not apply if the applicable Incident could have been prevented through planning proposed by Contractor and not implemented at the request of the State. To invoke this consideration, complete documentation relevant to the denied planning proposal must be presented to substantiate the proposal.

(iv) Time period measurements will be based on the time Incidents are received by the Contractor and the time that the State receives notification of resolution based on 24x7x365 time period, except that the time period measurement will be suspended based on the following:

1. Time period(s) will not apply where Contractor does not have access to a physical State Location and where access to the State Location is necessary for problem identification and resolution.
2. Time period(s) will not apply where Contractor needs to obtain timely and accurate information or appropriate feedback and is unable to obtain timely and accurate information or appropriate feedback from the State.

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

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

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

## **2.243 Liquidated Damages – Deleted/Not Applicable**

### **2.244 Excusable Failure**

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

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

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

The Contractor will not have the right to any additional payments from the State as a result of any Excusable Failure occurrence or to payments for Services not rendered/Deliverables not provided as a result of the Excusable Failure condition. Defaults or delays in performance by Contractor which are caused by acts or omissions of its Subcontractors will not relieve Contractor of its obligations under the Contract except to the extent that a Subcontractor is itself subject to



an Excusable Failure condition described above and Contractor cannot reasonably circumvent the effect of the Subcontractor's default or delay in performance through the use of alternate sources, workaround plans or other means.

## **2.250 Approval of Deliverables – Deleted/Not Applicable**

### **2.260 Ownership**

#### **2.261 Ownership of Work Product by State – Deleted / Not Applicable**

#### **2.262 Vesting of Rights**

Patents, copyrights or other intellectual property owned or created by Contractor or Contractor's Third Party Licensor(s) outside this Contract shall remain the property of Contractor or any Third Party Licensor(s), and that ownership or other rights shall be deemed to be conveyed or assigned to the State. Instead, the State shall own final deliverables customized and developed exclusively for them as part of the Services under the Contract, exclusive of any intellectual property including software, copyrights, or patents.

#### **2.263 Rights in Data**

(a) The State is the owner of all data made available by the State to the Contractor or its agents, Subcontractors or representatives under the Contract. Except as provided in 2.265, the Contractor must not use the State's data for any purpose other than providing the Services, nor will any part of the State's data be disclosed, sold, assigned, leased or otherwise disposed of to the general public or to specific third parties or commercially exploited by or on behalf of the Contractor. No employees of the Contractor, other than those on a strictly need-to-know basis, have access to the State's data. Contractor must not possess or assert any lien or other right against the State's data. Without limiting the generality of this Section, the Contractor must only use personally identifiable information as strictly necessary to provide the Services and must disclose the information only to its employees who have a strict need-to-know the information. The Contractor must comply at all times with all laws and regulations applicable to the personally identifiable information.

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

#### **2.264 Ownership of Materials**

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

#### **2.265 MarketScan® and the Contributino of State Data**

The State will provide certain data to the Contractor for inclusion in its MarketScan® data base. This data includes claims, eligibility, absenteeism, clinical and other similar health care data and information. The Contractor may use this data both during the term of this Contract and thereafter as follows: the State hereby grants to the Contractor a perpetual, irrevocable, nonexclusive, royalty-free, nontransferable license to use, disclose, distribute, license, copy, display and demonstrate all State Data, in a de-identified format for inclusion in its MarketScan® databases. For the purpose of the preceding sentence, the term "de-identified" shall mean information that satisfies the requirements set forth in 45 CFR § 164.514(b), as amended. In return, the State shall be provided MarketScan® normative data during the term of this Contract at no charge.



## **2.266 Third Party Requirements**

(a) The State agrees that the Data Management System includes, and other Contractor Proprietary Information may include, Third Party Licensor products, and that no third Party Licensor makes any warranty to the State regarding the System or other Contractor Proprietary Information, assumes any liability to the State with respect to the State's use of the Contractor Proprietary Information, or undertakes to furnish support or information relating to the Contractor Proprietary Information. The State's rights to use the Third Party Licensor products terminate if the State fails to comply with any such obligations. The Third Party Licensors shall be third party beneficiaries of this Contract to the extent permitted by applicable law for the purposes of enforcing their rights and the State's obligations regarding the Third Party Licensor products.

(b) American Medical Association. Pursuant to the Contractor's CPT License Agreement for Domestic Distribution with The American Medical Association ("AMA"), as it may now or hereafter be amended, the Contractor is authorized to distribute and sublicense to the State Physicians' Current Procedural Terminology, Fourth Edition, a coding system of nomenclature and five-digit codes for reporting of physician services, and/or ICD-9 (collectively, "CPT"), as part of the Data Management System, provided that the State is bound by certain terms and conditions. The State's rights to use the CPT terminate if the State fails to comply with any of the material terms and conditions thereof.

The following are the additional terms and conditions that apply to the CPT:

- i. The provision of an updated version of CPT in the Data Management System is dependent upon Contractor's continuing contractual relations with the AMA.
- ii. The CPT is nontransferable, nonexclusive and for the sole purpose of internal use by the State, and only within the United States.
- iii. The CPT license is granted in consideration for a license fee and other consideration.
- iv. The State is prohibited from using CPT or information contained therein in any public electronic bulletin board, or public computer-based information system (including the Internet and World Wide Web unless otherwise expressly provided in this Contract).
- v. The State is prohibited from publishing, translating or transferring possession of the CPT or a copy or portion of it.
- vi. The State is prohibited from creating derivative works based on CPT and selling, leasing or licensing it or otherwise making the CPT or any portion thereof available to any unauthorized party.
- vii. The State may only make copies of the CPT for back-up or archival purposes.
- viii. CPT is copyrighted by the AMA and all notices of proprietary rights, including trademark and copyright in CPT must appear on all permitted back-up or archival copies made by the user; any printout or other output from the Electronic Media that contains any portion of CPT (other than that which would constitute fair use, internal reports and claim forms for specific patients and external reports distributed outside of your entity containing less than twenty (20) CPT codes and/or descriptions) will display the following:

CPT only ©2010 American Medical Association. All Rights Reserved.

The year specified in the copyright notices must conform to future CPT updates.

- ix. The State shall require that anyone who has authorized access to the CPT (including consultants and contractors who perform services for the State) complies with the provisions of this Section 2.266(b).
- x. Except as otherwise expressly provided in this Contract the CPT is provided "as is" without any warranty from or liability to Contractor or the AMA, including, without limitation, liability for consequential or special damages or lost profits for sequence, accuracy or completeness of data, or that it will meet the State's requirements; Contractor's and AMA's sole responsibility is to use reasonable efforts to provide corrections to or a replacement of the CPT; AMA disclaims any liability for any consequences due to use, misuse or interpretation of information contained or not contained in CPT.
- xi. The CPT license terminates in the event of default by the State under this Contract, subject to any applicable cure period.
- xii. The responsibility for any content of any "National Correct Coding Policy" included in this product is with the Centers for Medicare and Medicaid Services, formerly known as the Health Care Financing Administration, and no endorsement by the AMA is intended or should be implied. The AMA disclaims responsibility for any consequences or liability attributable to or related to any use, nonuse or interpretation of information contained in this product.

## **2.270 State Standards**



### **2.271 Existing Technology Standards**

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

### **2.272 Acceptable Use Policy**

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

### **2.273 Systems Changes**

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

### **2.280 Extended Purchasing – Deleted/Not Applicable**

### **2.290 Environmental Provision**

#### **2.291 Environmental Provision**

Hazardous Materials:

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

- (a) The Contractor must use, handle, store, dispose of, process, transport and transfer any material considered a Hazardous Material according to all federal, State, and local laws. The State must provide a safe and suitable environment for performance of Contractor's Work. Before the commencement of Work, the State must advise the Contractor of the presence at the work site of any Hazardous Material to the extent that the State is aware of the Hazardous Material. If the Contractor encounters material reasonably believed to be a Hazardous Material and which may present a substantial danger, the Contractor must immediately stop all affected Work, notify the State in writing about the conditions encountered, and take appropriate health and safety precautions.
- (b) Upon receipt of a written notice, the State will investigate the conditions. If (a) the material is a Hazardous Material that may present a substantial danger, and (b) the Hazardous Material was not brought to the site by the Contractor, or does not result in whole or in part from any violation by the Contractor of any laws covering the use, handling, storage, disposal of, processing, transport and transfer of Hazardous Materials, the State must order a suspension of Work in writing. The State must proceed to have the Hazardous Material removed or rendered harmless. In the alternative, the State must terminate the affected Work for the State's convenience.
- (c) Once the Hazardous Material has been removed or rendered harmless by the State, the Contractor must resume Work as directed in writing by the State. Any determination by the Michigan Department of Community Health or the Michigan Department of Environmental Quality that the Hazardous Material has either been removed or rendered harmless is binding upon the State and Contractor for the purposes of resuming the Work. If any incident with Hazardous Material results in delay not reasonable anticipatable under the circumstances and which is attributable to the State, the applicable SLAs for the affected Work will not be counted in **Section 2.242** for a time as mutually agreed by the parties.
- (d) If the Hazardous Material was brought to the site by the Contractor, or results in whole or in part from any violation by the Contractor of any laws covering the use, handling, storage, disposal of, processing, transport and transfer of Hazardous Material, or from any other act or omission within the control of the Contractor, the Contractor must bear its proportionate share of the delay and costs involved in cleaning up the site and removing and rendering harmless the Hazardous Material according to Applicable Laws to the condition approved by applicable regulatory agency(ies).

Michigan has a Consumer Products Rule pertaining to labeling of certain products containing volatile organic compounds.



For specific details visit [http://www.michigan.gov/deq/0,1607,7-135-3310\\_4108-173523--,00.html](http://www.michigan.gov/deq/0,1607,7-135-3310_4108-173523--,00.html)

**Refrigeration and Air Conditioning:**

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

**Environmental Performance:**

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

**2.300 Other Provisions**

**2.311 Forced Labor, Convict Labor, Forced or Indentured Child Labor, or Indentured Servitude Made Materials**

Equipment, materials, or supplies, that will be furnished to the State under the Contract must not be produced in whole or in part by forced labor, convict labor, forced or indentured child labor, or indentured servitude.

“Forced or indentured child labor” means all work or service: exacted from any person under the age of 18 under the menace of any penalty for its nonperformance and for which the worker does not offer himself voluntarily; or performed by any person under the age of 18 under a contract the enforcement of which can be accomplished by process or penalties.



ATTACHMENT A - PRICING

Flat yearly prices for each year of this Contract, assuming that the number of contracts/members for medical coverage does not exceed the following values:

	MPSERS only - contracts	MPSERS only -members	MPSERS + SERS - contracts	MPSERS + SERS - members
January 1, 2013	148,000	232,000	199,000	310,000
January 1, 2014	154,000	240,000	207,000	323,000
January 1, 2015	160,000	250,000	215,000	336,000

Deliverables including the 10 days of consulting services referenced in 1.022D7, and all costs necessary for the implementation and facilitation of this Contract. The start date for all services requested in each option should be assumed to be 1/1/2013.

	Option 1	Option 2	Option 3	Option 4	Option 5
<b>Deliverables</b>	<b>1.022D (Fixed Price) - MPSERS only</b>	<b>1.022D - MPSERS+SERS</b>	<b>1.022D Plus 1.022E4 (Web-based pricing tool) - MPSERS Only</b>	<b>1.022D Plus 1.022E4 - MPSERS + SERS</b>	<b>1.022D + 1.022E5 (Fraud, waste, abuse tool) - MPSERS Only</b>
Year 1 Price	325,000	418,000	644,000	742,000	467,000
Year 2 Price	325,000	418,000	644,000	742,000	467,000
Year 3 Price	325,000	418,000	644,000	742,000	467,000
Implementation (only if not included in the Year 1, Year 2, Year 3 prices)			125,000	125,000	
<b>Total Contract Price</b>	<b>975,000</b>	<b>1,254,000</b>	<b>2,057,000</b>	<b>2,351,000</b>	<b>1,401,000</b>
Additional annual price for each 100 contracts over the assumed maximum.	\$ 175.00	\$ 175.00	\$ 250.00	\$ 250.00	\$ 175.00

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ATTACHMENT A - PRICING

Fee schedule for 1.022E1 (consulting services)

Truven Health 2012 Consulting Rates		
Job Classification	Daily Billing Rate	Hourly Billing Rate
Vice President / Medical Director	\$3,840	\$480
Director	\$3,560	\$445
Manager	\$2,720	\$340
Senior Consultant	\$2,800	\$325
Consultant	\$2,096	\$262
Analyst	\$1,896	\$237
Project Manager	\$2,800	\$325
Senior Data Management Consultant	\$2,800	\$325
Data Management Consultant	\$2,096	\$262
Data Management Analyst	\$1,896	\$237

Pricing for audits (1.022E6)

**FEES**

SOLUTION	FEES	PAYMENT TERMS
<b>Medical Claims Audit and Operational Review of BCBS Michigan</b>		
Option 1: Standard Audit	\$59,500	One-third due upon execution of the Statement of Work, one-third due upon completion of the onsite audit, and one-third due upon delivery of the final audit report.
Option 2: Standard Audit plus Three Additional Payment Integrity Algorithms	\$74,500	
Pharmacy Claims Audit (with Comprehensive Discount Validation) of Catalyst	\$39,900	One-third due upon execution of the Statement of Work and remainder due upon delivery of the final audit report.
Audit of Allocation of HHS Medicare Advantage Funds	\$97,100	One-third due upon execution of the Statement of Work, one-third due upon completion of the onsite audit, and one-third due upon delivery of the final audit report.



**ATTACHMENT B – ORGANIZATIONAL CHART**

