

STATE OF MICHIGAN

Contract No. 391B5500002
EQRO Services for Michigan's Medicaid
Managed Care Organizations

EXHIBIT A STATEMENT OF WORK CONTRACT ACTIVITIES

1.0 Requirements

Project Request

This is a contract for External Quality Review Organization (EQRO) Services for Michigan's Medicaid Managed Care Organizations. The Contractor must provide services to complete an External Quality Review (EQR) of Michigan's Medicaid Managed Care Organizations in accordance with Center for Medicaid and Medicare Services (CMS) Regulations 42 CFR Part 433 & 438 located at: <http://www.gpoaccess.gov/index.html>.

Additional EQRO Services

The Michigan Department of Community Health (MDCH) may require additional EQRO services for other MDCH programs in the future. As such needs arise, MDCH may request a quote/proposal from the Contractor and, if the quote/proposal is acceptable, MDCH will incorporate the statement of work into the contract through the formal contract change notice process. This provision does not preclude MDCH from issuing a formal bid and awarding a separate contract(s) for the additional EQRO services.

Background

The MDCH, Medical Services Administration (MSA), is the single State agency responsible for health policy and purchasing of health care services for the Medicaid population using state appropriated and federal matching funds. In 1997, MDCH began the implementation of its value based purchasing initiative of Medicaid managed care, known as the Comprehensive Health Care Program (CHCP). The Managed Care Plan Division (MCPD) is responsible for the administration, quality oversight, and performance monitoring of the Michigan CHCP.

The Social Security Act, section 1932 (c), requires that State agencies, contracting with Medicaid Managed Care Organizations, provide for an annual external, independent review of the quality outcomes, timeliness of, and access to the services. The Balanced Budget Act (BBA) of 1997 requires State agencies contracting with MHPs to provide for an annual external, independent review, for each contracting health plan, of aggregate information on the quality outcomes, timeliness of, and access to the services. As of the issuance of this contract, MDCH has contracts with 13 health plans, referred to as Medicaid Health Plans (MHPs), who accept financial risk for managing comprehensive health care for Medicaid beneficiaries.

MDCH is required to contract with an EQRO for the analysis and evaluation of the aggregated information provided from all the Quality Assessment and Improvement Activities and the production of the results of that review. The EQR must be conducted annually and must include a health plan specific, detailed assessment of the strengths and weaknesses with respect to quality, timeliness, and access to health care services for each contracted MHP. The EQR report must include recommendations for MHP improvement.

The Contractor must perform the reviews in accordance with the guidelines established by both Federal and State law, including the State's Appropriation Boilerplate language, when applicable. For Boilerplate language see www.legislature.mi.gov; Public Act 59 of 2013; Section 1662 (1), (2).

1.1 Specifications

TASKS

The following is a preliminary analysis of the major tasks involved for developing the end product of this project. The Contractor is not, however, constrained from supplementing this listing with additional steps, sub tasks or elements deemed necessary to permit the development of alternative approaches or the application of proprietary analytical techniques.

A. EQRO Compliance Review

The Contractor must produce a detailed, MHP-specific technical report that describes the manner in which the data from all EQR-related activities were aggregated and analyzed, and conclusions drawn as to the quality, timeliness, and access to care furnished to Medicaid managed care enrollees. The report must include the following for each activity conducted:

- a) An executive summary in the statewide analysis
- b) A description of the methodology used to conduct the analyses
- c) A narrative summary of the importance of each measure selected for analysis
- d) A description of the caveats concerning interpretation of each measure's results
- e) A comparison of the results to national Medicaid benchmarks
- f) Identification of rotated measures, at discretion of the State
- g) A model to group measures across domains that apply to specific population groups
- h) Interpretation of results
- i) A validation of Performance Measures from the health plans; and
- j) Recommendations for improvements
- k) An assessment of each MHPs strengths and weaknesses with respect to the quality, timeliness of, and access to health care services furnished to Medicaid enrollees
- l) Wherever methodologically appropriate, comparative information for each quality measure relative to industry benchmarks, including national Medicaid averages, and statewide MHP performance averages. Where feasible, the analysis of MHP data shall include comparisons with previous plan performance. The Contractor must provide comparative information for Medicaid quality measures relative to industry benchmarks
- m) Wherever possible, the data and results from all EQR-related activities shall be analyzed and reported separately for individuals with and without special health care needs
- n) An assessment of the extent to which each MHP has addressed the recommendations for quality improvement made by the EQRO during the previous year's review
- o) A strategic executive summary anchored to Agency goals and priorities and aligned with 42 CFR, Part 438, Section D (438.200 – 438.242)

Findings to be used by the Contractor to produce the technical report evaluating MHP performance includes, but is not limited to:

- Agency's annual MHP Compliance Review
- Validation of Performance Measures results
- MHP quality improvement projects
- Annual adult Consumer Assessment of Healthcare Providers and Systems® (CAHPS) and child CAHPS® and other consumer surveys studies, including findings from any strategic report produced on consumer survey data
- Clinical and/or nonclinical focused studies conducted by EQRO during preceding year (State's discretion)

1) Review of Compliance with Access, Structural and Operations Standards

MDCH has developed a tool to annually perform compliance review surveys of each MHP. MDCH staff monitors adherence to Medicaid managed care regulatory requirements, standards, and contract requirements through review of the MHP policies, procedures and programs and interviews with MHP staff. The MHP must submit a corrective action plan for any issues identified during the survey requiring corrective action. The Contractor must review the compliance review documents and findings to determine MHP compliance with the Medicaid managed care regulations. Additionally, the Contractor must provide information to MDCH for its use in evaluating the effectiveness of the Quality Assessment and Performance Improvement Strategy, as specified in § 438.204 (d) and § 438.240 (e).

2) Validation of Performance Measures

An aggregate assessment of audited Healthcare Effectiveness Data and Information Set (HEDIS) data, and other-source data, reported by the MHP is used to annually evaluate MHP performance levels of Michigan Quality Measures List of measures, such as, women's' health measures, comprehensive diabetes care measures, comprehensive asthma measures, well child measures, and etc.

- a) The Contractor must produce a preliminary and final report on statewide and MHP-specific performance measures, validation activities and findings. The report must include any areas of concerns for performance measures reported by MHPs and recommendations to the Agency for ways to improve and streamline validation of performance measures reported by MHPs, including

whether the Agency shall pursue planning related to calculation of the measures on behalf of the MHPs.

- b) The Contractor must provide MDCH with an aggregate assessment of HEDIS and other-source data, (at the State's discretion) which is used by MDCH to annually evaluate MHP performance levels.

3) Validation of Performance Improvement Projects (PIP)

- a) The Contractor must provide MDCH with an objective and comprehensive assessment of whether the MHPs PIP was designed, conducted and reported in a methodologically sound manner.
- b) The Contractor must evaluate the soundness and results of each MHPs PIP. The Contractor must minimally evaluate one PIP per year for each health plan.
- c) The Contractor must evaluate the soundness and results of the PIPs. All activities conducted must be in accordance with the specifications of 42 CFR, Part 438. Specifically, the Contractor must do the following:
 - 1) Develop a template to approve and evaluate the MHPs PIP projects. These templates must include the following:
 - a) Statement of intent for each PIP
 - b) PIP Evaluation
 - 2) Provide technical assistance to the MDCH and to the MHPs to ensure that the PIP projects are consistent with EQR protocol.
 - a) In providing technical assistance to the MHPs, the Contractor must ensure that they identify best practices of individual MHPs, as well as potential for synergy where there is similarity across MHPs, for use as appropriate throughout Michigan.

B. HEDIS Analysis

As part of the MDCH annual reporting requirements, MHPs must submit copies of the audited Medicaid HEDIS, Integrated Diagnostic Support System (IDSS) and Final Audit report. An aggregate assessment of HEDIS data is used by MDCH to annually evaluate MHP performance.

- 1) The Contractor must comparatively review MHP quality of care outcomes and performance measures and utilize the findings as part of this task for inclusion in EQR technical report.
- 2) The Contractor must utilize the most current National Committee for Quality Assurance (NCQA) Medicaid benchmarks in order to appropriately evaluate and perform HEDIS analysis.
- 3) The Contractor must perform a comprehensive review and analysis of the contracted Michigan MHPs IDSS results for each reporting year of this contract, beginning with reporting year 2013.
 - a) This task will include:
 - 1) Making recommendations to MDCH about appropriate benchmarks
 - 2) Creating electronic file extracts containing the Medicaid HEDIS results reported for each measure by each MHP and agreed upon benchmarks from a national database
 - 3) Providing the data in hard copy format and electronically in an MDCH software compatible format
 - 4) Determining the level of statistical analysis that is appropriate, given the quality and quantity of the HEDIS Medicaid data submitted by the MHPs
 - 5) Performing statistical tests to compare health plan performance to statewide means, NCQA's Quality Compass benchmarks and goals, where appropriate, or conducting descriptive comparative analysis with MDCH approval
 - 6) Comparing MHP performance to the prior year's results, and
 - 7) Constructing a model to group measures across domains that apply to specific population groups, such as children and pregnant women

C. Optional Focused Study

As an optional activity, and at the sole discretion of MDCH, MDCH may choose to conduct an external review of focused clinical and/or non-clinical topic(s) as part of MDCH's review of quality outcomes, timeliness of and access to, services provided by MHPs. The Contractor must conduct a focused study using a method consistent with the CMS established EQR Activity protocol as part of Task A- EQR Technical Report.

D. Consumer Guide Analysis

MDCH requires each MHP to perform a consumer satisfaction survey of Medicaid managed care adult enrollees. The results of the survey will be provided to the Contractor to provide a comparative analysis of the MHP annual HEDIS and other-source data and CAHPS data to support the development of the Michigan Medicaid Consumer Information Guide. The analysis helps to support MDCH public reporting of health plan performance information. The Contractor must utilize the results of HEDIS Analysis and CAHPS findings to perform the following tasks:

- 1) Perform statistical tests to compare MHP performance to statewide means, benchmarks, and goals where appropriate, and conduct descriptive comparative analysis using NCQA benchmarks; and
- 2) The Contractor must propose two methodologies to calculate MHP specific results for use in the Consumer Guide and/or Performance Bonus using Medicaid 50th percentile benchmark or Michigan Weighted Average (Aggregate Rate) as the reference point.
 - a) The Contractor must utilize CAHPS and/or HEDIS measures within a category. When using CAHPS measures, only composites or global ratings, not single questions, must be utilized. The Contractor must calculate MHP-specific results and provide these results to MDCH. The calculations must be based upon MHP-specific HEDIS and CAHPS rates compared to Michigan aggregate rates or comparable benchmarks.
 - b) The Contractor must maintain the existing five categories in the current Consumer Guide, and modify as determined by MDCH:
 - Doctor Communication and Service
 - Getting Care
 - Keeping Kids Healthy
 - Taking Care of Women
 - Living with Illness/Preventing Complications
 - c) Deliver an Excel file for each category that has the following (see Exhibit C, General Security Requirements):
 - Individual MHP rates
 - Michigan aggregate rate or comparable benchmarks
 - Difference between MHP and aggregate rate or benchmarks
 - 95% confidence interval
 - Indication if MHP rate is significantly higher, lower, or no different from the Michigan aggregate rate or comparable benchmark. This indication must be based on T-tests and a significance level of 95%

E. Additional Quality Measurement

In addition to the reports and measures' analysis previously specified in this Contract, MDCH may request additional ad hoc information/reporting/analysis of the Contractor. The Contractor must comply with these requests for reporting/analysis within the timeframe specified in the request.

F. Contractor Requirements

- a) Independence: The EQRO and its subcontractors must be independent from the State Medicaid agency and from the managed care organizations that they review. To qualify as "independent":
 - 1) A State agency, department, university, or other State entity may not have Medicaid purchasing or managed care licensing authority; and
 - 2) A State agency, department, university, or other State entity must be governed by a Board or similar body, the majority of whose members are not government employees.
 - 3) An EQRO may not—
 - a) Review a particular Managed Care Organization (MCO) or Prepaid Inpatient Health Plan (PIHP) if either the EQRO or the MCO or PIHP exerts control over the other (as used in this paragraph, "control" has the meaning given the term in 48 CFR 19.101) through:
 - (1) Stock ownership
 - (2) Stock options and convertible debentures
 - (3) Voting trusts
 - (4) Common management, including interlocking management; and
 - (5) Contractual relationships
 - b) Deliver any health care services to Medicaid recipients
 - c) Conduct, on the State's behalf, ongoing Medicaid managed care program operations related to oversight of the quality of MCO or PIHP services, except for the related activities specified in 42 CFR 438.358; or

- d) Have a present, or know of a future, direct or indirect financial relationship with an MCO or PIHP that it will review as an EQRO
- b) The Contractor must have the physical, technological and financing resources necessary to conduct EQR and EQR-related activities
- c) The Contractor must have NCQA HEDIS & CAHPS certification.

1.2 Reserved

2.0 Acceptance

2.1 Acceptance, Inspection and Testing

A. The State will use the following criteria to determine acceptance of the Contract Activities:

- 1) The State expects that at the introduction of each task (identified herein) that the Contractor will seek comments and approvals of final versions of each:
 - (a) Detailed work plan
 - (b) Template
 - (c) Methodology
 - (d) Draft or interim report
 - (e) Final report
 - (f) Invoices for payment

B. The Contractor must submit each task listed above, to the Program Manager, who will then confer with appropriate management to obtain final approvals. Mutually agreeable final approval time allowances must be factored into the work plans produced by the Contractor.

This process will also allow for discussion time, when applicable, during the established bi-weekly conference calls, or during special conference calls when deemed necessary by either or both parties.

3.0 Staffing

3.1 Contractor Representative

The Contractor must appoint a Contractor Representative, specifically assigned to State of Michigan accounts, that will respond to State inquiries regarding the Contract Activities, answering questions related to the Contract (the "Contractor Representative").

The Contractor Representative for this Contract is:

Diane Somerville, MSW
 Executive Director
 State & Corporate Services

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

3.2 Work Hours

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

3.3 Key Personnel

- A. The Contractor must appoint individuals who will be directly responsible for the day-to-day operations of the Contract ("Key Personnel"). Key Personnel must be specifically assigned to the State account and be knowledgeable on the contractual requirements.

Below is the list of Key Personnel and other personnel for this Contract:

Key personnel are indicated with a star (★).

Name	HSAG POSITION TITLE
Mary Ellen Dalton, PhD, MBA, RN, CHCA	Chief Executive Officer
Rick Potter, CPA, MBA, CHCA	Executive Vice President & Chief Operating Officer
Michigan Project Management Team	
★ Diane Somerville, MSW	Executive Director, State & Corporate Services Contractor Representative
Technical Report Team	
★ Constance Holstein, MA	Senior Project Manager
Alicja Wierzchowska, MA	Associate Director, Reports Team
Tom Miller, MA	Executive Director, Research and Analysis
Christy Hormann, LMSW, CPHQ	Project Manager, Michigan PIP Lead
Judy Yip-Reyes, PhD, CHCA	Associate Director, Audits
Validation of Performance Improvement Project (PIP) Team	
Christi Melendez, RN, CPHQ	Associate Director, Performance Improvement Projects
★ Christy Hormann, LMSW, CPHQ	Project Manager, Michigan PIP Lead
Kristin Hartmann, MS	PIP Analyst
Jennifer Montano	Project Coordinator, PIP Review Team
Performance Measurement, HEDIS Analysis and Additional Quality Measurement	
★ David Mabb, MS, CHCA	Director, Audits
Judy Yip-Reyes, PhD, CHCA	Associate Director, Audits
Mariyah Badani, JD, MBA	Associate Director, Audits
Tammy Gianfrancisco	Project Leader, Audits
Laura Jia, MS	Healthcare Analyst, Research and Analysis
Consumer Guide Analysis Team	
★ Ryan Fair, BS	Executive Director, Informatics
Jenny Starbuck, BA	Project Manager, Informatics
Focused Study Team—TBD based on study selected	
David Mabb, MS, CHCA	Director, Audits
Constance Holstein, MA	Senior Project Manager
★ Tom Miller, MA	Executive Director, Research and Analysis
Amy Kearney, BA	Director, Research and Analysis Team
Laura Jia, MS	Healthcare Analyst, Research and Analysis
Eliza Buyong, MS	Healthcare Analyst, Research and Analysis
Marilea Rose, RN, BA	Associate Director, State/Private Projects
Report Design and Production Team	
Alicja Wierzchowska, MA	Associate Director, Reports Team
Joy Valentine, MA	Editor, Reports Team

Note: All positions are physically located in Phoenix, Arizona.

- B. All staff assigned to this Contract must have, at a minimum, the following:
- 1) Demonstrated experience and knowledge of:
 - (a) Medicaid recipients, policies, data systems, and processes;
 - (b) Managed care delivery systems, organizations, and financing;
 - (c) Quality assessment and improvement methods; and
 - (d) Research design and methodology, including statistical analysis.
 - 2) Clinical and nonclinical skills necessary to carry out EQR and EQR-related activities and to oversee the work of any subcontractors.
 - 3) NCQA HEDIS & CAHPS certification.
- C. Prior to any proposed staffing changes, the Contractor must submit to the MDCH Program Manager for final approval the Contractor's project organizational structure.
- D. The State has the right to recommend and approve in writing the initial assignment, as well as any proposed reassignment or replacement, of any Key Personnel. Before assigning an individual to any Key Personnel position, Contractor will notify the State of the proposed assignment, introduce the individual to the State's Project Manager, and provide the State with a resume and any other information about the individual reasonably requested by the State. The State reserves the right to interview the individual before granting written approval. In the event the State finds a proposed individual unacceptable, the State will provide a written explanation including reasonable detail outlining the reasons for the rejection. The State may require a 30-calendar day training period for replacement personnel.
- E. Contractor will not remove any Key Personnel from their assigned roles on this Contract without the prior written consent of the State. The Contractor's removal of Key Personnel without the prior written consent of the State is an unauthorized removal ("**Unauthorized Removal**"). An Unauthorized Removal does not include replacing Key Personnel for reasons beyond the reasonable control of Contractor, including illness, disability, leave of absence, personal emergency circumstances, resignation, or for cause termination of the Key Personnel's employment. Any Unauthorized Removal may be considered by the State to be a material breach of this Contract, in respect of which the State may elect to terminate this Contract for cause under Termination for Cause in the Standard Terms.
- F. It is further acknowledged that an Unauthorized Removal will interfere with the timely and proper completion of this Contract, to the loss and damage of the State, and that it would be impracticable and extremely difficult to fix the actual damage sustained by the State as a result of any Unauthorized Removal. Therefore, Contractor and the State agree that in the case of any Unauthorized Removal in respect of which the State does not elect to exercise its rights under Termination for Cause, Contractor will issue to the State the corresponding credits set forth below (each, an "Unauthorized Removal Credit"):
- (i) For the Unauthorized Removal of any Key Personnel designated in the applicable Statement of Work, the credit amount will be \$25,000.00 per individual if Contractor identifies a replacement approved by the State and assigns the replacement to shadow the Key Personnel who is leaving for a period of at least 30 calendar days before the Key Personnel's removal.
 - (ii) If Contractor fails to assign a replacement to shadow the removed Key Personnel for at least 30 calendar days, in addition to the \$25,000.00 credit specified above, Contractor will credit the State \$833.33 per calendar day for each day of the 30 calendar-day shadow period that the replacement Key Personnel does not shadow the removed Key Personnel, up to \$25,000.00 maximum per individual. The total Unauthorized Removal Credits that may be assessed per Unauthorized Removal and failure to provide 30 calendar days of shadowing will not exceed \$50,000.00 per individual.
- G. Contractor acknowledges and agrees that each of the Unauthorized Removal Credits assessed above: (i) is a reasonable estimate of and compensation for the anticipated or actual harm to the State that may arise from the Unauthorized Removal, which would be impossible or very difficult to accurately estimate; and (ii)

may, at the State's option, be credited or set off against any fees or other charges payable to Contractor under this Contract.

3.4 Reserved

3.5 Reserved

4.0 Project Management

4.1 Work Plan

A. The Contractor must develop and produce annual work plans for each identified task, to include the proposed completion date and parties responsible for the tasks, that will be drafted and provided to the State's Program Manager for comments and approvals prior to implementation of the work plan; this will include a comments and approval sequence for all templates to be used during the course of the annual task.

Any variations from the approved plans (mentioned above) must be approved by both parties, and the Contractor must propose the remedy and the new deadline date, if applicable.

B. The Contractor must carry out this project under the direction and control of the Program Manager. Within 5 calendar days of the Contract start date, the Contractor must submit a final work plan to the Program Manager for approval.

4.2 Meetings

The Contractor must attend the following meetings:

A. The Contractor must conduct bi-weekly (every two weeks) conference calls with the State's EQRO staff, and produce a progress report, detailing the challenges and accomplishments of the prior period that is sent via email to the Program Manager.

B. The Contractor should also be available to conduct an annual update for the MHPs and the State's key personnel, typically requested in the fall of the year. The Contractor should also be available to conduct face-to-face meetings, two times a year, in Lansing, MI.

C. The State may request other meetings, as it deems appropriate.

4.3 Reporting

A. The Contractor must produce a Technical Report:

- 1) To provide MDCH with an objective and comprehensive analysis of each MHP's strengths and weaknesses in regard to quality outcomes, timeliness of, and access to the services. The analysis performed will evaluate each fiscal year (**October-September**) activities including performance measures reported by the MHP, and compliance with specific regulating and contracted requirements.
- 2) The analysis, in a report format, must evaluate the MHP's performance, provide comparisons to the MHP's previous evaluation (in subsequent years of the contract should it be renewed), and provide recommendations to MDCH and the MHP on performance improvement opportunities; by using comparative information about all MHPs as determined by MDCH and as methodologically appropriate, including, but not limited to the most current NCQA Quality Compass Report.
- 3) An assessment of the degree to which each MHP has addressed effectively the recommendations for quality improvement made during the previous year's review.
- 4) The Contractor must collate and disseminate to MDCH and the MHPs information collected during the EQR related activities concerning best practices and improvement strategies that have demonstrated success (clinical and administrative).

B. The Contractor must produce a PIP Report:

The MHP PIPs must be designed, conducted and reported in a methodologically sound manner. A completed PIP includes a baseline measurement and two re-measurements. MDCH will require MHPs to complete a PIP by the end of the fiscal year; the PIP study will be validated at the end of the calendar year. The Contractor must:

- 1) Produce a detailed, health plan specific, technical report, of the validity of the PIP for each MHP using protocol consistent with the CMS EQR Protocol on Validating PIP's.
- 2) Work with MHPs to evaluate and validate the MHP's PIP. This task may require the Contractor to make presentations to the health plans, or conduct technical assistance conference calls to the health plans, as needed.
- 3) The Contractor must provide MDCH with a summary report of the validation findings of each MHP.

C. HEDIS Analysis

The CMS EQR protocols require states to evaluate the accuracy of Medicaid performance measures reported by, or on behalf of, an MHP and determine the extent to which Medicaid-specific performance by an MHP followed state specifications. As part of the MDCH annual reporting requirements, MHPs must submit copies of the audited Medicaid HEDIS IDSS and Final Audit report. An aggregate assessment of HEDIS data is used by MDCH to annually evaluate MHP performance levels.

The Contractor must:

- 1) Comparatively review MHP quality of care outcomes and performance measures and utilize the findings as part of this task to meet the require EQR protocol.
- 2) Have access to and utilize the most current NCQA Medicaid benchmarks in order to appropriately address aspects of the MHPs' performance.
- 3) Produce an in-house report and statewide aggregate report of State selected Quality measures

D. Strategic Report on Consumer-Related Surveys

MDCH requires each MHP to perform a consumer satisfaction survey of Medicaid managed care adult enrollees. The results of the survey will be made available to the Contractor to provide a comparative analysis of the MHP CAHPS data to support the development of the Michigan Medicaid Consumer Information Guide, and include findings in the technical report. The analysis helps to support MDCH public reporting of health plan performance information.

E. Additional Quality Measurement

In addition to the reports and measures' analysis previously specified in this Contract, MDCH may request additional ad hoc information/reporting/analysis of the Contractor. The Contractor must comply with these requests for reporting/analysis within the timeframe specified in the request.

5.0 Ordering

5.1 Authorizing Document

The appropriate authorizing documents for the Contract will be a signed blanket purchase order as well as an agency issued purchase order.

6.0 Invoice and Payment

6.1 Invoice Requirements

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

Each task/deliverable described herein, may be invoiced for payment when the final task/deliverable is completed. The EQRO Technical Report is the only exception, which may be invoiced at 40% of full invoice at the completion of an acceptable draft version, and the balance of 60% at the delivery of the final version.

7. Liquidated Damages

Late or improper completion of the Contract Activities will cause loss and damage to the State and it would be impracticable and extremely difficult to fix the actual damage sustained by the State. Therefore, if there is late or improper completion of the Contract Activities the State is entitled to collect liquidated damages in the amount of

\$5,000 and an additional \$100 per day for each day Contractor fails to remedy the late or improper completion of the Work.

8. HIPAA Business Associate Agreement Addendum

At the time of contract execution, the Contractor ("Business Associate") must sign and return a Health Insurance Portability and Accountability Act (HIPAA) Business Associate Agreement Addendum (Attachment 1) to the MDCH individual specified in the Standard Contract Terms (Section 2) of the contract. The Business Associate performs certain services for the State ("Covered Entity") under the Contract that requires the exchange of information including protected health information under the HIPAA of 1996, as amended by the American Recovery and Reinvestment Act of 2009 (Pub. L. No. 111-5). The HIPAA Business Associate Agreement Addendum establishes the responsibilities of both parties regarding HIPAA-covered information and ensures the underlying contract complies with HIPAA.

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EXHIBIT B PRICING

The price list below is the Contractor's firm pricing for the duration of the Contract:

Annual MHPs Task Title	% Payable upon completed deliverable	(A) Year 1 Pricing	(B) Year 2 Pricing	(C) Year 3 Pricing	(A+B+C) Total 3 Year Pricing
Performance Improvement Projects	100%	\$120,841	\$126,884	\$133,229	\$380,954
Technical Report – Acceptable Draft	40%	\$43,565	\$45,744	\$48,030	\$137,339
Technical Report – Final Draft	60%	\$65,348	\$68,614	\$72,046	\$206,008
Other-Source Measurement and HEDIS Activities	100%	\$221,830	\$232,921	\$244,571	\$699,322
Consumer Guide	100%	\$40,671	\$42,705	\$44,840	\$128,217
Optional Focused Study	100%	\$117,477	\$123,351	\$129,519	\$370,347
Total One Year Amount		\$609,732			
Total Three Year Amount					\$1,922,187

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EXHIBIT C GENERAL SECURITY REQUIREMENTS

The Contractor must comply with State and federal statutory and regulatory requirements, and rules; National Institute of Standards and Technology (NIST) publications; Control Objectives for Information and Related Technology (COBIT); all other industry specific standards; national security best practices and all requirements herein.

The Contractor must perform annual testing of all security control requirements to determine they are working as intended. Annual certification must be provided in writing to the CCI or designee in the form of a Service Organization Controls (SOC) 2, Type II review or similar audit report upon award.

A. Governing Security Standards and Publications

The State of Michigan information is a valuable asset that must be protected from unauthorized disclosure, modification, use, or destruction. Prudent steps must be taken to ensure that its integrity, confidentiality, and availability are not compromised.

The Contractor must collect, process, store, and transfer State personal, confidential, or sensitive data in accordance with the Contract, State of Michigan policies, and the laws of the State of Michigan and the United States, including, but is not limited to the following:

- The Michigan Identity Theft Protection Act, MCL 445.61 et seq;
- The Michigan Social Security Number Privacy Act, MCL 445.82 et seq.
- Family Educational Rights and Privacy Act

State of Michigan Policies

- The Contractor must comply with the State of Michigan information technology standards <http://www.michigan.gov/dmb/0,1607,7-150-56355-107739--,00.html>.

B. Security Risk Assessment

The Contractor must conduct assessments of risks and identify the damage that could result from unauthorized access, use, disclosure, disruption, modification, or destruction of information and information systems that support the operations and assets of the State. Security controls should be implemented based on the potential risks. The Contractor must ensure that reassessments occur whenever there are significant modifications to the information system and that risk assessment information is updated.

C. System Security Plan

The Contractor must develop and implement a security plan that provides an overview of the security requirements for the information system. If a security plan does not exist, the Contractor must provide a description of the security controls planned for meeting those requirements. The security plan must be reviewed periodically and revised to address system/organizational changes or problems.

D. Network Security

The Contractor is responsible for the security of and access to State data, consistent with legislative or administrative restrictions. Unsecured operating practices, which expose other connected networks to malicious security violations, are not acceptable. The Contractor must coordinate with DTMB to enter the proper pointers into the State of Michigan infrastructure.

E. Data Security

The Contractor has the responsibility to protect the confidentiality, integrity, and availability of State of Michigan data that is generated, accessed, modified, transmitted, stored, disposed, or used by the system, irrespective of the medium on which the data resides and regardless of format (such as in electronic, paper or other physical form).

The Contractor must:

1. Process the personal data in accordance with the personal data protection laws of the State of Michigan and the United States.
2. Have in place appropriate technical and organizational internal and security controls to protect the personal data against accidental or unlawful destruction or accidental loss, alteration, unauthorized disclosure or access, and which provide a level of security appropriate to the risk represented by the processing and the nature of the data to be protected. Technical and organizational security controls must be implemented that are appropriate to the risks, such as against accidental or unlawful destruction or accidental loss, alteration, unauthorized disclosure or access, presented by the processing.
3. Provide secure and acceptable methods of transmitting personal, confidential or sensitive information over telecommunication devices such as data encryption (128 bit minimum), Secure Socket Layer (SSL), dedicated leased line or Virtual Private Network (VPN).
4. Supply the State with information associated with security audits performed in the last three years upon award.
5. Have in place procedures so that any third party it authorizes to have access to the personal data, including processors, will respect and maintain the confidentiality, integrity, and availability of the data upon award.
6. Process the personal, confidential, and sensitive data only for purposes described in the Contract.
7. Identify to the State a contact point within its organization authorized to respond to enquiries concerning processing of the personal, confidential or sensitive data, and will cooperate in good faith with the Department.
8. Not disclose or transfer the personal, confidential, or sensitive data to a third party unless it is approved under this Contract.
9. Not use data transferred by the State as a result of this Contract for marketing purposes.

F. Media Protection

- The Contractor must implement measures to provide physical and environmental protection and accountability for tapes, diskettes, printouts, and other media containing State personal, confidential, and sensitive information to prevent the loss of confidentiality, integrity, or availability of information including data or software, when stored outside the system. This can include storage of information before it is input to the system and after it is output.
- The Contractor must ensure that only authorized users have access to information in printed form or on digital media removed from the information system, physically control and securely store information media, both paper and digital, restrict the pickup, receipt, transfer, and delivery of such media to authorized personnel.

G. Media Destruction and Disposal

The Contractor must sanitize or destroy information system digital media containing personal, confidential, or sensitive information before its disposal or release for reuse to prevent unauthorized individuals from gaining access to and using information contained on the media.

- Personal, confidential, or sensitive information must be destroyed by burning, mulching, pulverizing, or shredding. If shredded, strips should not be more than 5/16-inch, microfilm should be shredded to affect a 1/35-inch by 3/8-inch strip, and pulping should reduce material to particles of one inch or smaller.
- Disk or tape media must be destroyed by overwriting all data tracks a minimum of three times or running a magnetic strip over and under entire area of disk at least three times. If the CD, DVD, or tape cannot be overwritten it must be destroyed in an obvious manner to prevent use in any disk drive unit and discarded. Hand tearing, recycling, or burying information in a landfill are unacceptable methods of disposal. Electronic data residing on any computer systems must be purged based on retention periods required by the State.

H. Access Control

The Contractor must limit information system access to authorized users, processes acting on behalf of authorized users, or devices (including other information systems) and to the types of transactions and functions that authorized users are permitted to exercise. Access must be immediately removed when a staff changes job duties or leaves the employment.

Authentication Process

Authentication is the process of verifying the identity of a user. Authentication is performed by having the user enter a user name and password in order to access the system.

To help protect information from unauthorized access or disclosure, users must be identified and authenticated per the table below prior to accessing confidential or sensitive information, initiating transactions, or activating services.

Publicly available information such as the mother's maiden name, birth date, and address as the sole authenticator is not a secure means of authentication and should not be used.

Automatic user logons are prohibited. Device-to-device logons must be secured (preferably using client certificates or password via tunneled session). For certain implementations, source restrictions (sign-on can occur only from a specific device) provide a compensating control, in addition to the ID and password.

Authentication information (e.g., a password or PIN) must never be disclosed to another user or shared among users.

The authentication process is limited to three unsuccessful attempts and must be reinstated by the authorized personnel (preferably the System security Administrator). User accounts should be systematically disabled after 90 days of inactivity and must be deleted after one year of inactivity.

Password Requirements

The purpose of a password is to authenticate a user accessing the system and restrict use of a userID only to the assigned user. To the extent that the functionality is supported within the technology or product, the controls listed must be implemented.

These following controls or content rules apply at any point where a new password value is to be chosen or assigned. These rules must be enforced automatically as part of a new password content checking process:

Password Property	Value
Minimum Length	Eight characters with a combination of alpha, numeric, and special characters
Composition	<ul style="list-style-type: none"> • At least two numeric characters (0 through 9), neither of which may be at the beginning or the end of the password • A combination of two upper (A through Z) and lower case (a through z) letters • Special characters (!, @, #, \$, %, ^, &, *, (,), +, =, /, <, >, ?, ., ;, :, \) • UserID in password is not allowed
Expiration Requirement (Maximum Password Age):	30 days
Revocation	Passwords should be revoked after three failed attempts (the State strongly supports password revocation after three failed attempts if system allows). Passwords should be systematically disabled after 90 days of inactivity to reduce the risk of compromise through guessing, password cracking or other attack and penetration methods.
Temporary passwords	<ul style="list-style-type: none"> • Must be randomly chosen or generated • System must force the user to change the temporary password at initial login
Change process	<p>System must force user to:</p> <ul style="list-style-type: none"> • Confirm their current password/PIN, • Reenter current password/PIN • Create a new password/PIN • Reenter new password/PIN <p>System must prevent users from being able to consecutively change their password value in a single day (The goal is to prevent recycling through password history records to reuse an earlier-used password value)</p>
Login process	Password/PIN must not appear on the screen during the login process (The exception to this is during selection of a machine-generated password).
Encryption of passwords/PINs	Passwords must be stored and transmitted with a minimum of 128-bit encryption. Passwords must be masked when entered on any screen
Compromise of password/PIN	Must be changed immediately
Forgotten password/PIN	Must be reset by authorized person (system Security Administrator)
Current user password/PIN	Must not be maintained or displayed in any readable format on the system
Audit logs	Maintain a record of when a password was changed, deleted, or revoked. The audit trail shall capture all unsuccessful login and authorization attempts for a one year period.

Password history	Keep a password history and perform a check against the history to verify the password has not been used for a minimum of one year
Privileged account access (e.g. supervisor or root)	Security administrator must change the password for that account immediately when user changes responsibilities

I. System Security Application Control

Application controls apply to individual computer systems and may include such controls as data origin, input controls, processing controls, output controls, application access controls, application interfaces, audit trail controls, and system documentation. Application controls consist of mechanisms in place over each separate computer system to ensure authorized data is processed completely, accurately, and reliably. The Contractor is responsible for ensuring application controls are in place and functioning properly within their organization. Ongoing testing and reporting of controls must be part of the business process in order to have a solid understanding of risks, strengths, and weaknesses.

A comprehensive solution is required to ensure that business critical applications are handled efficiently and are prioritized. Dynamic recovery procedures and fail over facilities must be incorporated into the scheduling process whenever possible; and where manual processes are needed, extensive tools must be available to minimize delays and ensure critical services are least impacted.

J. System Auditing

The Contractor must (i) create, protect, and retain information system audit log records to the extent needed to enable the monitoring, analysis, investigation, and reporting of unlawful, unauthorized, or inappropriate information system activity, and (ii) ensure that the actions of individual information system users can be uniquely traced to those users so they can be held accountable for their actions.

The Contractor must observe the following guidelines regarding system auditing:

1. Audit record should contain the following:
 - date and time of the event
 - subject identity
 - type of event
 - how data changed
 - where the event occurred
 - outcome of the event
2. System alerts if audit log generation fails
3. System protects audit information from unauthorized access
4. Audit record should be reviewed by individuals with a “need to know” on a regular basis
5. Audit logs are retained for sufficient period of time.

K. Configuration Control and Management

The configuration management policy and procedures must be consistent with applicable federal laws, directives, policies, regulations, standards, and guidance.

L. Incident Reporting

The Contractor must immediately notify any security incidents and/or breaches to the CCI.

- The Contractor must have a documented and implemented Incident Response Policy and Procedure
- Incident handling form for consistent, repeatable process for monitoring and reporting when dealing with incidents.
- Incident response resource identified to assist users in handling and reporting incidents.
- Personnel trained in their incident response roles and responsibilities at least annually.

M. Physical and Environmental Security

The Contractor must have established physical and environmental security controls to protect systems, the related supporting infrastructure, and facilities against threats associated with their physical environment.

1. The Contractor must have established environmental protection for magnetic and other media from fire, temperature, liquids, magnetism, smoke, and dust.
2. The Contractor must control all physical access points to facilities containing information systems (except those areas within the facilities officially designated as publicly accessible), review physical security logs periodically, investigate security violations or suspicious physical access activities, and initiate remedial actions.
3. The Contractor must periodically review the established physical and environmental security controls to ensure that they are working as intended.

N. Disaster Recovery and Business Continuity Plan

The Contractor must have developed, periodically update, and regularly test disaster recovery and business continuity plans designed to ensure the availability of State data in the event of an adverse impact to the contractors information systems due to a natural or man-made emergency or disaster event.

O. Security Awareness Training

The Contractor must ensure their staff having access to State information are made aware of the security risks associated with their activities and of applicable laws, policies, and procedures related to security identified in Section A of this document, and ensuring that personnel are trained to carry out their assigned information security related duties.

STATE OF MICHIGAN

Contract No. 391B5500002
EQRO Services for Michigan's Medicaid
Managed Care Organizations

EXHIBIT D STANDARD CONTRACT TERMS

This STANDARD CONTRACT ("**Contract**") is agreed to between the State of Michigan (the "**State**") and Health Services Advisory Group, Inc. ("**Contractor**"), an Arizona corporation. This Contract is effective on November 1, 2014, and unless terminated, expires on October 31, 2017.

This Contract may be renewed for up to 2 additional 1 year period(s). Renewal must be by written agreement of the parties.

The parties agree as follows:

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

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

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

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

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

If to State:	If to Contractor:
Kim Young, Buyer Michigan Department of Community Health Grants and Purchasing Division Lewis Cass Building 320 South Walnut Lansing, MI 48913 Youngk10@michigan.gov (517) 241-3784	Mary Ellen Dalton, PhD, MBA, RN Chief Executive Officer Health Services Advisory Group, Inc. 3133 E. Camelback Road, Suite 100 Phoenix, AZ 85016 mdalton@hsag.com (602) 801-6701

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

If to State:	If to Contractor:
Kim Young, Buyer Michigan Department of Community Health Grants and Purchasing Division Lewis Cass Building 320 South Walnut Lansing, MI 48913 Youngk10@michigan.gov (517) 241-3784	Mary Ellen Dalton, PhD, MBA, RN Chief Executive Officer Health Services Advisory Group, Inc. 3133 E. Camelback Road, Suite 100 Phoenix, AZ 85016 mdalton@hsag.com (602) 801-6701

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

If to State:	If to Contractor:
Lori Schultz, RN, Quality Analyst Michigan Department of Community Health Bureau of Medicaid Program Operations and Quality Assurance 400 S. Pine/P.O. Box 30479 Lansing, MI 48909-7979 schultzl@michigan.gov (517) 241-8229	Diane Somerville, MSW Executive Director, EQRO Services Health Services Advisory Group, Inc. 3133 E. Camelback Road, Suite 100 Phoenix, AZ 85016 dsomerville@hsag.com (602) 801-6880

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

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

Insurance Type	Additional Requirements
Commercial General Liability Insurance	
<u>Minimal Limits:</u> \$1,000,000 Each Occurrence Limit \$1,000,000 Personal & Advertising Injury Limit \$2,000,000 General Aggregate Limit \$2,000,000 Products/Completed Operations <u>Deductible Maximum:</u> \$50,000 Each Occurrence	Contractor must have their policy: (1) endorsed to add “the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees, and agents” as additional insureds using endorsement CG 20 10 11 85, or both CG 2010 07 04 and CG 2037 07 04; (2) include a waiver of subrogation; and (3) for a claims-made policy, provide 3 years of tail coverage.
Umbrella or Excess Liability Insurance	

<p><u>Minimal Limits:</u> \$5,000,000 General Aggregate</p>	<p>Contractor must have their policy: (1) endorsed to add "the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees, and agents" as additional insureds, and (2) include a waiver of subrogation.</p>
Motor Vehicle Insurance	
<p><u>Minimal Limits:</u> \$1,000,000 Per Occurrence</p>	
Workers' Compensation Insurance	
<p><u>Minimal Limits:</u> Coverage according to applicable laws governing work activities.</p>	<p>Waiver of subrogation, except where waiver is prohibited by law.</p>
Employers Liability Insurance	
<p><u>Minimal Limits:</u> \$100,000 Each Accident \$100,000 Each Employee by Disease \$500,000 Aggregate Disease.</p>	
Cyber Liability Insurance	
<p><u>Minimal Limits:</u> \$1,000,000 Each Occurrence \$1,000,000 Annual Aggregate</p>	<p>Contractor must have their policy: (1) endorsed to add "the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees, and agents" as additional insureds; and (2) cover information security and privacy liability, privacy notification costs, regulatory defense and penalties, and website media content liability.</p>
Professional Liability (Errors and Omissions) Insurance	
<p><u>Minimal Limits:</u> \$3,000,000 Each Occurrence \$3,000,000 Annual Aggregate <u>Deductible Maximum:</u> \$50,000 Per Loss</p>	

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

Contractor must: (a) provide insurance certificates to the Contract Administrator, containing the agreement or purchase order number, at Contract formation and within 20 calendar days of the expiration date of the applicable policies; (b) require that subcontractors maintain the required insurances contained in this Section; (c) notify the Contract Administrator within 5 business days if any insurance is cancelled; and (d) waive all rights against the State for damages covered by insurance. Failure to maintain the required insurance does not limit this waiver.

7. Reserved

8. Reserved

9. Independent Contractor. Contractor is an independent contractor and assumes all rights, obligations and liabilities set forth in this Contract. Contractor, its employees, and agents will not be considered employees of the State. No partnership or joint venture relationship is created by virtue of this Contract. Contractor, and not the State, is responsible for the payment of wages, benefits and taxes of Contractor's employees and any subcontractors. Prior performance does not modify Contractor's status as an independent contractor.

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

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

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

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

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

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

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

16. Acceptance. Contract Activities are subject to inspection and testing by the State within 30 calendar days of the State's receipt of them ("**State Review Period**"), unless otherwise provided in Exhibit A. If the Contract Activities

are not fully accepted by the State, the State will notify Contractor by the end of the State Review Period that either: (a) the Contract Activities are accepted, but noted deficiencies must be corrected; or (b) the Contract Activities are rejected. If the State finds material deficiencies, it may: (i) reject the Contract Activities without performing any further inspections; (ii) demand performance at no additional cost; or (iii) terminate this Contract in accordance with Section 23, Termination for Cause.

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

If Contractor is unable or refuses to correct the deficiency within the time response standards set forth in this Contract, the State may cancel the order in whole or in part. The State, or a third party identified by the State, may perform the Contract Activities and recover the difference between the cost to cure and the Contract price plus an additional 10% administrative fee.

17. Reserved

18. Reserved

19. Reserved

20. Terms of Payment. Invoices must conform to the requirements communicated from time-to-time by the State. All undisputed amounts are payable within 45 days of the State's receipt. Contractor may only charge for Contract Activities performed as specified in Exhibit A. Invoices must include an itemized statement of all charges. The State is exempt from State sales tax for direct purchases and may be exempt from federal excise tax, if Contract Activities purchased under the Contract are for the State's exclusive use. Prices are exclusive of all taxes, and Contractor is solely responsible for payment of any applicable taxes.

The State has the right to withhold payment of any disputed amounts until the parties agree as to the validity of the disputed amount. The State will notify Contractor of any dispute within a reasonable time. Payment by the State will not constitute a waiver of any rights as to Contractor's continuing obligations, including claims for deficiencies or substandard Contract Activities. Contractor's acceptance of final payment by the State constitutes a waiver of all claims by Contractor against the State for payment under this Contract, other than those claims previously filed in writing on a timely basis and still disputed.

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

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

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

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

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

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

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

- 24. Termination for Convenience.** The State may immediately terminate this Contract in whole or in part without penalty and for any reason, including but not limited to, appropriation or budget shortfalls. The termination notice will specify whether Contractor must: (a) cease performance of the Contract Activities immediately, or (b) continue to perform the Contract Activities in accordance with Section 25, Transition Responsibilities. If the State terminates this Contract for convenience, the State will pay all reasonable costs, as determined by the State, for State approved Transition Responsibilities.
- 25. Transition Responsibilities.** Upon termination or expiration of this Contract for any reason, Contractor must, for a period of time specified by the State (not to exceed 180 calendar days), provide all reasonable transition assistance requested by the State, to allow for the expired or terminated portion of the Contract Activities to continue without interruption or adverse effect, and to facilitate the orderly transfer of such Contract Activities to the State or its designees. Such transition assistance may include, but is not limited to: (a) continuing to perform the Contract Activities at the established Contract rates; (b) taking all reasonable and necessary measures to transition performance of the work, including all applicable Contract Activities, training, equipment, software, leases, reports and other documentation, to the State or the State's designee; (c) taking all necessary and appropriate steps, or such other action as the State may direct, to preserve, maintain, protect, or return to the State all materials, data, property, and confidential information provided directly or indirectly to Contractor by any entity, agent, vendor, or employee of the State; (d) transferring title in and delivering to the State, at the State's discretion, all completed or partially completed deliverables prepared under this Contract as of the Contract termination date; and (e) preparing an accurate accounting from which the State and Contractor may reconcile all outstanding accounts (collectively, "**Transition Responsibilities**"). This Contract will automatically be extended through the end of the transition period.
- 26. General Indemnification.** Contractor must defend, indemnify and hold the State, its departments, divisions, agencies, offices, commissions, officers, and employees harmless, without limitation, from and against any and all actions, claims, losses, liabilities, damages, costs, attorney fees, and expenses (including those required to establish the right to indemnification), arising out of or relating to: (a) any breach by Contractor (or any of Contractor's employees, agents, subcontractors, or by anyone else for whose acts any of them may be liable) of any of the promises, agreements, representations, warranties, or insurance requirements contained in this Contract; (b) any infringement, misappropriation, or other violation of any intellectual property right or other right of any third party; (c) any bodily injury, death, or damage to real or tangible personal property occurring wholly or in part due to action or inaction by Contractor (or any of Contractor's employees, agents, subcontractors, or by anyone else for whose acts any of them may be liable); and (d) any acts or omissions of Contractor (or any of Contractor's employees, agents, subcontractors, or by anyone else for whose acts any of them may be liable).

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

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

Any litigation activity on behalf of the State, or any of its subdivisions under this Section, must be coordinated with the Department of Attorney General. An attorney designated to represent the State may not do so until approved by the Michigan Attorney General and appointed as a Special Assistant Attorney General.

27. **Infringement Remedies.** If, in either party's opinion, any piece of equipment, software, commodity, or service supplied by Contractor or its subcontractors, or its operation, use or reproduction, is likely to become the subject of a copyright, patent, trademark, or trade secret infringement claim, Contractor must, at its expense: (a) procure for the State the right to continue using the equipment, software, commodity, or service, or if this option is not reasonably available to Contractor, (b) replace or modify the same so that it becomes non-infringing; or (c) accept its return by the State with appropriate credits to the State against Contractor's charges and reimburse the State for any losses or costs incurred as a consequence of the State ceasing its use and returning it.
28. **Limitation of Liability.** The State is not liable for consequential, incidental, indirect, or special damages, regardless of the nature of the action.
29. **Disclosure of Litigation, or Other Proceeding.** Contractor must notify the State within 14 calendar days of receiving notice of any litigation, investigation, arbitration, or other proceeding (collectively, "**Proceeding**") involving Contractor, a subcontractor, or an officer or director of Contractor or subcontractor, that arises during the term of the Contract, including: (a) a criminal Proceeding; (b) a parole or probation Proceeding; (c) a Proceeding under the Sarbanes-Oxley Act; (d) a civil Proceeding involving: (1) a claim that might reasonably be expected to adversely affect Contractor's viability or financial stability; or (2) a governmental or public entity's claim or written allegation of fraud; or (e) a Proceeding involving any license that Contractor is required to possess in order to perform under this Contract.
30. **Reserved**
31. **State Data.**
- a. **Ownership.** The State's data ("**State Data**," which will be treated by Contractor as Confidential Information) includes: (a) the State's data collected, used, processed, stored, or generated as the result of the Contract Activities; (b) personally identifiable information ("**PII**") collected, used, processed, stored, or generated as the result of the Contract Activities, including, without limitation, any information that identifies an individual, such as an individual's social security number or other government-issued identification number, date of birth, address, telephone number, biometric data, mother's maiden name, email address, credit card information, or an individual's name in combination with any other of the elements here listed; and, (c) personal health information ("**PHI**") collected, used, processed, stored, or generated as the result of the Contract Activities, which is defined under the Health Insurance Portability and Accountability Act (HIPAA) and its related rules and regulations. State Data is and will remain the sole and exclusive property of the State and all right, title, and interest in the same is reserved by the State. This Section survives the termination of this Contract.
 - b. **Contractor Use of State Data.** Contractor is provided a limited license to State Data for the sole and exclusive purpose of providing the Contract Activities, including a license to collect, process, store, generate, and display State Data only to the extent necessary in the provision of the Contract Activities. Contractor must: (a) keep and maintain State Data in strict confidence, using such degree of care as is appropriate and consistent with its obligations as further described in this Contract and applicable law to avoid unauthorized access, use, disclosure, or loss; (b) use and disclose State Data solely and exclusively for the purpose of providing the Contract Activities, such use and disclosure being in accordance with this Contract, any applicable Statement of Work, and applicable law; and (c) not use, sell, rent, transfer, distribute, or otherwise disclose or make available State Data for Contractor's own purposes or for the benefit of anyone other than the State without the State's prior written consent. This Section survives the termination of this Contract.
 - c. **Extraction of State Data.** Contractor must, within one (1) business day of the State's request, provide the State, without charge and without any conditions or contingencies whatsoever (including but not limited to the payment of any fees due to Contractor), an extract of the State Data in the format specified by the State.
 - d. **Backup and Recovery of State Data.** Unless otherwise specified in Exhibit A, Contractor is responsible for maintaining a backup of State Data and for an orderly and timely recovery of such data. Unless otherwise described in Exhibit A, Contractor must maintain a contemporaneous backup of State Data that can be recovered within two (2) hours at any point in time.
 - e. **Loss of Data.** In the event of any act, error or omission, negligence, misconduct, or breach that compromises or is suspected to compromise the security, confidentiality, or integrity of State Data or the

physical, technical, administrative, or organizational safeguards put in place by Contractor that relate to the protection of the security, confidentiality, or integrity of State Data, Contractor must, as applicable: (a) notify the State as soon as practicable but no later than twenty-four (24) hours of becoming aware of such occurrence; (b) cooperate with the State in investigating the occurrence, including making available all relevant records, logs, files, data reporting, and other materials required to comply with applicable law or as otherwise required by the State; (c) in the case of PII or PHI, at the State's sole election, (i) notify the affected individuals who comprise the PII or PHI as soon as practicable but no later than is required to comply with applicable law, or, in the absence of any legally required notification period, within 5 calendar days of the occurrence; or (ii) reimburse the State for any costs in notifying the affected individuals; (d) in the case of PII, provide third-party credit and identity monitoring services to each of the affected individuals who comprise the PII for the period required to comply with applicable law, or, in the absence of any legally required monitoring services, for no less than twenty-four (24) months following the date of notification to such individuals; (e) perform or take any other actions required to comply with applicable law as a result of the occurrence; (f) without limiting Contractor's obligations of indemnification as further described in this Contract, indemnify, defend, and hold harmless the State for any and all claims, including reasonable attorneys' fees, costs, and expenses incidental thereto, which may be suffered by, accrued against, charged to, or recoverable from the State in connection with the occurrence; (g) be responsible for recreating lost State Data in the manner and on the schedule set by the State without charge to the State; and, (h) provide to the State a detailed plan within 10 calendar days of the occurrence describing the measures Contractor will undertake to prevent a future occurrence. Notification to affected individuals, as described above, must comply with applicable law, be written in plain language, and contain, at a minimum: name and contact information of Contractor's representative; a description of the nature of the loss; a list of the types of data involved; the known or approximate date of the loss; how such loss may affect the affected individual; what steps Contractor has taken to protect the affected individual; what steps the affected individual can take to protect himself or herself; contact information for major credit card reporting agencies; and, information regarding the credit and identity monitoring services to be provided by Contractor. This Section survives the termination of this Contract.

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

- a. **Meaning of Confidential Information.** For the purposes of this Contract, the term "**Confidential Information**" means all information and documentation of a party that: (a) has been marked "confidential" or with words of similar meaning, at the time of disclosure by such party; (b) if disclosed orally or not marked "confidential" or with words of similar meaning, was subsequently summarized in writing by the disclosing party and marked "confidential" or with words of similar meaning; and, (c) should reasonably be recognized as confidential information of the disclosing party. The term "Confidential Information" does not include any information or documentation that was: (a) subject to disclosure under the Michigan Freedom of Information Act (FOIA); (b) already in the possession of the receiving party without an obligation of confidentiality; (c) developed independently by the receiving party, as demonstrated by the receiving party, without violating the disclosing party's proprietary rights; (d) obtained from a source other than the disclosing party without an obligation of confidentiality; or, (e) publicly available when received, or thereafter became publicly available (other than through any unauthorized disclosure by, through, or on behalf of, the receiving party). For purposes of this Contract, in all cases and for all matters, State Data is deemed to be Confidential Information.
- b. **Obligation of Confidentiality.** The parties agree to hold all Confidential Information in strict confidence and not to copy, reproduce, sell, transfer, or otherwise dispose of, give or disclose such Confidential Information to third parties other than employees, agents, or subcontractors of a party who have a need to know in connection with this Contract or to use such Confidential Information for any purposes whatsoever other than the performance of this Contract. The parties agree to advise and require their respective employees, agents, and subcontractors of their obligations to keep all Confidential Information confidential. Disclosure to a subcontractor is permissible where: (a) use of a subcontractor is authorized under this Contract; (b) the disclosure is necessary or otherwise naturally occurs in connection with work that is within the subcontractor's responsibilities; and (c) Contractor obligates the subcontractor in a written contract to maintain the State's Confidential Information in confidence. At the State's request, any employee of Contractor or any subcontractor may be required to execute a separate agreement to be bound by the provisions of this Section.

- c. Cooperation to Prevent Disclosure of Confidential Information. Each party must use its best efforts to assist the other party in identifying and preventing any unauthorized use or disclosure of any Confidential Information. Without limiting the foregoing, each party must advise the other party immediately in the event either party learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this Contract and each party will cooperate with the other party in seeking injunctive or other equitable relief against any such person.
- d. Remedies for Breach of Obligation of Confidentiality. Each party acknowledges that breach of its obligation of confidentiality may give rise to irreparable injury to the other party, which damage may be inadequately compensable in the form of monetary damages. Accordingly, a party may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies which may be available, to include, in the case of the State, at the sole election of the State, the immediate termination, without liability to the State, of this Contract or any Statement of Work corresponding to the breach or threatened breach.
- e. Surrender of Confidential Information upon Termination. Upon termination of this Contract or a Statement of Work, in whole or in part, each party must, within 5 calendar days from the date of termination, return to the other party any and all Confidential Information received from the other party, or created or received by a party on behalf of the other party, which are in such party's possession, custody, or control; provided, however, that Contractor must return State Data to the State following the timeframe and procedure described further in this Contract. Should Contractor or the State determine that the return of any non-State Data Confidential Information is not feasible, such party must destroy the non-State Data Confidential Information and must certify the same in writing within 5 calendar days from the date of termination to the other party.

33. Data Privacy and Information Security.

- a. Undertaking by Contractor. Without limiting Contractor's obligation of confidentiality as further described, Contractor is responsible for establishing and maintaining a data privacy and information security program, including physical, technical, administrative, and organizational safeguards, that is designed to: (a) ensure the security and confidentiality of the State Data; (b) protect against any anticipated threats or hazards to the security or integrity of the State Data; (c) protect against unauthorized disclosure, access to, or use of the State Data; (d) ensure the proper disposal of State Data; and (e) ensure that all employees, agents, and subcontractors of Contractor, if any, comply with all of the foregoing. In no case will the safeguards of Contractor's data privacy and information security program be less stringent than the safeguards used by the State, and Contractor must at all times comply with all applicable State IT policies and standards, which are available to Contractor upon request.
- b. Audit by Contractor. No less than annually, Contractor must conduct a comprehensive independent third-party audit of its data privacy and information security program and provide such audit findings to the State.
- c. Right of Audit by the State. Without limiting any other audit rights of the State, the State has the right to review Contractor's data privacy and information security program prior to the commencement of Contract Activities and from time to time during the term of this Contract. During the providing of the Contract Activities, on an ongoing basis from time to time and without notice, the State, at its own expense, is entitled to perform, or to have performed, an on-site audit of Contractor's data privacy and information security program. In lieu of an on-site audit, upon request by the State, Contractor agrees to complete, within 45 calendar days of receipt, an audit questionnaire provided by the State regarding Contractor's data privacy and information security program.
- d. Audit Findings. Contractor must implement any required safeguards as identified by the State or by any audit of Contractor's data privacy and information security program.
- e. State's Right to Termination for Deficiencies. The State reserves the right, at its sole election, to immediately terminate this Contract or a Statement of Work without limitation and without liability if the State determines that Contractor fails or has failed to meet its obligations under this Section.

34. Reserved

35. Reserved

- 36. Records Maintenance, Inspection, Examination, and Audit.** The State or its designee may audit Contractor to verify compliance with this Contract. Contractor must retain, and provide to the State or its designee and the auditor general upon request, all financial and accounting records related to the Contract through the term of the Contract and for 7 years after the latter of termination, expiration, or final payment under this Contract or any extension ("**Audit Period**"). If an audit, litigation, or other action involving the records is initiated before the end of the Audit Period, Contractor must retain the records until all issues are resolved.

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

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

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

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

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

40. Reserved

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

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

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

lack of personal jurisdiction or *forum non conveniens*. Contractor must appoint agents in Michigan to receive service of process.

44. **Non-Exclusivity.** Nothing contained in this Contract is intended nor will be construed as creating any requirements contract with Contractor. This Contract does not restrict the State or its agencies from acquiring similar, equal, or like Contract Activities from other sources.
45. **Force Majeure.** Neither party will be in breach of this Contract because of any failure arising from any disaster or acts of god that are beyond their control and without their fault or negligence. Each party will use commercially reasonable efforts to resume performance. Contractor will not be relieved of a breach or delay caused by its subcontractors. If immediate performance is necessary to ensure public health and safety, the State may immediately contract with a third party.
46. **Dispute Resolution.** The parties will endeavor to resolve any Contract dispute in accordance with this provision. The dispute will be referred to the parties' respective Contract Administrators or Program Managers. Such referral must include a description of the issues and all supporting documentation. The parties must submit the dispute to a senior executive if unable to resolve the dispute within 15 business days. The parties will continue performing while a dispute is being resolved, unless the dispute precludes performance. A dispute involving payment does not preclude performance.

Litigation to resolve the dispute will not be instituted until after the dispute has been elevated to the parties' senior executive and either concludes that resolution is unlikely, or fails to respond within 15 business days. The parties are not prohibited from instituting formal proceedings: (a) to avoid the expiration of statute of limitations period; (b) to preserve a superior position with respect to creditors; or (c) where a party makes a determination that a temporary restraining order or other injunctive relief is the only adequate remedy. This Section does not limit the State's right to terminate the Contract.
47. **Media Releases.** News releases (including promotional literature and commercial advertisements) pertaining to the Contract or project to which it relates must not be made without prior written State approval, and then only in accordance with the explicit written instructions of the State.
48. **Website Incorporation.** The State is not bound by any content on Contractor's website unless expressly incorporated directly into this Contract.
49. **Order of Precedence.** In the event of a conflict between the terms and conditions of the Contract, the exhibits, a purchase order, or an amendment, the order of precedence is: (a) the purchase order; (b) the amendment; (c) Exhibit A; (d) any other exhibits; and (e) the Contract.
50. **Severability.** If any part of this Contract is held invalid or unenforceable, by any court of competent jurisdiction, that part will be deemed deleted from this Contract and the severed part will be replaced by agreed upon language that achieves the same or similar objectives. The remaining Contract will continue in full force and effect.
51. **Waiver.** Failure to enforce any provision of this Contract will not constitute a waiver.
52. **Survival.** The provisions of this Contract that impose continuing obligations, including warranties and representations, termination, transition, insurance coverage, indemnification, and confidentiality, will survive the expiration or termination of this Contract.
53. **Entire Contract and Modification.** This Contract is the entire agreement and replaces all previous agreements between the parties for the Contract Activities. This Contract may not be amended except by signed agreement between the parties (a "**Contract Change Notice**").

ATTACHMENT 1

HIPAA BUSINESS ASSOCIATE AGREEMENT ADDENDUM

This Business Associate Agreement Addendum (“Addendum”) is made a part of the contract (“Contract”) between the Michigan Department of Community Health (“Covered Entity”), and Health Services Advisory Group, Inc. (“Business Associate”).

The Business Associate performs certain services for the Covered Entity under the Contract that requires the exchange of information including protected health information under the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), as amended by the American Recovery and Reinvestment Act of 2009 (Pub.L. No. 111-5). The Michigan Department of Community Health is a hybrid covered entity under HIPAA and the parties to the Contract are entering into this Addendum to establish the responsibilities of both parties regarding HIPAA-covered information and have the underlying Contract comply with HIPAA.

RECITALS

- A. Under the terms of the Contract, the Covered Entity wishes to disclose certain information to the Business Associate, some of which may constitute Protected Health Information (“PHI”). In consideration of the receipt of PHI, the Business Associate agrees to protect the privacy and security of the information as set forth in this Addendum.
 - B. The Covered Entity and the Business Associate intend to protect the privacy and provide for the security of PHI disclosed to the Business Associate under the Contract in compliance with HIPAA and the HIPAA Rules.
 - C. The HIPAA Rules require the Covered Entity to enter into a contract containing specific requirements with the Business Associate before the Covered Entity may disclose PHI to the Business Associate.
1. Definitions.
 - a. The following terms used in this Agreement have the same meaning as those terms in the HIPAA Rules: Breach; Data Aggregation; Designated Record Set; Disclosure; Health Care Obligations; Individual; Minimum Necessary; Notice of Privacy Practices; Protected Health Information; Required by Law; Secretary; Security Incident; Security Measures, Subcontractor; Unsecured Protected Health Information, and Use.
 - b. “Business Associate” has the same meaning as the term “business associate” at 45 CFR 160.103 and regarding this Addendum means [Insert Name of Business Associate]
 - c. “Covered Entity” has the same meaning as the term “covered entity” at 45 CFR 160.103 and regarding this Addendum means the Michigan Department of Community Health.

d. “HIPAA Rules” means the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Part 160 and Part 164.

e. “Agreement” means both the Contract and this Addendum.

f. “Contract” means the underlying written agreement or purchase order between the parties for the goods or services to which this Addendum is added.

2. Obligations of Business Associate.

The Business Associate agrees to

a. use and disclose PHI only as permitted or required by this Addendum or as required by law.

b. implement and use appropriate safeguards, and comply with Subpart C of 45 CFR 164 regarding electronic protected health information, to prevent use or disclosure of PHI other than as provided in this Addendum. Business Associate must maintain, and provide a copy to the Covered Entity within 10 days of a request from the Covered Entity, a comprehensive written information privacy and security program that includes security measures that reasonably and appropriately protect the confidentiality, integrity, and availability of PHI relative to the size and complexity of the Business Associate’s operations and the nature and the scope of its activities.

c. report to the Covered Entity within 24 hours of any use or disclosure of PHI not provided for by this Addendum of which it becomes aware, including breaches of Unsecured Protected Health Information as required by 45 CFR 164.410, and any Security Incident of which it becomes aware. If the Business Associate is responsible for any unauthorized use or disclosure of PHI, it must promptly act as required by applicable federal and State laws and regulations. Covered Entity and the Business Associate will cooperate in investigating whether a breach has occurred, to decide how to provide breach notifications to individuals, the federal Health and Human Services’ Office for Civil Rights, and potentially the media.

d. ensure, according to 45 CFR 164.502(e)(1)(ii) and 164.308(b)(2), if applicable, that any subcontractors that create, receive, maintain, or transmit PHI on behalf of the Business Associate agree to the same restrictions, conditions, and requirements that apply to the Business Associate regarding such information. Each subcontractor must sign an agreement with the Business Associate containing substantially the same provisions as this Addendum and further identifying the Covered Entity as a third party beneficiary of the agreement with the subcontractor. Business Associate must implement and maintain sanctions against subcontractors that violate such restrictions and conditions and must mitigate the effects of any such violation.

e. make available PHI in a Designated Record Set to the Covered Entity within 10 days of a request from the Covered Entity to satisfy the Covered Entity’s obligations under 45 CFR 164.524.

f. within ten days of a request from the Covered Entity, amend PHI in a Designated Record Set under 45 CFR § 164.526. If any individual requests an amendment of PHI directly from the Business Associate or its agents or subcontractors, the Business Associate must notify the Covered Entity in writing within ten days of the request, and then, in that case, only the Covered Entity may either grant or deny the request.

g. maintain, and within ten days of a request from the Covered Entity make available the information required to enable the Covered Entity to fulfill its obligations under 45 CFR § 164.528. Business Associate is not required to provide an accounting to the Covered Entity of disclosures : (i) to carry out treatment, payment or health care operations, as set forth in 45 CFR § 164.506; (ii) to individuals of PHI about them as set forth in 45 CFR § 164.502; (iii) under an authorization as provided in 45 CFR § 164.508; (iv) to persons involved in the individual's care or other notification purposes as set forth in 45 CFR § 164.510; (v) for national security or intelligence purposes as set forth in 45 CFR § 164.512(k)(2); or (vi) to correctional institutions or law enforcement officials as set forth in 45 CFR § 164.512(k)(5); (vii) as part of a limited data set according to 45 CFR 164.514(e); or (viii) that occurred before the compliance date for the Covered Entity. Business Associate agrees to implement a process that allows for an accounting to be collected and maintained by the Business Associate and its agents or subcontractors for at least six years before the request, but not before the compliance date of the Privacy Rule. At a minimum, such information must include: (i) the date of disclosure; (ii) the name of the entity or person who received PHI and, if known, the address of the entity or person; (iii) a brief description of PHI disclosed; and (iv) a brief statement of purpose of the disclosure that reasonably informs the individual of the basis for the disclosure, or a copy of the individual's authorization, or a copy of the written request for disclosure. If the request for an accounting is delivered directly to the Business Associate or its agents or subcontractors, the Business Associate must forward it within ten days of the receipt of the request to the Covered Entity in writing.

h. to the extent the Business Associate is to carry out one or more of the Covered Entity's obligations under Subpart E of 45 CFR Part 164, comply with the requirements of Subpart E that apply to the Covered Entity when performing those obligations.

i. make its internal practices, books, and records relating to the Business Associate's use and disclosure of PHI available to the Secretary for purposes of determining compliance with the HIPAA Rules. Business Associate must concurrently provide to the Covered Entity a copy of any PHI that the Business Associate provides to the Secretary.

j. retain all PHI throughout the term of the Agreement and for a period of six years from the date of creation or the date when it last was in effect, whichever is later, or as required by law. This obligation survives the termination of the Agreement.

k. implement policies and procedures for the final disposition of electronic PHI and the hardware and equipment on which it is stored, including but not limited to, the removal of PHI before re-use.

1. within ten days after a written request by the Covered Entity, the Business Associate and its agents or subcontractors must allow the Covered Entity to conduct a reasonable inspection of the facilities, systems, books, records, agreements, policies and procedures relating to the use or disclosure of PHI under this Addendum for the purpose of determining whether the Business Associate has complied with this Addendum; provided, however, that: (i) the Business Associate and the Covered Entity must mutually agree in advance upon the scope, timing and location of such an inspection; (ii) the Covered Entity must protect the confidentiality of all confidential and proprietary information of the Business Associate to which the Covered Entity has access during the course of such inspection; and (iii) the Covered Entity or the Business Associate must execute a nondisclosure agreement, if requested by the other party. The fact that the Covered Entity inspects, or fails to inspect, or has the right to inspect, the Business Associate's facilities, systems, books, records, agreements, policies and procedures does not relieve the Business Associate of its responsibility to comply with this Addendum. The Covered Entity's (i) failure to detect or (ii) detection, but failure to notify the Business Associate or require the Business Associate's remediation of any unsatisfactory practices, does not constitute acceptance of such practice or a waiver of the Covered Entity's enforcement rights under this Addendum.

3. Permitted Uses and Disclosures by the Business Associate.

a. Business Associate may use or disclose PHI:

(i) for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate; provided, however, either (A) the disclosures are required by law, or (B) the Business Associate obtains reasonable assurances from the person to whom the information is disclosed that the information will remain confidential and used or further disclosed only as required by law or for the purposes for which it was disclosed to the person, and the person notifies the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached;

(ii) as required by law;

(iii) for Data Aggregation services relating to the health care operations of the Covered Entity;

(iv) to de-identify, consistent with 45 CFR 164.514(a) – (c), PHI it receives from the Covered Entity. If the Business Associates de-identifies the PHI it receives from the Covered Entity, the Business Associate may use the de-identified information for any purpose not prohibited by the HIPAA Rules; and

(v) for any other purpose listed here: carrying out the Business Associate's duties under the Contract.

b. Business Associate agrees to make uses and disclosures and requests for PHI consistent with the Covered Entity's minimum necessary policies and procedures.

c. Business Associate may not use or disclose PHI in a manner that would violate Subpart E of 45 CFR Part 164 if done by the Covered Entity except for the specific uses and disclosures described above in 3(a)(i) and (iii).

4. Covered Entity's Obligations

Covered entity agrees to

a. use its Security Measures to reasonably and appropriately maintain and ensure the confidentiality, integrity, and availability of PHI transmitted to the Business Associate under the Agreement until the PHI is received by the Business Associate.

b. provide the Business Associate with a copy of its Notice of Privacy Practices and must notify the Business Associate of any limitations in the Notice of Privacy Practices of the Covered Entity under 45 CFR 164.520 to the extent that such limitation may affect the Business Associate's use or disclosure of PHI.

c. notify the Business Associate of any changes in, or revocation of, the permission by an individual to use or disclose the individual's PHI to the extent that such changes may affect the Business Associate's use or disclosure of PHI.

d. notify the Business Associate of any restriction on the use or disclosure of PHI that the Covered Entity has agreed to or is required to abide by under 45 CFR 164.522 to the extent that such restriction may affect the Business Associate's use or disclosure of PHI.

5. Term. This Addendum must continue in effect as to each Contract to which it applies until such Contract is terminated or is replaced with a new contract between the parties containing provisions meeting the requirements of the HIPAA Rules, whichever first occurs.

6. Termination.

a. Material Breach. In addition to any other provisions in the Contract regarding breach, a breach by the Business Associate of any provision of this Addendum, as determined by the Covered Entity, constitutes a material breach of the Addendum and is grounds for termination of the Contract by the Covered Entity under the provisions of the Contract covering termination for cause. If the Contract contains no express provisions regarding termination for cause, the following apply to termination for breach of this Addendum, subject to 6.b.:

(i) Default. If the Business Associate refuses or fails to timely perform any of the provisions of this Addendum, the Covered Entity may notify the Business Associate in writing of the non-performance, and if not corrected within thirty days, the Covered Entity may immediately terminate the Contract. Business Associate must continue performance of the Contract to the extent it is not terminated.

(ii) Associate's Duties. Notwithstanding termination of the Contract, and subject to any directions from the Covered Entity, the Business Associate must timely, reasonably and necessarily act to protect and preserve property in the possession of the Business Associate in which the Covered Entity has an interest.

(iii) Compensation. Payment for completed performance delivered and accepted by the Covered Entity must be at the Contract price.

(iv) Erroneous Termination for Default. If the Covered Entity terminates the Contract under Section 6(a) and after such termination it is determined, for any reason, that the Business

Associate was not in default, or that the Business Associate's action/inaction was excusable, such termination will be treated as a termination for convenience, and the rights and obligations of the parties will be the same as if the Contract had been terminated for convenience.

b. Reasonable Steps to Cure Breach. If the Covered Entity knows of a pattern of activity or practice of the Business Associate that constitutes a material breach or violation of the Business Associate's obligations under the provisions of this Addendum or another arrangement and does not terminate this Contract under Section 6(a), then the Covered Entity must notify the Business Associate of the pattern of activity or practice. The Business Associate must then take reasonable steps to cure such breach or end such violation, as applicable. If the Business Associate's efforts to cure such breach or end such violation are unsuccessful, the Covered Entity must either (i) terminate this Agreement, if feasible or (ii) if termination of this Agreement is not feasible, the Covered Entity must report the Business Associate's breach or violation to the Secretary of the Department of Health and Human Services.

c. Effect of Termination. After termination of this Agreement for any reason, the Business Associate, with respect to PHI it received from the Covered Entity, or created, maintained, or received by the Business Associate on behalf of the Covered Entity, must:

(i) retain only that PHI which is necessary for the Business Associate to continue its proper management and administration or to carry out its legal responsibilities;

(ii) return to the Covered Entity (or, if agreed to by the Covered Entity in writing, destroy) the remaining PHI that the Business Associate still maintains in any form;

(iii) continue to use appropriate safeguards and comply with Subpart C of 45 CFR Part 164 with respect to electronic protected health information to prevent use or disclosure of the PHI, other than as provided for in this Section, for as long as the Business Associate retains the PHI;

(iv) not use or disclose the PHI retained by the Business Associate other than for the purposes for which such PHI was retained and subject to the same conditions set out at Section 3(a)(1) which applied before termination; and

(v) return to the Covered Entity (or, if agreed to by the Covered Entity in writing, destroy) the PHI retained by the Business Associate when it is no longer needed by the Business Associate for its proper management and administration or to carry out its legal responsibilities.

7. No Waiver of Immunity. The parties do not intend to waive any of the immunities, rights, benefits, protection, or other provisions of the Michigan Governmental Immunity Act, MCL 691.1401, *et seq.*, the Federal Tort Claims Act, 28 U.S.C. 2671 *et seq.*, or the common law.

8. Data Ownership. The Business Associate has no ownership rights in the PHI. The covered entity retains all ownership rights of the PHI.

9. Disclaimer. The Covered Entity makes no warranty or representation that compliance by the Business Associate with this Addendum, HIPAA or the HIPAA Rules will be adequate or satisfactory for the Business Associate's own purposes. Business Associate is solely responsible for all decisions made by the Business Associate regarding the safeguarding of PHI.

10. Certification. If the Covered Entity determines an examination is necessary to comply with the Covered Entity's legal obligations under HIPAA relating to certification of its security

practices, the Covered Entity or its authorized agents or contractors, may, at the Covered Entity's expense, examine the Business Associate's facilities, systems, procedures and records as may be necessary for such agents or contractors to certify to the Covered Entity the extent to which the Business Associate's security safeguards comply with HIPAA, the HIPAA Rules or this Addendum.

11. Amendment.

a. The parties acknowledge that state and federal laws relating to data security and privacy are rapidly evolving and that amendment of this Addendum may be required to provide for procedures to ensure compliance with such developments. The parties specifically agree to take such action as is necessary to implement the standards and requirements of HIPAA and the HIPAA Rules. Upon the request of either party, the other party agrees to promptly enter into negotiations concerning the terms of an amendment to this Addendum embodying written assurances consistent with the standards and requirements of HIPAA and the HIPAA Rules. Either party may terminate the Agreement upon thirty days written notice if (i) the Business Associate does not promptly enter into negotiations to amend this Agreement when requested by the Covered Entity under this Section or (ii) the Business Associate does not enter into an amendment to this Agreement providing assurances regarding the safeguarding of PHI that the Covered Entity, in its sole discretion, deems sufficient to satisfy the standards and requirements of HIPAA and the HIPAA Rules.

12. Assistance in Litigation or Administrative Proceedings. Business Associate must make itself, and any subcontractors, employees or agents assisting Business Associate in the performance of its obligations under this Agreement, available to Covered Entity, at no cost to Covered Entity, to testify as witnesses, or otherwise, if someone commences litigation or administrative proceedings against the Covered Entity, its directors, officers or employees, departments, agencies, or divisions based upon a claimed violation of HIPAA or the HIPAA Rules relating to the Business Associate's or its subcontractors use or disclosure of PHI under this Agreement, except where the Business Associate or its subcontractor, employee or agent is a named adverse party.

13. No Third Party Beneficiaries. Nothing express or implied in this Addendum is intended to confer any rights, remedies, obligations or liabilities upon any person other than the Covered Entity, the Business Associate and their respective successors or assigns.

14. Effect on Contract. Except as specifically required to implement the purposes of this Addendum, or to the extent inconsistent with this Addendum, all other terms of the Contract must remain in force and effect. The parties expressly acknowledge and agree that sufficient mutual consideration exists to make this Addendum legally binding in accordance with its terms. Business Associate and the Covered Entity expressly waive any claim or defense that this Addendum is not part of the Contract.

15. Interpretation and Order of Precedence. This Addendum is incorporated into and becomes part of the Contract. Together, this Addendum and each separate Contract constitute the "Agreement" of the parties with respect to their Business Associate relationship under HIPAA and the HIPAA Rules. The provisions of this Addendum must prevail over any provisions in the Contract that may conflict or appear inconsistent with any provision in this

Addendum. This Addendum and the Contract must be interpreted as broadly as necessary to implement and comply with HIPAA and the HIPAA Rules. The parties agree that any ambiguity in this Addendum must be resolved in favor of a meaning that complies and is consistent with HIPAA and the HIPAA Rules. This Addendum supersedes and replaces any previous separately executed HIPAA addendum between the parties. If this Addendum conflicts with the mandatory provisions of the HIPAA Rules, then the HIPAA Rules control. Where the provisions of this Addendum differ from those mandated by the HIPAA Rules, but are nonetheless permitted by the HIPAA Rules, the provisions of this Addendum control.

16. Effective Date. This Addendum is effective upon receipt of the last approval necessary and the affixing of the last signature required.

17. Survival of Certain Contract Terms. Notwithstanding anything in this Addendum to the contrary, the Business Associate’s obligations under Section 6(d) and record retention laws (“Effect of Termination”) and Section 13 (“No Third Party Beneficiaries”) survive termination of this Addendum and are enforceable by the Covered Entity if the Business Associate fails to perform or comply with this Addendum.

18. Representatives and Notice.

a. Representatives. For the purpose of this Addendum, the individuals identified in the Contract must be the representatives of the respective parties. If no representatives are identified in the Contract, the individuals listed below are designated as the parties’ respective representatives for purposes of this Addendum. Either party may from time to time designate in writing new or substitute representatives.

b. Notices. All required notices must be in writing and must be hand delivered or given by certified or registered mail to the representatives at the addresses set forth below.

Covered Entity Representative:

Name: Kim Stephen
Title: Director, Bureau of Budget and Audit
Department and Division: Michigan Department of Community Health
Address: 320 South Walnut Street
Lansing, MI 48913

Business Associate Representative:

Name: _____
Title: _____
Department and Division: _____
Address: _____

Any notice given to a party under this Addendum must be deemed effective, if addressed to such party, upon: (i) delivery, if hand delivered; or (ii) the third (3rd) Business Day after being sent by certified or registered mail.

Business Associate

[INSERT NAME]

By: _____

Date: _____

Print Name: _____

Title: _____

Covered Entity

[INSERT NAME]

By: _____

Date: _____

Print Name: Kim Stephen

Title: Director, Bureau of Budget and
Purchasing