



**STATE OF MICHIGAN  
ENTERPRISE PROCUREMENT**

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

**CONTRACT CHANGE NOTICE**

Change Notice Number 3  
to  
Contract Number 071B4300012

<b>CONTRACTOR</b>	Towers Watson Delaware Inc.	<b>STATE</b>	Anthony Estell	DTMB
	28411 Northwestern Hwy		517-284-4555	
	Southfield, MI 48034		estella@michigan.gov	
	Brian Morris		Joshua Wilson	DTMB
	248-936-7430		(517) 284-7027	
	brian.morris@towerswatson.com		wilsonj31@michigan.gov	
*****1291				

<b>CONTRACT SUMMARY</b>				
HEALTH CARE ACTUARIAL SERVICES - DEPARTMENT OF TECHNOLOGY, MANAGEMENT AND BUDGET (DTMB) - OFFICE OF RETIREMENT SERVICES (ORS)				
INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE	
December 19, 2013	December 18, 2016	2 - 1 Year	December 18, 2018	
PAYMENT TERMS		DELIVERY TIMEFRAME		
NET 45		N/A		
ALTERNATE PAYMENT OPTIONS			EXTENDED PURCHASING	
<input type="checkbox"/> P-Card <input type="checkbox"/> Direct Voucher (DV) <input type="checkbox"/> Other			<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
MINIMUM DELIVERY REQUIREMENTS				
N/A				
<b>DESCRIPTION OF CHANGE NOTICE</b>				
OPTION	LENGTH OF OPTION	EXTENSION	LENGTH OF EXTENSION	REVISED EXP. DATE
<input type="checkbox"/>	N/A	<input type="checkbox"/>	N/A	
CURRENT VALUE	VALUE OF CHANGE NOTICE	ESTIMATED AGGREGATE CONTRACT VALUE		
\$8,969,220.00	\$0.00	\$8,969,220.00		
<b>DESCRIPTION</b>				
Effective September 20, 2016, pricing is hereby updated per the attached revised Attachment A, Pricing Proposal.				
All other terms, conditions, specifications and pricing remain the same per contractor and agency agreement, and per DTMB Procurement approval.				





# STATE OF MICHIGAN ENTERPRISE PROCUREMENT

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

## CONTRACT CHANGE NOTICE

Change Notice Number 2  
to  
Contract Number 071B4300012

<b>CONTRACTOR</b>	Towers Watson Delaware Inc.
	28411 Northwestern Hwy
	Southfield, MI 48034
	Brian Morris
	248-936-7430
	Brian.Morris@towerswatson.com
*****1291	

<b>STATE</b>	Program Manager	Estell, Anthony	ORS
		(517) 284-4555	
	estella@michigan.gov		
	Contract Administrator	Joshua Wilson	DTMB
(517) 284-7027			
WilsonJ31@michigan.gov			

CONTRACT SUMMARY				
<b>DESCRIPTION:</b> Health Care Actuarial Services – Department of Technology, Management and Budget (DTMB) – Office of Retirement Services (ORS)				
INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW	
December 19, 2013	December 18, 2016	2 - 1 Year	December 18, 2016	
PAYMENT TERMS		DELIVERY TIMEFRAME		
NET 45		N/A		
ALTERNATE PAYMENT OPTIONS			EXTENDED PURCHASING	
<input type="checkbox"/> P-card <input type="checkbox"/> Direct Voucher (DV) <input type="checkbox"/> Other			<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
MINIMUM DELIVERY REQUIREMENTS				
N/A				
DESCRIPTION OF CHANGE NOTICE				
OPTION	LENGTH OF OPTION	EXTENSION	LENGTH OF EXTENSION	REVISED EXP. DATE
<input checked="" type="checkbox"/>	2 – 1 Year Options	<input type="checkbox"/>		December 18, 2018
CURRENT VALUE		VALUE OF CHANGE NOTICE	ESTIMATED AGGREGATE CONTRACT VALUE	
\$6,186,725.00		\$ 2,782,495.00	\$8,969,220.00	

**DESCRIPTION:** Effective July 26, 2016, the Contract is increased by \$2,782,495.00 and both option years available on the Contract are hereby exercised. The revised expiration date is December 18, 2018.

Please note the Buyer/CA has changed to Joshua Wilson (Section 2.021). Please also note the Program Manager/CCI has changed to Anthony Estell (Section 2.022).

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

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

**CHANGE NOTICE NO. 1**  
 to  
**CONTRACT NO. 071B4300012**  
 between  
**THE STATE OF MICHIGAN**  
 and

NAME & ADDRESS OF CONTRACTOR	PRIMARY CONTACT	EMAIL
Towers Watson Delaware Inc. 28411 Northwestern Hwy Northwestern Plaza, Suite 500 Southfield, MI 48034	Brian Morris	Brian.Morris@towerswatson.com
	<b>PHONE</b>	<b>VENDOR TAX ID # (LAST FOUR DIGITS ONLY)</b>
	(248) 936-7430	1291

STATE CONTACTS	AGENCY	NAME	PHONE	EMAIL
<b>PROGRAM MANAGER</b>	DTMB	Phil Stoddard	(517) 322-6235	StoddardP@michigan.gov
<b>CONTRACT ADMINISTRATOR</b>	DTMB	Mary Ostrowski	(517) 284-7021	OstrowskiM@michigan.gov

CONTRACT SUMMARY			
<b>DESCRIPTION:</b> Health Care Actuarial, Underwriting & Plan Design Services			
INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW
December 19, 2013	December 18, 2016	2, 1 Year Options	December 18, 2016
PAYMENT TERMS	F.O.B.	SHIPPED TO	
N/A	N/A	N/A	
ALTERNATE PAYMENT OPTIONS			EXTENDED PURCHASING
<input type="checkbox"/> P-card <input type="checkbox"/> Direct Voucher (DV) <input type="checkbox"/> Other			<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
MINIMUM DELIVERY REQUIREMENTS			
N/A			

DESCRIPTION OF CHANGE NOTICE				
EXTEND CONTRACT EXPIRATION DATE	EXERCISE CONTRACT OPTION YEAR(S)	EXTENSION BEYOND CONTRACT OPTION YEARS	LENGTH OF EXTENSION/OPTION	EXPIRATION DATE AFTER CHANGE
<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	<input type="checkbox"/>	<input type="checkbox"/>	N/A	December 18, 2016
CURRENT VALUE		VALUE/COST OF CHANGE NOTICE	ESTIMATED REVISED AGGREGATE CONTRACT VALUE	
\$6,186,725.00		\$0.00	\$6,186,725.00	

**DESCRIPTION:**  
 Effective May 1, 2015, The following amendment is hereby incorporated into the Contract per attached Statement of Work. This change includes the following: Additional related services Also effective May 1, 2015, the following items are added to this Contract per revised Attachment A. All other terms condition, specifications and pricing remain the

same. Per Contractor and agency agreement, and DTMB Procurement approval.

Attachment A			
Task 8 : Consultants Task 9: Pharmacy Consultants	Consultant's Name	Projected Hours Per Year	Fixed Hourly Rate
Actuarial Analyst	Ann Byman	30	\$317.00
Administrative Support	Katie McKearn	10	\$148.00

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

**NOTICE  
 OF  
 CONTRACT NO. 071B4300012**  
 between  
**THE STATE OF MICHIGAN**  
 and

NAME & ADDRESS OF CONTRACTOR:	PRIMARY CONTACT	EMAIL
Towers Watson Delaware Inc. 28411 Northwestern Hwy One Northwestern Plaza, Suite 500 Southfield, MI 48034	Brian Morris	<a href="mailto:Brian.Morris@towerswatson.com">Brian.Morris@towerswatson.com</a>
	TELEPHONE	CONTRACTOR #, MAIL CODE
	(248) 936-7430	

STATE CONTACTS	AGENCY	NAME	PHONE	EMAIL
CONTRACT COMPLIANCE INSPECTOR:	DTMB	Phil Stoddard	(517) 322-6848	<a href="mailto:stoddardp@michigan.gov">stoddardp@michigan.gov</a>
BUYER:	DTMB	Mary Ostrowski	517-373-6327	<a href="mailto:ostrowskim@michigan.gov">ostrowskim@michigan.gov</a>

CONTRACT SUMMARY:			
<b>DESCRIPTION: Descriptive Contract Title (Not always the same language as provided in MAIN)</b>			
<b>Health Care Actuarial, Underwriting &amp; Plan Design Services</b>			
INITIAL TERM	EFFECTIVE DATE	INITIAL EXPIRATION DATE	AVAILABLE OPTIONS
3 years	December 19, 2013	December 18, 2016	2, one year
PAYMENT TERMS	F.O.B	SHIPPED	SHIPPED FROM
N/A	N/A	N/A	N/A
<b>ALTERNATE PAYMENT OPTIONS:</b>			AVAILABLE TO MiDEAL PARTICIPANTS
<input type="checkbox"/> P-card <input type="checkbox"/> Direct Voucher (DV) <input type="checkbox"/> Other			<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO
<b>MINIMUM DELIVERY REQUIREMENTS:</b>			
N/A			
<b>MISCELLANEOUS INFORMATION:</b>			
N/A			
<b>ESTIMATED CONTRACT VALUE AT TIME OF EXECUTION:</b>		\$6,186,725.00	

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

**CONTRACT NO. 071B4300012**  
 between  
**THE STATE OF MICHIGAN**  
 and

NAME & ADDRESS OF CONTRACTOR:	PRIMARY CONTACT	EMAIL
Towers Watson Delaware Inc. 28411 Northwestern Hwy One Northwestern Plaza, Suite 500 Southfield, MI 48034	Brian Morris	<a href="mailto:Brian.Morris@towerswatson.com">Brian.Morris@towerswatson.com</a>
	TELEPHONE	CONTRACTOR #, MAIL CODE
	(248) 936-7430	

STATE CONTACTS	AGENCY	NAME	PHONE	EMAIL
CONTRACT COMPLIANCE INSPECTOR:	DTMB	Phil Stoddard	(517) 322-6848	<a href="mailto:stoddardp@michigan.gov">stoddardp@michigan.gov</a>
BUYER:	DTMB	Mary Ostrowski	517-373-6327	<a href="mailto:ostrowskim@michigan.gov">ostrowskim@michigan.gov</a>

CONTRACT SUMMARY:			
DESCRIPTION: Descriptive Contract Title (Not always the same language as provided in MAIN)			
<b>Health Care Actuarial, Underwriting &amp; Plan Design Services</b>			
INITIAL TERM	EFFECTIVE DATE	INITIAL EXPIRATION DATE	AVAILABLE OPTIONS
3 years	December 19, 2013	December 18, 2016	2, one year
PAYMENT TERMS	F.O.B	SHIPPED	SHIPPED FROM
N/A	N/A	N/A	N/A
ALTERNATE PAYMENT OPTIONS:			AVAILABLE TO MiDEAL PARTICIPANTS
<input type="checkbox"/> P-card <input type="checkbox"/> Direct Voucher (DV) <input type="checkbox"/> Other			<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO
MINIMUM DELIVERY REQUIREMENTS:			
N/A			
MISCELLANEOUS INFORMATION:			
N/A			
ESTIMATED CONTRACT VALUE AT TIME OF EXECUTION:		\$6,186,725.00	

**THIS IS NOT AN ORDER:** This Contract Agreement is awarded on the basis of our inquiry bearing the solicitation #07113200063. Orders for delivery will be issued directly by the Department of Technology, Management & Budget through the issuance of a Purchase Order Form.

**Notice of Contract #: 071B4300012**

<b>FOR THE CONTRACTOR:</b>	<b>FOR THE STATE:</b>
Towers Watson Delaware Inc. Firm Name	Signature Kevin Dunn, Services Division Director Name/Title
Authorized Agent Signature	DTMB Procurement Enter Name of Agency
Authorized Agent (Print or Type)	Date
Date	Date



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

Contract No. 071B4300012  
Health Care Actuarial, Underwriting & Plan Design Services

Buyer Name: Mary Ostrowski  
Telephone Number: (517) 373-6327  
E-Mail Address: [ostrowskim@michigan.gov](mailto:ostrowskim@michigan.gov)



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## **DEFINITIONS**

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

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

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

**Bidder(s)** are those companies that submit a proposal in response to this RFP.

**Business Day** means any day other than a Saturday, Sunday or State-recognized legal holiday from 8:00am EST through 5:00pm EST unless otherwise stated.

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

**CCI** means Contract Compliance Inspector.

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

**Deleted – N/A** means that section is not applicable or included in this RFP. This is used as a placeholder to maintain consistent numbering.

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

**DTMB** means the Michigan Department of Technology Management and Budget.

**Environmentally Preferable Products** means a product or service that has a lesser or reduced effect on human health and the environment when compared with competing products or services that serve the same purpose. Such products or services may include, but are not limited to: those which contain recycled content, minimize waste, conserve energy or water, and reduce the amount of toxics either disposed of or consumed.

**Hazardous Material** means any material defined as hazardous under the latest version of federal Emergency Planning and Community Right-to-Know Act of 1986 (including revisions adopted during the term of the Contract).

**HIIMS** - Health Insurance Information Management System. This is the Plan Sponsor claims database system (current contract with Truven Health Analytics.)

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

**Key Personnel** means any personnel identified in **Section 1.031** as Key Personnel.

**MHCP** means Master Health Care Plan and includes medical/hospital and prescription benefits, not including HMO's (health maintenance organizations).

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

**Ozone-depleting Substance** means any substance the Environmental Protection Agency designates in 40 CFR part 82 as: (1) Class I, including, but not limited to, chlorofluorocarbons, halons, carbon tetrachloride, and methyl chloroform; or (2) Class II, including, but not limited to, hydrochlorofluorocarbons.



**PBM** means Pharmacy Benefit Manager.

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

**Post-Consumer Waste** means any product generated by a business or consumer which has served its intended end use; and which has been separated or diverted from solid waste for the purpose of recycling into a usable commodity or product, and which does not include post-industrial waste.

**Post-Industrial Waste** means industrial by-products which would otherwise go to disposal and wastes generated after completion of a manufacturing process, but does not include internally generated scrap commonly returned to industrial or manufacturing processes.

**Recycling** means the series of activities by which materials that are no longer useful to the generator are collected, sorted, processed, and converted into raw materials and used in the production of new products. This definition excludes the use of these materials as a fuel substitute or for energy production.

**Reuse** means using a product or component of municipal solid waste in its original form more than once.

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

**Services** means any function performed for the benefit of the State.

**SLA** means Service Level Agreement.

**Source Reduction** means any practice that reduces the amount of any hazardous substance, pollutant, or contaminant entering any waste stream or otherwise released into the environment prior to recycling, energy recovery, treatment, or disposal.

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

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

**Unauthorized Removal** means the Contractor's removal of Key Personnel without the prior written consent of the State.

**Waste Prevention** means source reduction and reuse, but not recycling.

**Pollution Prevention** means the practice of minimizing the generation of waste at the source and, when wastes cannot be prevented, utilizing environmentally sound on-site or off-site reuse and recycling. The term includes equipment or technology modifications, process or procedure modifications, product reformulation or redesign, and raw material substitutions. Waste treatment, control, management, and disposal are not considered pollution prevention, per the definitions under Part 143, Waste Minimization, of the Natural Resources and Environmental Protection Act (NREPA), 1994 PA 451, as amended.

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

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



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

### **1.010 Project Identification**

#### **1.011 Project Request**

This is a Contract for Health Care Actuarial, Underwriting and Plan Design Services necessary to complete Department of Technology, Management and Budget (DTMB), Office of Retirement Services (ORS) projects.

The Contract is for a period of three years and 25 days beginning October 7, 2013, through October 31, 2016. The period of October 7, 2013, through October 31, 2013, will be for implementation and transition for the Contractor. No payments will be made to the Contractor for the implementation and transition period. The Contractor must begin providing all Services, without interruption, on November 1, 2013.

#### **1.012 Background**

The Michigan Public School Employees Retirement System (MPERS) began actively addressing the rising cost of funding health benefits for retirees in the late 1980s. Efforts began with a move to self-insuring the plan to allow greater flexibility with plan design issues. The second step was to engage consulting services to assist in strategic planning and the management issues related to self-insuring. The third step was the development of an initial strategic plan that included a mission statement and cost/quality goals in a process that involved the Retirement Board, DTMB and active/retired school employee organizations. The fourth and ongoing step involves the identification, development, approval and implementation of strategic planning initiatives toward accomplishing the established goals.

The ORS offers a Master Health Care Plan (MHCP) as well as a dental plan and a vision plan for MPERS. Additionally, MPERS has a pilot program offering Health Maintenance Organization (HMOs) on a voluntary basis that has included from two to seven HMOs.

The MHCP is self-funded. Hospital/medical benefits are currently administered by Blue Cross-Blue Shield of Michigan (BCBSM). Prescription drug benefits are currently being administered by Catamaran. The hospital/medical contract will expire December 31, 2013, and is expected to re-bid January 1, 2014. The prescription drug contract has been extended to December 31, 2014, and is expected to re-bid January 1, 2015. Individuals electing hospital/medical benefits may also enroll in prescription drug benefits, or they may waive this coverage. Individuals waiving hospital/medical benefits may not enroll in prescription drug benefits.

As of June 30, 2012, there were 130,200 contracts for MHCP hospital/medical coverage. This translates to 201,300 covered individuals, including dependents (73% are Medicare age). Non-Medicare subscribers are in a PPO, and Medicare subscribers are in an MMA Advantage PPO Plan. Claims cost for the twelve-month period ending June 30, 2012 were \$1,596 million, including the portion paid by Medicare.

As of June 30, 2012, there were 125,700 contracts for MHCP prescription drug coverage. This translates to 195,000 covered individuals, including dependents (72% are Medicare age). Medicare subscribers are in an MMA Advantage Prescription Drug Plan (EGWP Plus Wrap). Claims cost for the twelve-month period ending June 30, 2012 were \$351 million, including the portion paid by Medicare.

The dental and vision plan benefits cover approximately 156,000 pension recipients and 93,000 dependents at a cost of \$91.4 million for the dental plan and \$8.1 million for the vision plan for the twelve-month period ending June 30, 2012. The dental plan is currently self-funded, and the vision plan is currently fully-insured. Both contracts will expire December 31, 2013, and are expected to be re-bid with effective dates of January 1, 2014. Truven Health Analytics is contracted to provide claims data management services with a contract expiration of December 31, 2015.

The successful implementation of this Contract largely depends upon the expertise of the Health Care Actuary's team members. It is expected that a close professional relationship will exist between the Contractor's team and the Contract Compliance Inspector (CCI), including close interaction with the Retirement Board's Health Insurance Committee, key ORS staff as assigned by the CCI and key health plan Contractor staff as assigned by the CCI.



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

### **1.021 In Scope**

The primary purpose of this Contract is to: (1) facilitate the development of bid specifications for the current master health care (inclusive of prescription drug benefits), dental, vision and the Health Insurance Information Management System's expiring contracts, (2) provide expertise and leadership in the ongoing development, implementation and monitoring of strategic planning cost/quality initiatives, and (3) perform ongoing duties relating to plan administration including but not limited to the following specifications under Section 1.022.

### **1.022 Work and Deliverable**

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

#### **A. MHCP RFP Development**

The Contractor must provide health care and actuarial consultation for the development of Requests For Proposals (RFPs) for the re-bid of the hospital/medical and pharmacy benefit management services. Consultation must include, but not be limited to, analysis of the costs and benefits of various contracting alternatives for non-Medicare and Medicare health care and pharmacy services in both administrative-services only and fully insured models. If analysis indicates the need for multiple RFPs (for example, creating separate RFPs for the Medicare and non-Medicare populations), the Contractor must provide these services for each RFP written.

#### **1. Requirements**

##### **The Contractor must:**

- a. Provide real time analysis and recommendations on how to provide a high quality plan that is affordable to both the members and employers.
- b. Employ knowledge of current industry trends, including extensive knowledge of potential Bidder pool in the development of RFP document(s).
- c. Provide project management of RFP development, including assembly and organization of subject matter expertise.
- d. Provide, through subject matter experts, support and consultation to the Plan Sponsor in the development of RFP content, Bidder evaluation, Bidder selection, and post-award implementation of service(s).
- e. Review and recommend changes to facilitate rapid implementation of benefit and procedural modifications resulting from strategic planning initiatives or industry-wide changes in provider practice procedures, HMOs, Medicare, etc.
- f. Recommend service level agreement (SLA) standards.
- g. Provide requirements for management data and reports that will support the Plan Sponsor's efforts in strategic planning and administrative oversight.
- h. Advise the Plan Sponsor on information to provide bidders in order to ensure competitive and complete RFP bid responses.
- i. Provide criteria for the audit process to include in the RFP.
- j. Recommend pricing methodologies and tools to be used in the evaluation of competitive bids.
- k. Evaluate competitive bids using Plan Sponsor approved methodologies and tools.
- l. Recommend criteria for selecting the winning bid.



m. Recommend any other information necessary for the RFP, to be reviewed by the Plan Sponsor.

n. Participate in all aspects of the bid response review committee. Anticipated activities may include a Bidders' question and answer meeting, analyzing and scoring the proposals, interviews, on-site claim facility visits with the finalists, and any negotiations.

o. Give presentations to the CCI and staff, the Board's Health Insurance Committee, and to the MPSERS Board, as required.

## **2. The following Resources may be available for the Contractor.**

- a. Onsite Plan Sponsor
- b. Previous RFP documents
- c. List of subsequent changes to coverage
- d. List of new changes/additions to coverage
- e. Health Care Strategic Plan, which includes Plan Sponsor's claims experience reporting

## **3. Time Frame**

- a. The Contractor must work collaboratively with the Plan Sponsor in anticipation of those contracts that will require going out for competitive bid.
- b. Upon receipt of an approved timeline of development, the Contractor must anticipate and provide consultation to the Plan Sponsor on appropriate commencement and conclusion of RFP development/contract award.
- c. Once established, the Contractor must adhere to this schedule to ensure implementation time for re-contracted services.

## **B. Dental Plan RFP Development**

The Contractor must provide advice on industry standards and expert consultation for the development of an RFP for the re-bid of dental plan services. Consultation must include, but not be limited to, analysis of the costs and benefits of both administrative-services only and fully insured models.

### **1. Requirements**

#### **The Contractor must:**

- a. Provide real time analysis and recommendations on how to provide a high quality plan that is affordable to both the members and employers.
- b. Employ knowledge of current industry trends, including knowledge of the potential Bidder pool in development of RFP documents.
- c. Provide project management of RFP development, including assembly and organization of subject matter expertise.
- d. Provide, through subject matter experts, support and consultation to the Plan Sponsor in the development of RFP content, Bidder evaluation, bidder selection, and post-award implementation of services.
- e. Review and recommend changes to facilitate rapid and uncontested implementation of benefit and procedural modifications resulting from strategic planning initiatives or industry-wide changes in dental health coverage provider practice procedures.
- f. Establish and include requirements for management data and reports that will support the Plan Sponsor's efforts in strategic planning and administrative oversight.
- g. Advise the Plan Sponsor on information to provide Bidders in order to ensure competitive and complete RFP bid responses.
- h. Establish and include criteria for the audit process as part of the RFP.



- i. Establish, in conjunction with subject matter experts, pricing methodologies and tool to be used in the evaluation of competitive bids.
- j. Recommend and include criteria for selecting the winning bid as part of the RFP.
- k. Recommend the pricing methodologies and tools to be used in evaluation of competitive bids.
- l. Evaluate competitive bids using the Plan Sponsor approved methodologies and tools.
- m. Establish and include any other information necessary for the RFP.
- n. Participate in all aspects of the bid response review committee. Anticipated activities include a Bidders' question and answer meeting, analyzing and scoring the proposals, interviews, on-site claim facility visits with the finalists, and any final negotiations.
- o. Give presentations to the CCI and staff, the Board's Health Insurance Committee, and to the MPSERS Board, as required.

**2. The following Resources may be available to the Contractor:**

- a. Onsite Plan Sponsor
- b. Previous RFP documents
- c. List of subsequent changes to coverage
- d. List of new changes/additions to coverage
- e. Health Care Strategic Plan, which includes Plan Sponsor's dental claims experience reporting

**3. Time Frame**

- a. The Contractor must work collaboratively with the Plan Sponsor in anticipation of those contracts that will require going out for competitive bid.
- b. Upon receipt of an approved timeline of development, the Contractor must anticipate and provide consultation to the Plan Sponsor on appropriate commencement and conclusion of RFP development/contract award.
- c. Once established, the Contractor must adhere to this schedule to ensure implementation time for re-contracted services.

**C. Vision Plan RFP Development**

The Contractor must provide advice on industry standards and expert consultation for the development of an RFP for the re-bid of vision plan services. Consultation must include, but not be limited to, analysis of the costs and benefits of both administrative-services only and fully insured models.

**1. Requirements**

**The Contractor must:**

- a. Provide real time analysis and recommendations on how to provide a high quality plan that is affordable to both the members and schools.
- b. Employ knowledge of current industry trends, including knowledge of the potential Bidder pool, in development of RFP document(s).
- c. Provide project management of RFP development, including the assembly and organization of subject matter expertise.
- d. Provide, through subject matter experts, support and consultation to the Plan Sponsor in development of RFP content, Bidder evaluation, bidder selection, and post-award implementation of services.
- e. Review and recommend changes to facilitate rapid and uncontested implementation of benefit and procedural modifications resulting from strategic planning initiatives or industry-wide changes in dental health coverage provider practice procedures.



- f. Establish and include requirements for management data and reports that will support Plan Sponsor's efforts in strategic planning and administrative oversight.
- g. Advise the Plan Sponsor on information to provide Bidders in order to ensure competitive and complete RFP bid responses.
- h. Establish and include criteria for the audit process as part of the RFP.
- i. Establish, in conjunction with subject matter experts, pricing methodologies and tools to be used in the evaluation of competitive bids.
- j. Recommend and include criteria for selecting the winning bid.
- k. Recommend pricing methodologies and tools to be used in the evaluation of competitive bids.
- l. Evaluate competitive bids using the Plan Sponsor approved methodologies and tools.
- m. Establish and include any other information for the RFP.
- n. Participate on all aspects of the bid response review committee. Anticipated activities include a Bidders' question and answer meeting, analyzing and scoring the proposals, interviews, on-site claim facility visits with the finalists, and any final negotiations.
- o. Give presentations to the CCI and staff, the Board's Health Insurance Committee, and to the MPSERS Board, as required.

**2. The following Resources may be available to the Contractor:**

- a. Onsite Plan Sponsor
- b. Previous RFP documents
- c. List of subsequent changes to coverage
- d. List of new changes/additions to coverage
- e. Health Care Strategic Plan, which includes Plan Sponsor's vision claims experience reporting

**3. Time Frame**

- a. The Contractor must work collaboratively with the Plan Sponsor in anticipation of those contracts that will require going out for competitive bid.
- b. Upon receipt of an approved timeline of development, the Contractor must anticipate and provide consultation to the Plan Sponsor on commencement and conclusion of RFP development/contract award.
- c. Once established, the Contractor must adhere to this schedule to ensure implementation time for re-contracted services.

**D. Health Insurance Information Management RFP Development (HIIMS)**

The Contractor must provide health care and actuarial consultation for the development of an RFP for the re-bid of HIIMS.

**1. Requirements**

**The Contractor must:**

- a. Provide real time analysis and recommendations on how to secure data management services that support the Plan Sponsor's objectives.
- b. Employ knowledge of current industry trends, including knowledge of the potential Bidder pool in the development of RFP document(s).
- c. Provide project management of RFP development, including the assembly and organization of subject matter expertise.
- d. Provide, through subject matter experts, support and consultation to the Plan Sponsor in development of RFP content, Bidder evaluation, bidder selection, and post-award implementation of services.



- e. Establish and include requirements for management data and reports that will support the Plan Sponsor's efforts in strategic planning and administrative oversight.
- f. Advise the Plan Sponsor on information to provide Bidders in order to ensure competitive and complete RFP bid responses.
- g. Recommend pricing methodologies and tools to be used in evaluation of competitive bids.
- h. Evaluate competitive bids using the Plan Sponsor approved methodologies and tools.
- i. Recommend criteria for selecting the winning bid.
- j. Provide any other information necessary for the RFP.
- k. Participate on all aspects of the bid response review committee. Anticipated activities include a Bidders' question and answer meeting, analyzing and scoring the proposals, interviews, on-site claim facility visits with the finalists, and any final negotiations.

**2. The following Resources may be available to the Contractor:**

- a. Previous RFP documents
- b. List of existing Contract terms and conditions
- c. Input from Plan Sponsor on desired additions/edits to existing Contract terms and conditions.

**3. Time Frame**

- a. The Contractor must work collaboratively with the Plan Sponsor in anticipation of those contracts that will require going out for competitive bid.
- b. Upon receipt of an approved timeline of development, the Contractor must anticipate and provide consultation to the Plan Sponsor on commencement and conclusion of RFP development/contract award.
- c. Once established, the Contractor must adhere to this schedule to ensure implementation time for re-contracted services.

**E. Actuarial Underwriting**

The Contractor must provide actuarial and underwriting services for the MHCP, HMOs, dental plan, and vision plan.

**1. Requirements**

**The Contractor must:**

- a. Provide a premium rate setting for each plan on an annual basis.
- b. Provide related reports as necessary. All working papers, reports and other documentation prepared in the performance of this Contract are the property of the Plan Sponsor and must be submitted upon the completion of each individual project or as requested by the Plan Sponsor.
- c. Provide a quarterly health and pension financial report (see Attachment B for example). This report must include historical, current and projected employer contribution requirements for both health and pension.
- d. Give presentations to the MPSERS staff, the Board's Health Insurance Committee, the Health Initiative Review Committee (comprised of key educational administrators, union personnel, and retiree organization leadership) and to the MPSERS Board, as required.
- e. Validate a Medicare Advantage Program Savings report provided by the MHCP medical Contractor on a quarterly basis. The document must compare, for the current and next calendar year, the projected net costs of Medicare Advantage participation versus net costs that would be experienced if offering a Medicare Supplemental plan.
- f. Validate proposed quarterly settlements by the MHCP medical Contractor. These settlements are used to reconcile all payment requests from MHCP medical Contractor.

**2. The following Resources may be available to the Contractor:**

- a. Claims Data and administrative cost data will be available from the MHCP, HMO (as applicable), dental, and vision vendors and from the Health Insurance Information Management System.
- b. Medicare Savings document will be available from the master health claims administrator.
- c. Proposed quarterly settlements will be available from the master health claims administrator.

**3. Time Frame**

The Contractor must submit, to the Plan Sponsor, all items in 1.022.E.1 a through f above quarterly and annually, as appropriate, with the within-year schedule to be determined by the Plan Sponsor.

**F. Performance Audits**

The Contractor must provide written performance audits for the MHCP, dental plan and vision plan. The Contractor must provide the performance audit requirements on an as-needed basis and as-needed scope, as determined by the CCI for the MCHP, dental plan, and vision plan.

**1. Requirements****The Contractor must:**

- a. Advise the MPSERS on the desirable performance standards for the claims administrators, when developing the bid specifications. At the discretion of the CCI, performance audits must be designed to ensure that claims are paid on a timely basis, paid only once, and paid only for members of our plan. The Contractor's audits must ensure that providers bill services correctly, that providers perform only necessary and reasonable services covered by the Plan, and that coordination of benefits occurs. The Contractor's audits must also be designed to review contract compliance or policies and procedures of vendors, but additional activities may be required.
- b. Include in their health audit, a comprehensive review of claim office operations and procedures and system capabilities, but additional activities may be required.
- c. Design the Prescription Drug audits to discover processing patterns and identify problem areas, but are not limited to these activities. The Contractor must perform the audit(s) with a scope defined by the Plan Sponsor.
- d. Design the dental and vision audits to discover processing patterns and identify problem areas, but are not limited to these activities. The Contractor must perform the audit(s) with a scope defined by the Plan Sponsor.
- e. Design the Health Care audits to discover processing patterns and identify problem areas, but are not limited to these activities. The Contractor must perform the audits with a scope defined by the Plan Sponsor.
- f. Classify all errors discovered in the health, prescription drug, dental and vision audits as financial or non-financial. The Contractor must produce a variety of performance statistics and extrapolate them over the entire population of claims. Statistics generated include percent of benefits overpaid, percent of benefits underpaid and percent of benefits paid in error. The Contractor must compare each statistic to standard industry performance and any specific performance agreements or Service Level Agreements with the MPSERS. Financial errors must be the Contractor's primary concern. The Contractor must report discovered financial and non-financial errors to the Plan Sponsor. The Contractor must make recommendations to the Plan Sponsor and to the claims administrator. A settlement of overpayments and underpayments must be negotiated on behalf of the Plan Sponsor. The Contractor must stand behind their findings and provide support throughout the recovery process.



g. Perform all audits on-site at the claims administrator's claim office. All audits must determine compliance with:

- 1) The MPSERS plan descriptions.
- 2) The claims administrator's internal guidelines.
- 3) The generally accepted industry procedures

h. Cost audits out on a unit basis. The Plan Sponsor would like the ability to look at alternative audit formats and the Contractor must provide these options on a unit cost basis. The number and type of audits will be determined at the discretion of the CCI. The CCI and the Contractor must work to determine the final method for any audit conducted during the life of this Contract.

**2. The following Resources may be available to the Contractor:**

Performance criteria will be established in the respective bid specifications. Data will be available from the claims administrators and providers.

**3. Time Frame**

Audits may or may not be in progress or be up to date on the first day of the properly executed Contract agreement. If a backlog does exist and a prior year audit must be performed by the Contractor, the Plan Sponsor will consider it a unit-priced activity.

**G. Strategic Planning**

The Plan Sponsor conducts ongoing and regular strategic planning and updates to its health plan offerings that employ three basic levers: cost avoidance, cost savings, and cost sharing. The Contractor must work with the Plan Sponsor to continue developing strategic planning initiatives to meet this need. In addition, the Contractor must work with the Plan Sponsor's health insurance claims data management services contractor to analyze utilization and normative data and make suggestions concerning plan design. The Contractor's requirements are ongoing throughout the term of the Contract with annual deliverables.

**1. Requirements**

**Using utilization and normative data from the Health Insurance Information Management System (HIIMS), The Contractor must:**

- a. Have knowledge and resources that support consultation to the Plan Sponsor in all matters of the health care industry, including, but not limited to, Federal and State programs, and changes in the health care landscape which may bring opportunity to the Plan Sponsor in support of its strategic goals.
- b. Compare current-year utilization data to age-adjusted norms.
- c. Identify trends by comparing current utilization data with historical data.
- d. Provide consultation to updates in plan design that promote the maintenance of quality health care offerings while keeping the plan affordable to the Members and employers that fund them.
- e. Review, maintain and update the Plan Sponsor's Health Care Strategic Plan annually in conjunction with the Board's Health Insurance Committee.
- f. Monitor previously implemented initiatives for cost and quality effectiveness and submit to the Plan Sponsor, an annual report to include accomplishments toward cost and quality projections and recommended modifications.
- g. Develop a quarterly report including future forecasts of developing changes in benefit delivery, profession/facility practice patterns, utilization of existing and new technology, etc. to be used as an aid in strategic planning.
- h. Conduct ad-hoc studies and report preparations, as required by the Plan Sponsor.
- i. Conduct an actuarial analysis to determine how much the retirement system could benefit by moving eligible members to Medicaid, with or without the State adopting the Medicaid expansion.



**2. The following Resources may be available to the Contractor:**

- a. Utilization and cost data, which incorporates data provided by the claims administrators of the MHCP; HMOs, dental and vision plans.
- b. Plan Sponsor’s Health Care Strategic Plan
- c. Reports made available to Plan Sponsor by its other contractors, including all health plans.
- d. Reports developed through the course of work of the health actuary.

**3. Time Frame**

Activities delineated for this requirement are ongoing and continuous. Those requiring the production of reports by the Contractor must be produced and presented in accordance with the Plan Sponsor’s direction.

**H. Pharmacy Consulting Services**

The Contractor must provide pharmacy consulting services as related to prescription drug benefit plan design, plan administration, and vendor contract administration.

**1. Requirements**

**The Contractor must:**

- a. Provide pharmacy consulting services related to developing benefit plan design.
- b. Monitor recommendations made by the Pharmacy Benefit Manager (PBM) regarding drug coverage and utilization management (i.e. prior authorization, step therapy, etc.) to ensure that the recommendations are consistent with MPSERS formulary management strategy and benefit design.
- c. Make recommendations on prescription drug plan administration.
- d. Make recommendations related to vendor contract administration.
- e. Provide information to the Plan Sponsor relative to Federal changes with the Center for Medicaid and Medicare Services (CMS).
- f. Make recommendations on how to maintain or enhance quality and maintain or reduce costs of the pharmacy plan.

**2. Time Frame**

Pharmacy Consulting Services must be performed at the express direction of the Plan Sponsor on an as-needed basis.

**I. General Requirements**

At the direction of the CCI, or designee, the Contractor must:

- 1. Negotiate on MPSERS’s behalf with contractors, health care providers, etc.
- 2. Submit testimony to the State Legislature, the MPSERS’s Board, etc. at the request of ORS.
- 3. Provide counsel and assistance to deal with issues of plan design, cost containment, communications, and other matters, which are part of managing the health care plans.
- 4. Provide accurate research projects, audits, data analyses and strategic planning assistance.
- 5. Provide day-to-day oversight of research projects, audits, data analyses, strategic planning, plan development, and other related tasks.
- 6. Be responsible for receiving, analyzing, and interpreting health data in order to provide actuarial, budgetary, legislative, and system management recommendations necessary to administer the plan.
- 7. Have on-site representation. The team must be available within 24 hours for meetings at the General Office Building in Dimondale, or similar mid-Michigan locations.



## **1.030 Roles and Responsibilities**

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

#### **A. Contractor Staff General Requirements**

1. The Contractor must provide a designated team to perform the professional health actuarial, underwriting and plan design services for ORS. The team must consist of the Key Personnel listed in Section 1.031.C, 1-6. Each member of this team must be approved by the ORS. No team member is to be assigned or changed by the Contractor without the approval of the Plan Sponsor. In the event that an assigned team member becomes permanently unavailable, the Plan Sponsor must be fully involved in selecting a replacement and has the right of refusal in the selection process. The Plan Sponsor may terminate the Contract if the Contract Administrator or designee determines that the consultants filling these positions are not acceptable to the Plan Sponsor. The team must consider the Plan Sponsor's projects to be top priority.

2. All of the Contractor's Key Personnel must have a minimum of three years of experience in providing consulting and actuarial services to major statewide public employee retirement systems.

#### **B. Contractor Consultant Requirements**

1. The Contractor must provide expert counsel, actuarial services, auditing services, underwriting services, tax and legal information, research, and communications services on an "as needed" basis.

2. The Contractor must provide actuarial counsel, research, and support to Plan Sponsor, the form of which may be either orally or in writing. Actuarial expertise provided must include, but not be limited to, the following:

- a. Understanding of changes in employee benefit laws (i.e. COBRA, HIPAA, MMA, PPACA, etc.).
- b. Understanding of trends in healthcare informatics and data management.
- c. Understanding of changes in State and Federal law related to Healthcare and Other Post-Employment Benefits (OPEB) including ability to provide legislative or congressional policy analysis.
- d. Participant demographics trends.
- e. Contract administration of healthcare related vendors and general contract management for large vendor service contracts.
- f. Administering healthcare services preferably within the State of Michigan environment. If no experience within the State of Michigan environment, please provide details regarding experience administering healthcare services within other states environments.
- g. Knowledge of Procurement rules and regulations within state government, preferably State of Michigan Procurement rules and regulations.
- h. Industry expertise and ability to relay information to Plan Sponsor relative to Federal changes with the CMS.
- i. Interpreting Governmental Accounting Standards Board (GASB) standards especially pertaining to OPEB.
- j. IRS and tax law as it pertains to OPEB.
- k. Understanding medical policy standards and recommendations.

3. The Contractor's consultants must be available and able to be on-site, often within two hours' notice. A core group of the consultants are required to be onsite a minimum of three times per week.



## C. Contractor Staff

### The Contractor must provide, at a minimum:

#### 1. Senior Consultant

The Senior Consultant must:

- a. Have experience on a national level, of health care and group benefits with expertise of trends influencing the future of health and group benefits for large plans.
- b. Have analytical, strategic planning and communication skills.
- c. Have a minimum of six years of experience as a Senior Level Consultant identifying, designing, recommending and implementing cost reduction and quality improvement initiatives for large plans.

This position must commit approximately 50 hours annually, spending 25 hours on fixed price tasks and 25 hours on variable priced tasks.

The Senior Consultant is considered Key Personnel.

#### 2. Negotiations Consultant

The Negotiations Consultant must:

- a. Have experience in the health benefits arena with negotiating skills.
- b. Have a minimum of five years of experience in negotiating rates of reimbursement, premiums, delivery of healthcare and recoveries with experience preferably with Michigan based benefit plans.
- c. Have a minimum of three years of experience as a consultant identifying, designing, recommending and implementing cost reduction and quality improvement initiatives for plan sponsors.

This position must commit approximately 200 hours annually, spending 75 hours on fixed price tasks and 125 hours on variable priced tasks.

The Negotiations Consultant is considered Key Personnel.

#### 3. Pharmacy Consultant(s)

The Pharmacy Consultant(s) must:

- a. Have experience in all areas of pharmacy benefits management compliance and oversight, including but not limited to: custom formulary development and management, with adherence to Plan Sponsor's overall mission of maintaining a lowest net cost formulary, Medicare Part D compliance-including being abreast of current industry practices and CMS-prescribed mandates for employer group waiver plans, and industry insights that can support Plan Sponsor in its strategic initiatives.
- b. Be available to the Plan Sponsor to use their industry experience in support of the Plan Sponsor's management and oversight of the pharmacy benefits manager and in matters of pharmacy benefits management contracting.

A minimum of one pharmacy consultant must be a licensed, registered pharmacist.

These positions must collectively commit approximately 610 hours annually.

The Pharmacy Consultant(s) are considered Key Personnel.

#### 4. Managing Consultants

The Managing Consultants must:

- a. Have experience with quality and cost containment strategies, the Federal Medicare Modernization Act, Health Insurance Portability and Accountability Act, Patient Protection and Affordable Care Act, etc.
- b. Have a minimum of two years of experience preferably with Michigan based; 1) health benefit plans, 2) provider networks and 3) insurance and claims administration.



These positions must collectively commit approximately 2500 hours annually, with 1700 hours being considered as part of the Strategic Planning fixed price.  
The Managing Consultants are considered Key Personnel.

**5. Project Manager**

The Project Manager must:

- a. Be a full-time, onsite Project Manager.
- b. Have project management, writing, verbal, analytical and problem-solving skills.
- c. Have experience in strategic planning.
- d. Have experience in the health care industry, preferably experience with third party administration.

This position is full-time, on-site at the direction of the Plan Sponsor.  
The Project Manager is considered Key Personnel.

**6. Health Care Actuary Team**

Health Care Actuary Team Members must:

- a. Have verbal and written presentation skills and experience in rate setting and validation of documents relating to the financial state of health plans.
- b. Have a background in pension as well as health actuarial concepts for the preparation of the quarterly health and pension financial report.

The Health Care Actuary Team is considered Key Personnel.

**7. Additional Contractor Staff**

The Contractor’s proposed staff must be all-inclusive, with no additional charges for services and staffing roles to perform the requirements of this Contract.

Additional staff includes but are not limited to:

- a. Pension Actuary
- b. Auditor
- c. Underwriter
- d. Lawyer
- e. Technical Staff
- f. Clerical Staff
- g. Computer Programmers
- h. Word Processing Operators

**1.040 Project Plan**

**1.041 Project Plan Management**

**A. Project Control**

1. The Contractor must carry out this Contract under the direction and control of the State of Michigan, DTMB, ORS.
2. Although there will be continuous interaction with the Contractor team, the Contractor's implementation project manager must meet biweekly, as a minimum, with the CCI or designee, for the purpose of reviewing progress.
3. When initiating a task activity, the Contractor must submit to the Plan Sponsor for final approval an implementation work plan, staffing chart and estimate of costs (for unit priced activities) for approval by the Plan Sponsor.
4. The Contractor must submit to the Plan Sponsor for final approval a work plan, due within one week of the beginning of the implementation period, which must include the following:
  - a. The Contractor's project organizational structure.
  - b. The Contractor's staffing table with names and title of personnel assigned to the Contract.  
This must be in agreement with staffing of accepted proposal. Necessary substitutions due to



change of employment status and other unforeseen circumstances may only be made with prior approval of the Plan Sponsor.

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

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

e. Indicate any involvement expected of ORS in the implementation and on-going administration of the plan.

## **B. Issue Management**

1. If the Contractor is notified, by the Plan Sponsor, of any critical issues related to the administration of the program, the Contractor must respond the same day with a resolution and execution plan.

2. The Contractor must notify the Plan Sponsor CCI and/or Plan Administrator immediately of any issues affecting any aspect of the program or administration thereof.

3. The Contractor must develop an annual work plan in collaboration with the Plan Sponsor which must be agreed upon by the Plan Sponsor and the Contractor. The Plan Sponsor will perform an annual review of the Contractor on qualitative and quantitative measures.

## **C. Risk Management**

The Contractor must provide to the CCI Within 30 days of the Contract start date, a complete description of their risk management policies and procedures to mitigate any potential risks.

## **D. Change Management**

The Contractor must not make any changes in the costs (for unit priced activities), timelines, work plans, or staffing without prior review and written approval by the Plan Sponsor.

### **1.042 Reports**

The Contractor must:

1. Provide a draft of any study, report, bid specification, or communication production to the Plan Sponsor for purposes of reviewing factual accuracy and to determine if task items have been adequately completed. The number of copies of the deliverable product will be 50 unless otherwise specified.
2. Submit to the CCI, or designee, brief written biweekly summaries of progress which outline the work accomplished during the reporting period; work to be accomplished during the subsequent reporting period; problems, real or anticipated, which should be brought to the attention of the CCI or designee; and notification of any significant deviation from previously agreed-upon work plans.
3. Provide management reports as outlined in 1.022.E Actuarial Underwriting, Requirements section of the RFP. The Contractor must also provide any other standard reports.
4. Submit a report summary, for inclusion in the annual health management report, (chapter 4 of the health strategic plan), and independent from the HIIMS contractor. The summary must attest to the progress, or lack of, in meeting the board's strategic planning cost and quality goals and a summary description of future trends that should be considered for activities in the upcoming year.
5. Provide any other reports requested by the Plan Sponsor.

**1.050 Acceptance****1.051 Criteria**

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

- Timeliness of meetings and report completion;
- Adherence to Implementation Plan and approved calendar;
- Invoices must be submitted to the ORS Financial Analyst. The Financial Analyst will review to determine whether all items were completed and (for unit priced items) number of hours did not exceed agreed-upon caps and number of hours are reasonable and verifiable. The CCI or designee will approve based upon the same criteria.

**1.052 Final Acceptance – Deleted, Not Applicable****1.060 Proposal Pricing****1.061 Proposal Pricing**

For authorized Services and Price List, see Attachment A, Price Proposal.

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

**1.062 Price Term**

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

**1.063 Tax Excluded from Price**

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

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

**1.064 Holdback – Deleted, Not Applicable****1.070 Additional Requirements****1.071 Additional Terms and Conditions specific to this RFP – Deleted – N/A**



## Article 2, Terms and Conditions

### 2.000 Contract Structure and Term

#### **2.001 Contract Term**

The Contract is for a period of three years beginning December 19, 2013, through December 18, 2016. All outstanding Purchase Orders must also expire upon the termination (cancellation for any of the reasons listed in **Section 2.150**) of the Contract, unless otherwise extended under the Contract. Absent an early termination for any reason, Purchase Orders issued but not expired, by the end of the Contract's stated term, will remain in effect for the balance of the fiscal year for which they were issued.

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

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

#### **2.003 Legal Effect**

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

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

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

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

#### **2.005 Ordering**

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

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

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

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



## **2.007 Headings**

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

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

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

## **2.009 Reformation and Severability**

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

## **2.010 Consents and Approvals**

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

## **2.011 No Waiver of Default**

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

## **2.012 Survival**

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

## **2.020 Contract Administration**

### **2.021 Issuing Office**

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

Mary Ostrowski, Buyer  
Procurement  
DTMB  
Mason Bldg, 2nd Floor  
PO Box 30026  
Lansing, MI 48909  
Email: [ostrowskim@michigan.gov](mailto:ostrowskim@michigan.gov)  
Phone: (517) 373-6327

### **2.022 Contract Compliance Inspector**

After DTMB-Procurement receives the properly executed Contract, it is anticipated that the Chief



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

Kerrie Vanden Bosch  
ORS  
PO Box 30171  
Lansing, MI 48909-7671  
[vandenboschk@michigan.gov](mailto:vandenboschk@michigan.gov)  
Phone: (517) 636-6104

### 2.023 Project Manager

The following individual will oversee the project:

Aaron Usher, Senior Analyst  
ORS  
PO Box 30171  
Lansing, MI 48909-7671  
[ushera@michigan.gov](mailto:ushera@michigan.gov)  
Phone: (517) 322-6736

### 2.024 Change Requests

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

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

Change Requests:

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

### 2.025 Notices

Any notice given to a party under the Contract must be deemed effective, if addressed to the State contact



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

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

### **2.026 Binding Commitments**

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

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

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

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

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

### **2.029 Assignments**

(a) Neither party may assign the Contract, or assign or delegate any of its duties or obligations under the Contract, to any other party (whether by operation of law or otherwise), without the prior written consent of the other party; provided, however, that the State may assign the Contract to any other State agency, department, division or department without the prior consent of Contractor and Contractor may assign the Contract to an affiliate so long as the affiliate is adequately capitalized and can provide adequate assurances that the affiliate can perform the requirements of the Contract. The State may withhold consent from proposed assignments, subcontracts, or novations when the transfer of responsibility would operate to decrease the State's likelihood of receiving performance on the Contract or the State's ability to recover damages.

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

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

### **2.030 General Provisions**

#### **2.031 Media Releases**

News releases (including promotional literature and commercial advertisements) pertaining to the RFP and Contract or project to which it relates must not be made without prior written State approval, and then



only in accordance with the explicit written instructions from the State. No results of the activities associated with the RFP and Contract are to be released without prior written approval of the State and then only to persons designated.

### **2.032 Contract Distribution**

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

### **2.033 Permits**

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

### **2.034 Website Incorporation**

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

### **2.035 Future Bidding Preclusion**

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

### **2.036 Freedom of Information**

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

### **2.037 Disaster Recovery**

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

## **2.040 Financial Provisions**

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

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

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

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

**2.043 Services/Deliverables Covered**

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

**2.044 Invoicing and Payment - In General**

(a) Each Statement of Work issued under the Contract must list (or indicate by reference to the appropriate Contract Exhibit) the prices for all Services/Deliverables, equipment and commodities (if any) to be provided, and the associated payment milestones and payment amounts.

(b) Each Contractor invoice must show details as to charges by Service/Deliverable component and location at a level of detail reasonably necessary to satisfy the State's accounting requirements. Invoices for Services performed on a time and materials basis must show, for each individual, the number of hours of Services performed during the billing period, the billable skill/labor category for such person and the applicable hourly billing rate. Prompt payment by the State is contingent on the Contractor's invoices showing the amount owed by the State.

(c) Correct invoices will be due and payable by the State, in accordance with the State's standard payment procedure as specified in 1984 PA 279, MCL 17.51 et seq., within 45 days after receipt, provided the State determines that the invoice was properly rendered.

(d) All invoices should reflect actual work done. Specific details of invoices and payments will be agreed upon between the CCI and the Contractor.

The specific payment schedule for any Statement of Work entered into, as the State and the Contractor(s) must mutually agreed upon. The schedule must show payment amount and must reflect actual work done by the payment dates. As a general policy, statements must be forwarded to the designated representative by the 15th day of the following month.

The State may make progress payments to the Contractor when requested as work progresses, but not more frequently than monthly, in amounts approved by the CCI, after negotiation. Contractor must show verification of measurable progress at the time of requesting progress payments.

**2.045 Pro-ration**

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

**2.046 Antitrust Assignment**

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

**2.047 Final Payment**

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

**2.048 Electronic Payment Requirement**



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

## **2.050 Taxes**

### **2.051 Employment Taxes**

Contractors are expected to collect and pay all applicable federal, state, and local employment taxes for all persons involved in the Contract.

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

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

## **2.060 Contract Management**

### **2.061 Contractor Personnel Qualifications**

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

### **2.062 Contractor Key Personnel**

- (a) The Contractor must provide the CCI with the names of the Key Personnel, if any, in each Statement of Work.
- (b) Key Personnel must be dedicated as defined in the Statement of Work to the Project for its duration in the applicable Statement of Work with respect to other individuals designated as Key Personnel for that Statement of Work.
- (c) The State reserves the right to recommend and approve in writing the initial assignment, as well as any proposed reassignment or replacement, of any Key Personnel. Any Key Personnel listed on the applicable Statement of Work, Contractor must provide the State with a resume and any other information about the individual reasonably requested by the State. The State reserves the right to interview the individual before granting written approval. In the event the State finds a proposed individual unacceptable, the State must provide a written explanation including reasonable detail outlining the reasons for the rejection. Contractor shall promptly remove such individual from the applicable Statement of Work and shall, as soon as practicable, provide a replacement individual with comparable skills and experience. The State acknowledges that any rejection or request for removal of an individual designated by Contractor may delay the commencement and/or completion of



Services.

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

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

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

### **2.064 Contractor Personnel Location**

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

### **2.065 Contractor Identification**

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

### **2.066 Cooperation with Third Parties**

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

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

The Contractor must return to the State any State-furnished equipment, facilities, and other resources



when no longer required for the Contract in the same condition as when provided by the State, reasonable wear and tear excepted.

### **2.068 Contract Management Responsibilities**

The Contractor must assume responsibility for all contractual activities performed by Contractor and its affiliates and subcontractors who performs them for Contractor. Further, the State considers the Contractor to be the sole point of contact with regard to contractual matters, including managing and successfully completing Services as specified in this Contract. If any part of the work is to be subcontracted, the Contract must include a list of Subcontractors, including firm name and address, contact person and a complete description of work to be subcontracted. The State reserves the right to approve Subcontractors and to require the Contractor to replace Subcontractors found to be unacceptable. The Contractor is totally responsible for adherence by the Subcontractor to all provisions of the Contract. Any change in Subcontractors must be approved by the State, in writing, prior to such change.

#### **2.070 Subcontracting by Contractor**

### **2.071 Contractor Full Responsibility**

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

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

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

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

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

### **2.074 Flow Down**



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

### **2.075 Competitive Selection**

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

#### **2.080 State Responsibilities**

### **2.081 Equipment**

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

### **2.082 Facilities**

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

#### **2.090 Security**

### **2.091 Background Checks**

On a case-by-case basis, the Contractor shall authorize an investigation of the Contractor's personnel before they may have access to State facilities and systems. The scope of the background check is at the discretion of the State and the results will be used to determine Contractor personnel eligibility for working within State facilities and systems. The investigations will include Michigan State Police Background checks (ICHAT) and may include the National Crime Information Center (NCIC) Finger Prints. Proposed Contractor personnel may be required to complete and submit an RI-8 Fingerprint Card for the NCIC Finger Print Check. Any request for background checks will be initiated by the State and will be reasonably related to the type of work requested.

### **2.092 Security Breach Notification**

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

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

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

(b) The Contractor must notify the CCI (within 72 hours of discovery) of any breaches in security where cardholder data has been compromised. In that event, the Contractor must provide full cooperation to the



Visa, MasterCard, Discover and state Acquirer representative(s), and/or a PCI approved third party to conduct a thorough security review. The Contractor must make the forensic report available within two weeks of completion. The review must validate compliance with the current PCI Data Security Standards for protecting cardholder data.

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

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

The parties acknowledge and agree this Section 2.093 is not applicable to the Services the State is requesting under this Contract and does not apply to Contractor, in whole or in part.

## **2.100 Confidentiality**

### **2.101 Confidentiality**

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

The State acknowledges that certain Deliverables could contain Contractor's trade secrets and other Confidential Information that is exempt from disclosure under the Freedom of Information Act or similar laws. In the event that the State receives a request for such information under the Freedom of Information Act or similar law, the State will endeavor to provide notice to Contractor, in accordance with Contractor's express written instructions contained in the Deliverable, and a reasonable opportunity for Contractor to object to the release of such information, and to take action at its own expense to prevent the release of the information. Contractor acknowledges that while the State will exercise its discretion to exempt Confidential Information from disclosure, a court with jurisdiction could ultimately order release of the information. The State shall not be liable to Contractor for any release of information to which Contractor had an opportunity to object or the release of any information ordered by a court.

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

The State and Contractor must each use at least the same degree of care to prevent disclosing to third parties the Confidential Information of the other as it employs to avoid unauthorized disclosure, publication, or dissemination of its own confidential information of like character, but in no event less than reasonable care. Neither Contractor nor the State will (i) make any use of the Confidential Information of the other except as contemplated by the Contract, (ii) acquire any right in or assert any lien against the Confidential Information of the other, or (iii) if requested to do so, refuse for any reason to promptly return the other party's Confidential Information to the other party. Each party must limit disclosure of the other party's Confidential Information to employees and Subcontractors who must have access to fulfill the purposes of the Contract. Disclosure to, and use by, a Subcontractor is permissible where (A) use of a Subcontractor is authorized under the Contract, (B) the disclosure is necessary or otherwise naturally occurs in connection with work that is within the Subcontractor's scope of responsibility, and (C) Contractor obligates the Subcontractor in a written Contract to maintain the State's Confidential



Information in confidence. At the State's request, any employee of Contractor and of any Subcontractor having access or continued access to the State's Confidential Information may be required to execute an acknowledgment that the employee has been advised of Contractor's and the Subcontractor's obligations under this Section and of the employee's obligation to Contractor or Subcontractor, as the case may be, to protect the Confidential Information from unauthorized use or disclosure. Promptly upon termination or cancellation of the Contract for any reason, Contractor must certify to the State that Contractor has destroyed all State Confidential Information.

### **2.103 Exclusions**

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

### **2.104 No Implied Rights**

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

### **2.105 Respective Obligations**

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

#### **2.110 Records and Inspections**

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

The State's authorized representatives, at all reasonable times and upon reasonable advance notice, may inspect, monitor, and evaluate the work being performed by the Contractor's on-site representatives and employees, to the extent the access will not unreasonably interfere or disrupt Contractor's business operations. The Contractor must provide reasonable assistance for the State's representatives during inspections. The State's inspection, monitoring, and evaluation will recognize that work-in-progress is not a final product and agrees to keep all information, data, and materials that it inspects, monitors and evaluates confidential in accordance with this Agreement. The State acknowledges that the reviewer will not be given access to any materials that contain information related to other clients of Contractor and the reviewer will not be permitted to copy any work it may inspect, monitor and/or evaluate.

##### **2.112 Retention, Examination, and Audit of Records**

Under MCL 18.1470, the State or its designee (provided that the State's designee enters into an appropriate confidentiality agreement with Contractor) may audit Contractor to verify compliance with this Contract with respect to the fees paid by the State to Contractor. Contractor must retain, and provide to the State or its designee and the auditor general upon reasonable request and advance notice, all financial and accounting records its financial system can generate directly 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**"). The State agrees to keep proprietary information disclosed to the State in the course of the audit confidential from third parties, except for any third party participating in the audit as provided for herein. If



an audit, litigation, or other legal 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 business days of providing notice, the State and its authorized representatives or designees have the right to enter Contractor's premises, and inspect, examine, copy, and audit all records related to this Contract in accordance with this Section, but no more than once per calendar year subject to any State legal obligations to perform additional financial audits. Contractor must cooperate and provide reasonable assistance. The State agrees to compensate Contractor for time in excess of four hours expended by Contractor's staff to facilitate the review and to reimburse Contractor for any expenses incurred in connection with the audit, but the total amount of such compensation and reimbursement shall not exceed \$10,000. If any financial errors are revealed, the amount in error must be paid or refunded within 45 calendar days of notice from the State of such error. In addition to other available remedies, if the difference between the State's actual payment and the correct invoice amount, as determined by an audit, is greater than 10%, the Contractor must pay all reasonable audit costs. 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. The State understands that, in order to maintain confidentiality and security of its operations and business practices, Contractor will not consent to the participation of any third party auditors offering services or products that compete with its own.

### **2.113 Audit Resolution**

If necessary, the Contractor and the State will meet to review any audit report promptly after its issuance. The Contractor must respond to each report in writing within 30 days after receiving the report, unless the report specifies a shorter response time. The Contractor and the State must agree upon, an action plan to promptly address and resolve any deficiencies, concerns, or recommendations in the report.

### **2.114 Errors**

(a) If an audit reveals any financial errors in the records provided to the State, the amount in error must be reflected as a credit or debit on the next invoice and subsequent invoices until the amount is paid or refunded in full. If a balance remains after four invoices, the remaining amount will be due as a payment or refund within 45 days of the last invoice on which the balance appeared or upon termination of the Contract, whichever is earlier.

(b) In addition to other available remedies, if the difference between the State's actual payment and the correct invoice amount, as determined by an audit, is greater than 10%, the Contractor must pay all reasonable audit costs.

### **2.120 Warranties**

#### **2.121 Warranties and Representations**

The Contractor represents and warrants:

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

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

(c) It is the lawful owner or licensee of any Deliverable licensed or sold to the State by Contractor or developed by Contractor under the Contract, and Contractor has all of the rights necessary to convey to the



State the ownership rights or licensed use, as applicable, of any and all Deliverables. None of the Deliverables provided by Contractor to the State under the Contract, nor their use by the State, will infringe the patent, copyright, trade secret, or other proprietary rights of any third party.

(d) If, under the Contract, Contractor procures any equipment, software or other Deliverable for the State (including equipment, software and other Deliverables manufactured, re-marketed or otherwise sold by Contractor under Contractor's name), then in addition to Contractor's other responsibilities with respect to the items in the Contract, Contractor must assign or otherwise transfer to the State or its designees, or afford the State the benefits of, any manufacturer's warranty for the Deliverable. The parties agree under this Contract, Contractor will not procure any equipment, software or other Deliverable for the State that would include a manufacturer's warranty.

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

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

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

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

**2.122 RESERVED**

**2.123 RESERVED**

**2.124 RESERVED**

**2.125 RESERVED**

**2.126 RESERVED**

**2.127 RESERVED**

**2.128 Consequences For Breach**

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

**2.130 Insurance**

**2.131 Liability Insurance**

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

The Contractor waives all rights against the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees and agents for recovery of damages to the extent these



damages are covered by the insurance policies the Contractor is required to maintain under the Contract.

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

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

Except for Professional Liability, which Contractor has advised is written by a Captive, domiciled in Vermont and is not rated by A.M. Best, all other insurers selected by Contractor must have an A.M. Best rating of A or better, or as otherwise approved in writing by the State, or if the ratings are no longer available, with a comparable rating from a recognized insurance rating agency and must be issued by companies that have been approved to do business in the State. See [www.michigan.gov/deleg](http://www.michigan.gov/deleg).

Where specific limits are shown, they are the minimum acceptable limits. If Contractor's policy contains higher limits, the State must be entitled to coverage to the extent of the higher limits, subject to indemnification provisions stated elsewhere in this Contract.

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

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

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

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

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

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

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

- 4. Employers liability insurance with the following minimum limits:



\$100,000 each accident  
 \$100,000 each employee by  
 disease \$500,000 aggregate  
 disease

- 5. Employee Fidelity, including Computer Crimes, insurance naming the State as a loss payee, providing coverage for direct loss to the State and any legal liability of the State arising out of or related to fraudulent or dishonest acts committed by the employees of Contractor or its Subcontractors, acting alone or in collusion with others, in a minimum amount of \$1,000,000.00 with a maximum deductible of \$50,000.00.
- 6. Umbrella or Excess Liability Insurance in a minimum amount of ten million dollars (\$10,000,000.00), which must apply, at a minimum, to the insurance required in Subsection 1 (Commercial General Liability) above.
- 7. Professional Liability (Errors and Omissions) Insurance with the following minimum coverage: \$3,000,000.00 each claim and \$3,000,000.00 annual aggregate.
- 8. Fire and Personal Property Insurance covering against any loss or damage to the office space used by Contractor for any reason under the Contract, and the equipment, software and other contents of the office space, including without limitation, those contents used by Contractor to provide the Services to the State, up to its replacement value, where the office space and its contents are under the care, custody and control of Contractor. The policy must cover all risks of direct physical loss or damage, including without limitation, flood and earthquake coverage and coverage for computer hardware and software. The State must be endorsed on the policy as a loss payee as its interests appear.

**2.132 Subcontractor Insurance Coverage**

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

**2.133 Certificates of Insurance and Other Requirements**

Contractor must furnish to DTMB-Procurement, certificate(s) of insurance verifying insurance coverage or providing satisfactory evidence of self-insurance as required in this Section (the “Certificates”). Except for Professional Liability, which Contractor has advised is written by a Captive using the Captive Certificate Form, the Certificate must be on the standard “accord” form or equivalent. **THE CONTRACT OR PURCHASE ORDER NO. MUST BE SHOWN ON THE CERTIFICATE OF INSURANCE TO ASSURE CORRECT FILING.** All Certificate(s) are to be prepared and submitted by an Authorized Representative of the Insurance Provider. Before the Contract is signed, and not more than 10 days following the renewal date every year thereafter, the Contractor must provide evidence that the State and its agents, officers and employees are listed as additional insureds under each commercial general liability and commercial automobile liability policy. In the event the State approves the representation of the State by the insurer’s attorney, the attorney may be required to be designated as a Special Assistant Attorney General by the Attorney General of the State of Michigan.

The Contractor must maintain all required insurance coverage throughout the term of the Contract and any extensions and, in the case of claims-made Commercial General Liability policies, must secure tail coverage for at least three years following the expiration or termination for any reason of the Contract. The minimum limits of coverage specified above are not intended, and must not be construed, to limit any liability or indemnity of Contractor under the Contract to any indemnified party or other persons. Contractor is responsible for all deductibles with regard to the insurance and nothing in this Contract shall



prevent Contractor from maintaining self-insured retentions and deductibles that it deems appropriate. If the Contractor fails to pay any premium for required insurance as specified in the Contract, or if any insurer cancels or significantly reduces any required insurance as specified in the Contract without the State's written consent, then the State may, after the State has given the Contractor at least 30 days written notice, pay the premium or procure similar insurance coverage from another company or companies. The State may deduct any part of the cost from any payment due the Contractor, or the Contractor must pay that cost upon demand by the State.

### **2.140 Indemnification**

#### **2.141 General Indemnification**

To the extent permitted by law and subject to the Limitation of Liability provision herein, the Contractor must indemnify, defend and hold harmless the State from liability, including all third party claims and losses, and all related costs and expenses (including reasonable attorneys' fees and costs of investigation, litigation, settlement, judgments, interest and penalties), accruing or resulting to any person, firm or corporation that may be injured or damaged by the Contractor in the performance of the Contract to the extent that are attributable to the negligent acts or omissions or willful misconduct of the Contractor or any of its Subcontractors or anyone else for whose acts the Contractor may be liable and provides Services under this Contract, provided that the State gives Contractor prompt notice of any potential loss and gives Contractor the right to control the response to and defense of any related claim, subject to Section 2.145, Indemnification Procedures. The State shall cooperate as reasonably requested in the defense and any reasonable costs and expenses incurred by the State will be reimbursed by Contractor.

#### **2.142 Code Indemnification**

To the extent permitted by law and applicable to Contractor's Services under this Contractor, the Contractor must indemnify, defend and hold harmless the State from any third party claim, loss, or expense arising from Contractor's breach of the No Surreptitious Code Warranty provided Contractor has the same rights in section 2.141 above and subject to the Limitation of Liability provision herein.

#### **2.143 Patent/Copyright Infringement Indemnification**

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

In addition, should the Deliverable(s), become or in the State's or Contractor's opinion be likely to become the subject of a claim of infringement, the Contractor must at the Contractor's sole expense (i) procure for the State the right to continue using Deliverable(s) or, if the option is not reasonably available to the Contractor, (ii) replace or modify to the State's satisfaction in accordance with this Contract the Deliverable(s) of equivalent function and performance so that it becomes non-infringing, or, if the option is not reasonably available to Contractor, (iii) accept its return by the State and reimburse the State for the cost of the Deliverable(s).

Notwithstanding the foregoing, the Contractor has no obligation to indemnify or defend or hold harmless the State for, or to pay any costs, damages or attorneys' fees related to, any claim based upon any modification to the Deliverables made by the State in violation of this Contract. The provisions of this Section states Contractor's entire liability and the State's sole and exclusive remedy with respect to any infringement or claim of infringement.

#### **2.144 Continuation of Indemnification Obligations**



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

### **2.145 Indemnification Procedures**

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

(a) After the State receives notice of the action or proceeding involving a claim for which it will seek indemnification, the State must promptly notify Contractor and Contractor's Legal Department at 1500 Market Streets, East Towers, Philadelphia, PA 19101 of the claim in writing and take or assist Contractor in taking, as the case may be, any reasonable action to avoid the imposition of a default judgment against Contractor. No failure to notify the Contractor relieves the Contractor of its indemnification obligations except to the extent that the Contractor can prove damages attributable to the failure. Within 10 business days following receipt of written notice from the State relating to any claim, or such earlier time as may be required by the notice and proceedings, the Contractor must notify the State in writing whether Contractor agrees to assume control of the defense and settlement of that claim (a "Notice of Election").

(b) When Contractor delivers a Notice of Election relating to any claim: (i) the State is entitled to participate in the defense of the claim and to employ counsel at its own expense to assist in the handling of the claim and to monitor and advise the State about the status and progress of the defense; (ii) the Contractor must, at the request of the State, demonstrate to the reasonable satisfaction of the State, the Contractor's financial ability to carry out its defense and indemnity obligations under the Contract; (iii) the Contractor must periodically advise the State about the status and progress of the defense and must obtain the prior written approval of the State before entering into any settlement of the claim (which approval shall not be unreasonably withheld or delayed) or ceasing to defend against the claim and (iv) to the extent that any principles of Michigan governmental or public law may be involved or challenged, the State has the right, at its own expense, to control the defense of that portion of the claim involving the principles of Michigan governmental or public law. But the State may retain control of the defense and settlement of a claim by notifying the Contractor in writing within 10 days after the State's receipt of Contractor's information requested by the State under clause (ii) of this paragraph if the State determines that the Contractor has failed to demonstrate to the reasonable satisfaction of the State the Contractor's financial ability to carry out its defense and indemnity obligations under this Section. Any litigation activity on behalf of the State, or any of its subdivisions under this Section, must be coordinated with the Department of Attorney General. In the event the insurer's attorney represents the State under this Section, the insurer's attorney may be required to be designated as a Special Assistant Attorney General by the Attorney General of the State of Michigan.

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

### **2.146 Limits of Liability**

Contractor's maximum total liability, including that of any employee, affiliate, agent or contractor, relating to the services, regardless of the cause of action (including but not limited to tort, contract, indemnity, ect.), will be limited to the value of the Contract. Neither Contractor nor the State shall be liable to the other for indirect, consequential, or special damages. The limitations of damages stated above shall not apply to claims for infringement of United States patent, copyright, trademarks or trade secrets; claims for personal injury or damage to property caused by the gross negligence or willful misconduct of Contractor; The State's liability for damages to Contractor is limited to the value of the Contract.

The limitations provided for herein do not affect either party's obligation to obtain the policies of insurance required under this Contract.



This section will not apply to any liability covered by the requirements of section 2.130 Insurance.

### **2.150 Termination/Cancellation**

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

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

#### **2.152 Termination for Cause**

- (a) Either party may terminate the Contract, for cause, by notifying the other party in writing, if such party (i) breaches any of its material duties or obligations under the Contract, or (ii) fails to cure a breach within the time period specified in the written notice of breach provided by the non-breaching party.
- (b) If the Contract is terminated for cause, the Contractor must pay all costs incurred by the State in terminating the Contract, including but not limited to, State administrative costs, reasonable attorneys' fees and court costs, and any reasonable additional costs the State may incur to procure the Services/Deliverables required by the Contract from other sources. Re-procurement costs are not consequential, indirect or incidental damages, and cannot be excluded by any other terms otherwise included in the Contract, provided the costs are not in excess of \$150,000.00.
- (c) If the State chooses to partially terminate the Contract for cause, charges payable under the Contract will be equitably adjusted to reflect those Services/Deliverables that are terminated and the State must pay for all Services/Deliverables for which Final Acceptance has been granted provided up to the termination date. Services and related provisions of the Contract that are terminated for cause must cease on the effective date of the termination.
- (d) If the State terminates the Contract for cause under this Section, and it is determined, for any reason, that Contractor was not in breach of contract under the provisions of this section, that termination for cause must be deemed to have been a termination for convenience, effective as of the same date, and the rights and obligations of the parties must be limited to that otherwise provided in the Contract for a termination for convenience.

#### **2.153 Termination for Convenience**

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



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

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

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

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

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

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

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

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

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

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

(b) If the State terminates the Contract before its expiration for its own convenience, the State must pay Contractor for all charges due for Services provided before the date of termination and, if applicable, as a separate item of payment under the Contract, for Work In Process, on a percentage of completion basis at



a mutually determined level of completion. All completed or partially completed Deliverables prepared by Contractor under the Contract, at the option of the State, becomes the State's property, and Contractor is entitled to receive equitable fair compensation for the Deliverables. Regardless of the basis for the termination, the State is not obligated to pay, or otherwise compensate, Contractor for any lost expected future profits, costs or expenses incurred with respect to Services not actually performed for the State.

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

## **2.158 Reservation of Rights**

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

### **2.170 Transition Responsibilities**

#### **2.171 Contractor Transition Responsibilities**

If the State terminates the Contract, for convenience or cause, or if the Contract is otherwise dissolved, voided, rescinded, nullified, expires or rendered unenforceable, the Contractor agrees to comply with direction provided by the State to assist in the orderly transition of equipment, services, software, leases, etc. to the State or a third party designated by the State. If the Contract expires or terminates, the Contractor agrees to make all reasonable efforts to effect an orderly transition of services within a reasonable period of time that in no event will exceed 120 days. These efforts must include, but are not limited to, those listed in **Sections 2.171, 2.172, 2.173, 2.174, and 2.175.**

#### **2.172 Contractor Personnel Transition**

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

#### **2.173 Contractor Information Transition**

The Contractor agrees to provide reasonable detailed specifications for all Services/Deliverables needed by the State, or specified third party, to properly provide the Services/Deliverables required under the Contract. The Contractor must provide the State with asset management data generated from the inception of the Contract through the date on which the Contractor is terminated in an industry standard format acceptable to the State. Any Deliverables ordered by the State, shall be completed and delivered to the State, pursuant to an applicable purchase order and subject to appropriate payment by the State. The Contractor will also provide any licenses required to perform the Services.

#### **2.174 Contractor Software Transition**

The Contractor must reasonably assist the State in the acquisition of any Contractor software required to perform the Services/use the Deliverables under the Contract. This must include any documentation being used by the Contractor to perform the Services under the Contract. If the State transfers any software licenses to the Contractor, those licenses must, upon expiration of the Contract, transfer back to the State at their current revision level.



## **2.175 Transition Payments**

If the transition results from a termination for any reason, reimbursement must be governed by the termination provisions of the Contract. If the transition results from expiration, the Contractor will be reimbursed for all reasonable transition costs (i.e. costs incurred within the agreed period after contract expiration that result from transition operations) at Contractor's applicable hourly rates in effect at the time of expiration, which shall in no event exceed 110% of the hourly rates identified in Attachment A, as amended.

## **2.176 State Transition Responsibilities**

In the event that the Contract is terminated, dissolved, voided, rescinded, nullified, or otherwise rendered unenforceable, the State agrees to perform the following obligations, and any others upon which the State and the Contractor agree: (a) Reconciling all accounts between the State and the Contractor; (b) Completing any pending post-project reviews; (c) Performs any other obligations upon which the State and the Contractor agree.

### **2.180 Stop Work**

#### **2.181 Stop Work Orders**

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

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

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

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

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

### **2.190 Dispute Resolution**

#### **2.191 In General**

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



covers all costs of every type to which Contractor is entitled from the occurrence of the claimed event, and (c) the claim and the supporting data are current and complete to Contractor's best knowledge and belief.

### **2.192 Informal Dispute Resolution**

(a) All disputes between the parties must be resolved under the Contract Management procedures in the Contract. If the parties are unable to resolve any disputes after compliance with the processes, the parties must meet with the Director of Procurement, DTMB, or designee, for the purpose of attempting to resolve the dispute without the need for formal legal proceedings, as follows:

- (i) The representatives of Contractor and the State must meet as often as the parties reasonably deem necessary to gather and furnish to each other all information with respect to the matter in issue which the parties believe to be appropriate and germane in connection with its resolution. The representatives must discuss the problem and negotiate in good faith in an effort to resolve the dispute without the necessity of any formal proceeding.
- (ii) During the course of negotiations, all reasonable requests made by one party to another for non-privileged information reasonably related to the Contract must be honored in order that each of the parties may be fully advised of the other's position.
- (iii) The specific format for the discussions will be left to the discretion of the designated State and Contractor representatives, but may include the preparation of agreed upon statements of fact or written statements of position.
- (iv) Following the completion of this process within 60 calendar days, the Director of Procurement, DTMB, or designee, must issue a written opinion regarding the issue(s) in dispute within 30 calendar days. The opinion regarding the dispute must be considered the State's final action and the exhaustion of administrative remedies.

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

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

### **2.193 Injunctive Relief**

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

### **2.194 Continued Performance**

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

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

#### **2.201 Nondiscrimination**

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



220, MCL 37.1101, et seq., and any breach of this provision may be regarded as a material breach of the Contract.

### **2.202 Unfair Labor Practices**

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

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

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

### **2.204 RESERVED**

### **2.205 RESERVED**

#### **2.210 Governing Law**

### **2.211 Governing Law**

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

### **2.212 Compliance with Laws**

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

### **2.213 Jurisdiction**

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

#### **2.230 Disclosure Responsibilities**

### **2.231 Disclosure of Litigation**

(a) Disclosure. Contractor must disclose any material criminal litigation, investigations or proceedings involving the Contractor (and each Subcontractor) or any of its officers or directors or any litigation, investigations or proceedings under the Sarbanes-Oxley Act. In addition, each Contractor (and each Subcontractor) must notify the State of any material civil litigation, arbitration or proceeding which arises during the term of the Contract and extensions, to which Contractor (or, to the extent Contractor is aware, any Subcontractor) is a party, and which involves: (i) disputes that might reasonably be expected to adversely affect the viability or financial stability of Contractor or any Subcontractor; or (ii) a claim or written



allegation of fraud against Contractor or, to the extent Contractor is aware, any Subcontractor by a governmental or public entity arising out of their business dealings with governmental or public entities. The Contractor must disclose in writing to the Contract Administrator any litigation, investigation, arbitration or other proceeding (collectively, "Proceeding") within 30 days of its occurrence. Details of settlements which are prevented from disclosure by the terms of the settlement may be annotated. Information provided to the State from Contractor's publicly filed documents referencing its material litigation will be deemed to satisfy the requirements of this Section.

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

- (i) the ability of Contractor (or a Subcontractor) to continue to perform the Contract according to its terms and conditions, or
- (ii) whether Contractor (or a Subcontractor) in performing Services for the State is engaged in conduct which is similar in nature to conduct alleged in the Proceeding, which conduct would constitute a breach of the Contract or a violation of Michigan law, regulations or public policy, then the Contractor must provide the State all reasonable assurances requested by the State to demonstrate that:
  - (a) Contractor and its Subcontractors must be able to continue to perform the Contract and any Statements of Work according to its terms and conditions, and
  - (b) Contractor and its Subcontractors have not and will not engage in conduct in performing the Services which is similar in nature to the conduct alleged in the Proceeding.
  - (c) Contractor must make the following notifications in writing:
    - (1) Within 30 days of Contractor becoming aware that a change in its ownership or officers has occurred, or is certain to occur, or a change that could result in changes in the valuation of its capitalized assets in the accounting records, Contractor must notify DTMB-Procurement.
    - (2) Contractor must also notify DTMB Procurement within 30 days whenever changes to asset valuations or any other cost changes have occurred or are certain to occur as a result of a change in ownership or officers.
    - (3) Contractor must also notify DTMB Procurement within 30 days whenever changes to company affiliations occur.

## 2.232 RESERVED

## 2.233 Bankruptcy

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

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

In the event of termination for any reason, the parties will come to a mutual agreement as to the payment, timing and other terms under which Contractor will complete any in-process deliverables, or discrete portions thereof, in order for Contractor to be in compliance with all professional and actuarial



standards of practice.

### **2.240 Performance**

#### **2.241 Time of Performance**

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

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

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

#### **2.242 RESERVED**

#### **2.243 RESERVED**

#### **2.244 Excusable Failure**

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

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

If any of the above-enumerated circumstances substantially prevent, hinder, or delay the Contractor's performance of the Services/provision of Deliverables for more than 14 Business Days, and the State determines that performance is not likely to be resumed within a period of time that is satisfactory to the State and in accordance with this Contract, in its reasonable discretion, then at the State's option: (a) the State may procure the affected Services/Deliverables from an alternate source, and the State is not be liable for payment for the unperformed Services/ Deliverables not provided under the Contract for so long as the delay in performance continues; (b) the State may terminate any portion of the Contract so affected and the charges payable will be equitably adjusted to reflect those Services/Deliverables terminated; or (c) the State may terminate the affected Statement of Work without liability for payment to Contractor as of a date specified by the State in a written notice of termination to the Contractor, except to the extent that the State must pay for Services/Deliverables provided through the date of termination.

The Contractor will not have the right to any additional payments from the State as a result of any Excusable Failure occurrence or to payments for Services not rendered/Deliverables not provided as a



result of the Excusable Failure condition. Defaults or delays in performance by Contractor which are caused by acts or omissions of its Subcontractors will not relieve Contractor of its obligations under the Contract except to the extent that a Subcontractor is itself subject to an Excusable Failure condition described above and Contractor cannot reasonably circumvent the effect of the Subcontractor's default or delay in performance through the use of alternate sources, workaround plans or other means.

### **2.250 Approval of Deliverables**

**2.251 RESERVED**

**2.252 RESERVED**

**2.253 RESERVED**

**2.254 RESERVED**

### **2.255 Process For Approval of Written Deliverables**

The State Review Period for Written Deliverables will be the number of days set forth in the applicable Statement of Work following delivery of the final version of the Deliverable (and if the Statement of Work does not state the State Review Period, it is by default ten (10) Business Days for Written Deliverables. The duration of the State Review Periods will be doubled if the State has not had an opportunity to review an interim draft of the Written Deliverable before its submission to the State. The State agrees to notify Contractor in writing by the end of the State Review Period either stating that the Deliverable is approved in the form delivered by Contractor or describing any deficiencies that must be corrected before approval of the Deliverable (or at the State's election, after approval of the Deliverable). If the State notifies the Contractor about deficiencies, the Contractor must correct the described deficiencies and within 30 Business Days resubmit the Deliverable in a form that shows all revisions made to the original version delivered to the State. Contractor's correction efforts must be made at no additional charge. Upon receipt of a corrected Deliverable from Contractor, the State must have a reasonable additional period of time, not to exceed the length of the original State Review Period, to review the corrected Deliverable to confirm that the identified deficiencies have been corrected.

**2.256 RESERVED**

**2.257 RESERVED**

### **2.258 Final Acceptance**

Unless otherwise stated in the Article 1, Statement of Work or Purchase Order, "Final Acceptance" of each Deliverable must occur when each Deliverable/Service has been approved by the State following the State Review Periods identified in **Sections 2.251-2.257**. Upon acceptance of a Service, the State will pay for all Services provided during the State Review Period that conformed to the acceptance criteria.

### **2.260 Ownership**

#### **2.261 Ownership of Work Product**

The State shall retain ownership of all original data and materials, and the intellectual property rights in that data, provided to Contractor by the State or the State's representatives. The State will have the right to use, reproduce, display, distribute, prepare derivative works based upon, and adapt copies of the Deliverables provided to the State for any purpose, subject to the restrictions applicable to Deliverables containing Contractor's Confidential Information as identified in this Section. Notwithstanding the foregoing, Contractor shall retain its intellectual property rights in all Confidential Information contained in the Deliverables, and the skills, know-how and methodologies used or



acquired by Contractor during the course of providing any Services/Deliverables, and the State shall have no interest in or claim to such Confidential Information except as necessary to exercise its rights in the Deliverables.

Deliverables containing Contractor's Confidential Information, as expressly marked by Contractor, are provided solely for their intended purpose, and may not be distributed to a third party without Contractor's prior written consent. Contractor acknowledges, however, that this Contract is with the State of Michigan and Contractor will not interfere with the State's obligation to share certain Deliverables under this Contract between government officials, employees, and agents in the performance of their official duties.

## **2.262 RESERVED**

### **2.263 Rights in Data**

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

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

## **2.264 RESERVED**

### **2.270 State Standards**

#### **2.271 Existing Technology Standards**

The Contractor must adhere to all existing standards as described within the comprehensive listing of the State's existing technology standards at <http://www.michigan.gov/dmb/0,4568,7-150-56355-108233--,00.html>.

#### **2.272 Acceptable Use Policy**

To the extent that Contractor is provided access to the State computer system by the State, Contractor must comply with the State's Acceptable Use Policy, see [http://www.michigan.gov/cybersecurity/0,1607,7-217-34395\\_34476--,00.html](http://www.michigan.gov/cybersecurity/0,1607,7-217-34395_34476--,00.html). All Contractor employees must be required, in writing, to agree to the State's Acceptable Use Policy before accessing the State system. The State reserves the right to terminate Contractor's access to the State system if a violation occurs.

#### **2.273 Systems Changes**

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

## **2.280 RESERVED**



**2.290 RESERVED**

**2.291 RESERVED**

**2.300 Other Provisions**

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

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

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



Attachment A, Pricing Proposal

Healthcare Actuarial, Underwriting & Plan Design Services

	Task 1: Master Health Care Plan RFP		Task 2: Dental RFP	Task 3: Vision RFP	Task 4: Health Information Management Systems (IMS) RFP	Task 5: Actuarial Underwriting	Task 6: Performance Audit:					Task 7: Strategic Planning	Task 8: Consultants		Task 9: Pharmacy Consultants	Projected Total for 3 Years		
	Variable Priced Tasks						Fixed - Ongoing Tasks	Variable Priced Tasks					Fixed - Ongoing Tasks	Variable Priced Tasks	Fixed - Ongoing Tasks	Variable Priced Tasks		
	Medical		Prescription Drugs					Medical-Medicare	Medical - nonMedicare	Prescription Drugs	Dental	Vision		Consultants	On-Site Project Manager	Pharmacy Consultant		
FIXED Rate is Per:	RFP	Option Year	RFP	Option Year	RFP	RFP	RFP	Month	Audit	Audit	Audit	Audit	Audit	Month	Hour	Month	Hour	
Rate	\$ 122,000.00	\$ 27,600.00	\$ 123,000.00	\$ 51,750.00	\$ 42,750.00	\$ 39,800.00	\$ 44,750.00	\$ 5,275.00	\$ 62,100.00	\$ 62,100.00	\$ 127,700.00	\$ 38,900.00	\$ 37,750.00	\$ 55,250.00		\$ 10,000.00		
Additional per-RFP rate to include implementation services	\$ 106,000.00		\$ 142,000.00		\$ 40,000.00	\$ 40,000.00	\$ 40,000.00											
Additional per-RFP rate to include contract finalization services	\$ -		\$ -		\$ -	\$ -	\$ -											
Rate - Alternate Scope								\$ 44,000.00	\$ 44,000.00	\$ 120,900.00	\$ 28,700.00	\$ 28,200.00						
Additional per-RFP rate to include an operational review								\$ 12,000.00	\$ 12,000.00									
Projected Grand Total for 3 Years	\$ 228,000.00	\$ 27,600.00	\$ 265,000.00	\$ 51,750.00	\$ 42,750.00	\$ 39,800.00	\$ 44,750.00	\$ 189,900.00	\$ 222,300.00	\$ 222,300.00	\$ 383,100.00	\$ 38,900.00	\$ 37,750.00	\$ 1,989,000.00	\$ 1,122,000.00	\$ 360,000.00	\$ 921,825.00	\$ 6,186,725.00

(DTMB): Exercising an option year on the Master Health Care Plan medical contract, Bidder rate must include analysis and negotiations

(DTMB): Exercising an option year on the Master Health Care Plan Prescription Drug contract, Bidder rate must include analysis and negotiations

Brian Morris (Ben/HGB, Detroit): Rate is per vendor. If non-Medicare and Medicare vendor is the same, and audit is performed at the same time, the total fee would be \$12,000 and not \$24,000.

Brian Morris (Ben/HGB, Detroit): Rate is per vendor. If non-Medicare and Medicare vendor is the same, and audit is performed at the same time, the total fee would be \$12,000 and not \$24,000.

(DTMB): Audit sample size = 350  
(DTMB): Audit sample size = 210

(DTMB): Audit sample size = 350  
(DTMB): Audit sample size = 210

(DTMB): Full claims re-pricing plus onsite audit of 10 rebate contracts  
(DTMB): Full claims re-pricing plus onsite audit of 5 rebate contracts

(DTMB): Audit sample size = 250  
(DTMB): Audit sample size = 105

(DTMB): Audit sample size = 250  
(DTMB): Audit sample size = 105

Notes:

For tasks that are on a per-hour basis: If Contractor is proposing multiple individuals with differing hourly rates, please indicate each rate in the table below.

Tasks	Consultant's Name	Projected Hours Per Year	Fixed Hourly Rate	Projected Grand Total for 3 Years
<b>Task 8: Consultants</b>				
Senior Consultant	Brian Morris	25	\$ 600.00	\$ 45,000.00
Negotiations Consultant	Brian Morris	50	\$ 600.00	\$ 90,000.00
Negotiations Consultant	Beth Lieberman	50	\$ 600.00	\$ 90,000.00
Negotiations Consultant	Connie Perry	25	\$ 600.00	\$ 45,000.00
Managing Consultant	Benjamin Louagie	100	\$ 355.00	\$ 106,500.00
Managing Consultant	Virginia Gibson	300	\$ 355.00	\$ 319,500.00
Managing Consultant	Barbara Murphy	150	\$ 355.00	\$ 159,750.00
Managing Consultant	Thomas Schaefer	50	\$ 355.00	\$ 53,250.00
Managing Consultant	Paul Abdelnour	200	\$ 355.00	\$ 213,000.00
<b>3-Year Estimated Total</b>		<b>950</b>		<b>\$ 1,122,000.00</b>
<b>Task 9: Pharmacy Consultants</b>				
Lead Consultant	Connie Perry	245	\$ 600.00	\$ 441,000.00
Senior Consultant	Evelyn Giguere	120	\$ 521.00	\$ 187,560.00
Project Manager	Dawn Reck	245	\$ 399.00	\$ 293,265.00
			\$ -	\$ -
			\$ -	\$ -
<b>3-Year Estimated Total</b>		<b>610</b>		<b>\$ 921,825.00</b>