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 **071B4300041**

CONTRACTOR	
	Logisticare Solutions, LLC
	1275 Peachtree Street NE
	Atlanta, GA 30309
	Albert Cortina
	770-907-7596
	albertc@logisticare.com
	*******1253

STATE			
	Program Manager	Kevin Dunn	DHHS
		517-335-5096	
		dunnk@michigan.gov	
	Contract Administrator	Jillian Yeates	DTMB
		(517) 284-7019	
		yeatesj@michigan.gov	

CONTRACT SUMMARY

DESCRIPTION: Non Emergency Medical Transportation

INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW
December 1, 2013	November 30, 2016	2 - 1 Year	November 30, 2016

PAYMENT TERMS	DELIVERY TIMEFRAME
N/A	N/A

ALTERNATE PAYMENT OPTIONS			EXTENDED PURCHASING	
☐ P-card	☐ Direct Voucher (DV)	☐ Other	☐ Yes	☒ No

MINIMUM DELIVERY REQUIREMENTS
N/A

DESCRIPTION OF CHANGE NOTICE

OPTION	LENGTH OF OPTION	EXTENSION	LENGTH OF EXTENSION	REVISED EXP. DATE
☒	1 Year	☐		November 30, 2017

CURRENT VALUE	VALUE OF CHANGE NOTICE	ESTIMATED AGGREGATE CONTRACT VALUE
$60,324,447.00	$21,500,000.00	$81,824,447.00

DESCRIPTION: Effective August 30, 2016 this Contract is exercising the first option year and is increased by $21,500,000.00. The revised contract expiration date is November 30, 2017. The following Sections of the Contract have been amended:

1. Section 1.041, A, Project Plan Management, Quality Compliance is deleted and replaced as follows:
"The Contractor must establish safety and quality standards for the provision of NEMT. Transportation providers must meet health and safety standards for vehicle maintenance, operation and inspection; driver qualifications and training and the delivery of courteous, safe and timely transportation services. A non-emergency equipped vehicle (such as a van taking patients to doctor appointments, etc.) is a limousine and the carrier must have a Limousine Certificate of Authority.

•The Contractor must establish a process for tracking and monitoring NEMT utilization by beneficiaries and providers to detect patterns of abuse or misuse. Contractor must report/refer all (employee, provider, and member) suspicion of fraud, waste or abuse to the MDHHS Office of Inspector General (OIG) via email at mdhhs-oig@michigan.gov. Examples of fraud can be found at www.michigan.gov/fraud.

Contractor must cooperate fully in any investigation by MDHHS-OIG or the Department of Attorney General (AG) and any subsequent legal action that may result from such referral. Contractor is permitted to disclose protected health information to MDHHS-OIG or the AG without first obtaining authorization from the member to disclose such information.

•The Contractor must establish and maintain standardized, approved written procedures for handling all complaints, including documentation requirements. Additionally, the Contractor must notify beneficiaries of the process to use when transportation is refused.

•The Contractor must analyze complaint data to identify common themes and implement system improvements.

•The Contractor must educate and manage beneficiaries who are chronically late, "no-shows" or abusive. The Contractor must document no-shows and abusive behavior in the transportation database; and their process of reporting beneficiaries who misuse emergency services that require NEMT to or from the medical service to the MDCH. If the beneficiary continues to exhibit uncooperative behavior or misuses/abuse NEMT services, services may be denied. Beneficiaries must receive written notice of denial and information regarding their right to an appeal for a denial or reduction of NEMT services."

2. Section 1.071 Additional Terms and Conditions specific to this RFP, Standards for Minors Traveling Alone, is deleted and replaced as follows:
"•Children under the age of 12 years of age must be escorted to medically necessary appointments. Child's parent, foster parent, caretaker or legal guardian, as appropriate, must be responsible for providing the escort. However, in a situation where two or more children under the age of 12 are being transported from school to a day program to another program, no escort must be required.

•For children between the ages of 12 through 17 years, a consent letter signed by a parent, foster parent, caretaker or legal guardian must be required for a child to be transported without an escort, unless access to the service is without parental consent as specified by MDCH (i.e., for family planning and mental health treatment).

•For children 18 years of age and older, no consent must be required.

These requirements do not apply to a beneficiary who has been emancipated, or if they are seeking transportation for health care services that a minor is legally able to consent to (i.e. pregnancy-related, sexually transmitted/venereal disease, HIV/AIDS, substance abuse, or outpatient mental health care)."

All other terms, conditions, specifications, and pricing remain the same. Per contractor and agency agreement, DTMB Procurement approval, and State Administrative Board approval on August 30, 2016.

Form No. DTMB-3521 (Rev. 4/2012)
AUTHORITY: Act 431 of 1984
COMPLETION: Required
PENALTY: Contract change will not be executed unless form is filed

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

CHANGE NOTICE NO. 1
to
CONTRACT NO. 071B4300041
between
THE STATE OF MICHIGAN
and

NAME & ADDRESS OF CONTRACTOR:	PRIMARY CONTACT	EMAIL
LogisticCare Solutions, LLC	Albert Cortina	albertc@logisticare.com
1275 Peachtree Street NE 6th Floor	TELEPHONE	CONTRACTOR #, MAIL CODE
Atlanta, GA 30309	(770) 907-7596	

STATE CONTACTS	AGENCY	NAME	PHONE	EMAIL
CONTRACT COMPLIANCE INSPECTOR	MDCH	Kevin Dunn	517-335-5096	Dunnk3@michigan.gov
BUYER	DTMB	Pam Platte	517-284-7022	plattep@michigan.gov

CONTRACT SUMMARY:

DESCRIPTION: **NON Emergency Medical Transportation - MDCH**

INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW
December 1, 2013	November 30, 2016	2, one year	November 30, 2016
PAYMENT TERMS	**F.O.B**	**SHIPPED**	**SHIPPED FROM**
N/A	N/A	N/A	N/A

ALTERNATE PAYMENT OPTIONS:	AVAILABLE TO MiDEAL PARTICIPANTS
☐ P-card ☐ Direct Voucher (DV) ☐ Other	☐ Yes ☒ No

MINIMUM DELIVERY REQUIREMENTS:

N/A

DESCRIPTION OF CHANGE NOTICE:

EXTEND CONTRACT EXPIRATION DATE	EXERCISE CONTRACT OPTION YEAR(S)	EXTENSION BEYOND CONTRACT OPTION YEARS	LENGTH OF OPTION/EXTENSION	EXPIRATION DATE AFTER CHANGE
☐ No ☐ Yes	☐	☐		

VALUE/COST OF CHANGE NOTICE:	ESTIMATED REVISED AGGREGATE CONTRACT VALUE:
$11,000,000.00	$60,324,447.00

Effective September 11, 2014, funds in the amount of $11,000,000.00 are hereby ADDED to this Contract. Please also note that the CCI has been changed to Kevin Dunn. All other terms, conditions, pricing, and specifications remain the same. Per vendor and agency agreement, DTMB Procurement approval and the approval of the State Administrative Board on September 11, 2014.

Form No. DTMB-3522 (Rev. 4/2012)
AUTHORITY: Act 431 of 1984
COMPLETION: Required
PENALTY: Contract will not be executed unless form is filed

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

NOTICE
OF
CONTRACT NO. 071B4300041
between
THE STATE OF MICHIGAN
and

NAME & ADDRESS OF CONTRACTOR:	PRIMARY CONTACT	EMAIL
LogistiCare Solutions, LLC 1275 Peachtree Street NE 6th Floor Atlanta, GA 30309	Albert Cortina	albertc@logisticare.com
	TELEPHONE	CONTRACTOR #, MAIL CODE
	(770) 907-7596	

STATE CONTACTS	AGENCY	NAME	PHONE	EMAIL
CONTRACT COMPLIANCE INSPECTOR:	MDCH	Greg Rivet	517-335-5096	rivetg@michigan.gov
BUYER:	DTMB	Pam Platte	517-373-0494	plattep@michigan.gov

CONTRACT SUMMARY:

DESCRIPTION: Descriptive Contract Title (Not always the same language as provided in MAIN)

NON Emergency Medical Transportation - MDCH

INITIAL TERM	EFFECTIVE DATE	INITIAL EXPIRATION DATE	AVAILABLE OPTIONS
3 years	December 1, 2013	November 30, 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	
☐ P-card	☐ Direct Voucher (DV)	☐ Other	☐ YES	☒ NO

MINIMUM DELIVERY REQUIREMENTS:

N/A

MISCELLANEOUS INFORMATION:

N/A

ESTIMATED CONTRACT VALUE AT TIME OF EXECUTION:	$49,324,447.00

Form No. DTMB-3522 (Rev. 4/2012)
AUTHORITY: Act 431 of 1984
COMPLETION: Required
PENALTY: Contract will not be executed unless form is filed

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

CONTRACT NO. 071B4300041

between

THE STATE OF MICHIGAN

and

NAME & ADDRESS OF CONTRACTOR:	PRIMARY CONTACT	EMAIL
LogistiCare Solutions, LLC 1275 Peachtree Street NE 6th Floor Atlanta, GA 30309	Albert Cortina	albertc@logisticare.com
	TELEPHONE	CONTRACTOR #, MAIL CODE
	(770) 907-7596	

STATE CONTACTS	AGENCY	NAME	PHONE	EMAIL
CONTRACT COMPLIANCE INSPECTOR:	MDCH	Greg Rivet	517-335-5096	rivetg@michigan.gov
BUYER:	DTMB	Pam Platte	517-373-0494	plattep@michigan.gov

CONTRACT SUMMARY:

DESCRIPTION: Descriptive Contract Title (Not always the same language as provided in MAIN)

NON Emergency Medical Transportation - MDCH

INITIAL TERM	EFFECTIVE DATE	INITIAL EXPIRATION DATE	AVAILABLE OPTIONS
3 years	December 1, 2013	November 30, 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	
☐ P-card	☐ Direct Voucher (DV)	☐ Other	☐ YES	☒ NO

MINIMUM DELIVERY REQUIREMENTS:

N/A

MISCELLANEOUS INFORMATION:

N/A

ESTIMATED CONTRACT VALUE AT TIME OF EXECUTION:	$49,324,447.00

THIS IS NOT AN ORDER: This Contract Agreement is awarded on the basis of our inquiry bearing the solicitation #391R3200042**. 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 #: 071B4300041

FOR THE CONTRACTOR:	**FOR THE STATE:**
LogistiCare Solutions, LLC	
Firm Name	Signature
	Jeff Brownlee, Chief Procurement Officer
Authorized Agent Signature	Name/Title
	DTMB Procurement
Authorized Agent (Print or Type)	Enter Name of Agency
Date	Date

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

Contract No. 071B4300041
Non-Emergency Medical Transportation Services for Medicaid Beneficiaries
For the Michigan Department of Community Health

Buyer Name: Pamela Platte
Buyer Direct Telephone Number: 517-373-0484
Toll-Free Office Number: 855-MI-PURCH (855-647-8724)
E-Mail Address: plattep@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.

Airplane - beneficiaries may travel by airplane if it is the most appropriate mode of transport. Air travel may be authorized because of distance or to facilitate arriving at the appropriate time for an extraordinary appointment.

Appropriate Method of Transportation - is the least expensive mode of transportation that best meets the physical and medical circumstances of a beneficiary requiring transportation to a medical service.

Ancillary Services - meals and lodging are part of the transportation package for participants when the beneficiary requires a particular medical service which is only available in another city, county or state and the distance and travel time warrants staying in that place overnight.

Appeal - the formal mechanism which allows a provider the right to appeal a decision.

Assistance - is when a beneficiary must be physically helped from within or into a building and/or from within or into the medical provider's site. Without such assistance, it would be unsafe or impossible for the beneficiary to reach the vehicle or the medical provider's site. The assistance is included as part of the transportation rate and may not be billed separately.

Attendant - is an employee of a transportation provider who in addition to the driver is required to assist in the transport of the beneficiary due to his/her physical, mental or developmental status.

Attending Practitioner - is defined as the practitioner (i.e., primary care practitioner or specialist) who provides care and treatment to the patient on an ongoing basis and who can certify the medical necessity for the transport. The attending practitioner is responsible for the ongoing care and management of the patient and can certify the non-ambulatory status of the patient and the medical need for NEMT transport, the type of certification and length of time the non-ambulatory status will remain unchanged. Attending practitioner also refers to a designated practitioner who is covering for the attending practitioner in his or her absence or a practitioner who is a member of the same group practice as the attending practitioner and in which it is customary for the members of the practice to cross cover for each other's patients. Practitioners must hold a valid and current license or certification to practice as at least one (1) of the following:
(a) A doctor of medicine;
(b) A doctor of osteopathy;
(c) A doctor of podiatric medicine; or
(d) An advanced practice nurse (APN).

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

Beneficiary - an individual who is eligible to receive assistance under the Medicaid Program.

Beneficiary Preference – the beneficiary requests a ride with a particular provider based on beneficiary's preference (for whatever reason) for that provider. The Contractorage will not make payment for transportation to a specific provider based solely on beneficiary or beneficiary/family preference or convenience.

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

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

Bridges Administrative Manual Section 825 (BAM 825) - the document containing the Michigan Medicaid Program policy for NEMT.

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.

Bus Passes and Tickets - many beneficiaries should be able to travel by bus. The Contractorage determines the type of ticket or pass ordered for the beneficiary by determining how many rides the beneficiary requires during a certain period and comparing the cost of the individual tickets to the cost of a pass for the period. Passes should only be authorized if the cost of individual tickets exceeds the cost of the pass otherwise tickets should be issued for the exact number of rides.

Cancel Call - is notification to the transportation provider, prior to the time the vehicle is en route to the pickup point, not to provide services to a beneficiary.

CCI means Contract Compliance Inspector.

Companion - a person who accompanies a beneficiary, but who is not needed to provide personal assistance to the beneficiary.

Contractorage - the service contracted to provide screening and authorization for NEMT service for Medicaid beneficiaries. The Contractorage also subcontracts with transportation providers who provide service for Medicaid beneficiaries.

Covered Medical Service - a medical service paid for by Medicaid. A beneficiary may be transported to any covered medical service, even if it is not included under their specific benefit package or a non-Medicaid provider if it is cost effective (prior authorization may be required).

Days means calendar days unless otherwise specified.

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

Denial of Service - Beneficiaries may be denied a ride for the following reasons:
1. They are not Medicaid eligible,
2. They are not going to a covered medical service,
3. They have transportation resources available to them,
4. The beneficiary is currently suspended.

DTMB means the Michigan Department of Technology Management and Budget.

Eligible Beneficiary - will mean beneficiaries living in the Service Area who seek medically necessary transportation for Michigan Medicaid covered services under the terms of the agreement with the State.

Emergency Services – the health care and services provided for diagnosis and treatment of a medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) such that a prudent layperson, who possesses an average knowledge of health and medicine, could reasonably expect the absence of immediate medical attention to result in placing the health of the individual (or with respect to a pregnant woman, the health of both the woman and her unborn child) in serious jeopardy, serious impairment to bodily functions or serious dysfunction of any bodily organ or part. Emergency services are not the responsibility of the Contractor. Beneficiaries should call 911 to request emergency response.

Encounter Data - information showing use of provider services by health plan enrollees that is used to develop cost profiles of a particular group of enrollees and then to guide decisions about or provide justification for the maintenance or adjustment of premiums. Encounter data can be used to assess and improve quality, as well as monitor program integrity and determine capitation payment rates. However, in order for encounter data to effectively serve these purposes, it must be valid through completeness and accuracy measures. Encounter data can be considered “complete” when the data can be used to describe the majority of services that have been provided to Medicaid beneficiaries who are enrollees of that benefit plan.

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.

Fair Hearing - the procedure by which a beneficiary may appeal a decision of the Medicaid Transportation Program.

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).

HIPAA - means Health Insurance Portability and Accountability Act.

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

Inter-City or Interstate Bus – (e.g. Greyhound or other carrier) may be used for beneficiaries who must travel long distances, but who are able to use the bus.

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

Least Costly Alternative - NEMT is limited to the most appropriate and least costly transportation alternative suitable for the beneficiary's medical condition.

Loaded Mileage - is the distance traveled by a motor vehicle while transporting a beneficiary from a pickup point to a drop-off point.

Lodging - when an overnight or longer stay is required, lodging may be paid for the beneficiary and one (1) additional person if the beneficiary is not the driver. Accommodations must be obtained at the most economical facility available. Resources such as Ronald McDonald Houses or facilities operated by the hospital must be used whenever possible.

Lowest Cost - the cost per trip that one (1) Transportation Provider charges as opposed to another for comparable level of service. The Contractorage is obligated to choose the lowest cost, most appropriate level of service.

Meals - reimbursement for meals is available only for meals which occur during the time of the travel or the stay. Meals are permitted for the beneficiary and/or the person approved to stay with the beneficiary.

Medically Necessary - a service which is Medicaid eligible and reasonably calculated to prevent, diagnose, correct, cure, alleviate or prevent the worsening of conditions that endanger life, cause suffering or pain, result in illness or infirmity, threaten to cause or aggravate a handicap, or cause physical deformity or malfunction, and there is no other equally effective more conservative or substantially less costly course of treatment available or suitable for the beneficiary requesting the service. "Course of treatment" may mean mere observation or, where appropriate, no treatment at all.

Medivan - may be considered as a commercial vehicle used for transport of a beneficiary that needs door to door or curb to curb service due to medical condition. The beneficiary is able to transfer in and out of the vehicle but may need assistance. This could include vehicles such as a limousine, ambu-cab or non-wheelchair van. Drivers are expected to assist the beneficiary as needed.

Non-emergency medical transportation services (NEMT) are defined as non-ambulance, non-emergency transportation to or from any covered medical services for the purpose of receiving treatment and/or medical evaluation.

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.

No Show - is when a beneficiary fails to cancel a scheduled transportation service and the transport arrives at the pick-up point.

Notice of Denial is a notification of denied or a reduction of service for NEMT services, which includes a hearing request form explaining appeal rights.

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.

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.

Private Vehicle - a motor vehicle owned or leased by the beneficiary, family member or friend of the beneficiary or an authorized individual acting as a volunteer which may be used to transport the beneficiary to and from covered medical services.

Public Transit - is fixed route transportation provided by public buses. When making a determination about whether or not a beneficiary can use the bus the following circumstances should be taken into consideration:
1. How far is the nearest bus stop from the beneficiary's residence?
2. Can the beneficiary reasonably get to the nearest bus stop?
3. Does the bus go reasonably near the beneficiary's medical provider?
4. Are there other circumstances which affect the beneficiary’s ability to use the public bus such as having to walk a long distance with several small children, weather conditions, safety, etc.?
If in doubt about whether a beneficiary is physically able to use the bus, contact the medical provider for an opinion.

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.

Related Expenses - reimbursement may be made for other expenses associated with travel, such as turnpike tolls and parking fees.

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.

Rideshare - a rideshare participant is a beneficiary who is able to share a ride with another beneficiary because their route and time coincide.

Round-Trip Mileage - from the beneficiary’s home to the medical facility is paid at the current mileage rate. If more than one (1) beneficiary is being transported, payment is approved for one (1) trip only. The round trip will be made over the shortest route.

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.

Sufficient Capacity - means the Contractor has enough resources (providers) to handle the non-emergency medical transportation needs of the Medicaid population. If the Contractor cannot meet the existing needs, then the Contractor must document the reason(s) for the deficiency and report it.

Taxi - beneficiaries without bus access and for whom no other less costly form of transport is available may be authorized to use a taxi. Beneficiaries who are physically unable to use a bus may also be authorized to use a taxi in the absence of alternate transportation. Advise beneficiaries that solicitation of tips by the driver is prohibited.

Train - beneficiaries may travel by train if they are going to a covered medical service out of the area and if train is the least costly, appropriate type of transportation.

Transportation Provider - any public, private or private non-profit organization or individual who has been designated by the Contractor to receive reimbursement for NEMT services at a negotiated rate, for NEMT provided as authorized by the Contractor. NEMT may include, taxi, wheelchair/Medivan, public transit, volunteers driving their own vehicles and beneficiaries, relatives or friends of beneficiaries eligible for mileage reimbursement for driving their own vehicles when there is an economic need for assistance with costs of driving.

Transportation Type - the type of transportation used to provide transportation services to beneficiaries. Types may include, but are not limited to: public or private fixed route service, exclusive ride service or shared ride service.

Trip - transporting an eligible beneficiary to or from a medical service. If the transportation provider waits for the medical service to be delivered subsequent transportation of the beneficiary is a continuation of the original trip (two trip legs = one round trip).

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

Unloaded Mileage - is the distance traveled by the motor vehicle to the point of pickup of the beneficiary and/or from the point of drop-off of the beneficiary. The transportation provider can only charge mileage when the beneficiary for whom the claim is submitted is physically in the vehicle. Mileage cannot be charged en route to the pickup point or en route from the drop-off.

Volunteer Transport - beneficiaries may be transported by volunteer programs. Some programs offer van transportation, including wheelchair equipped vehicles and others provide transportation by volunteer drivers using their own vehicles. Volunteer drivers are reimbursed mileage and not for services. Meals and lodging may be reimbursed when the transportation necessitates. Volunteer agencies often require advance notice in order to assure that a trip can be scheduled.

Waiting Time - is the time a vehicle is waiting at a medical provider's facility, to which the transportation provider transported the beneficiary, in order to transport the beneficiary to another destination, during the same trip.

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

Wheelchair Transport - wheelchair van transport is transportation provided by a wheelchair lift equipped vehicle for a beneficiary who uses a wheelchair. Transportation is a generally a "door to door" service. At times, an individual being transported must be picked up at their residence and taken inside their destination (escort by the driver).

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 Contract is for a Contractor to act as the broker for and administer the Non-Emergency Medical Transportation (NEMT) program for the Michigan Department of Community Health (MDCH) in Wayne, Oakland, and Macomb counties. This includes capitated payment for a combination of services and administrative duties. NEMT services are provided for Fee-For-Service (FFS) Medicaid and/or dually Medicaid/Children's Special Health Care Services (CSHCS) beneficiaries to any Medicaid covered service from any Medicaid enrolled provider. NEMT for clients enrolled in a Medicaid Health Plan (MHP) is limited to dental, substance abuse, or community mental health services. The Contractor must administer the program, assure NEMT to eligible beneficiaries, establish a network of transportation providers, field beneficiary calls, verify beneficiary eligibility, approve and arrange for NEMT, provide reimbursement to the NEMT providers, establish provider record keeping requirements and track and report NEMT utilization.

1.012 Background

The MDCH is the single State agency that administers and supervises the Michigan Medicaid program in accordance with the Title XIX of the Social Security Act 1902 (a)(10)(A) and (e), 42 CFR (Code of Federal Regulations), MCL 400.106, 1984 PA 246. 42 C.F.R. Section 431.53 requires Medicaid agencies to assure necessary transportation for beneficiaries to and from covered benefit appointments.

The Michigan Department of Human Services (MDHS) has determined eligibility for NEMT per agreement with MDCH. Starting January 1, 2011, NEMT was provided through a pilot program in Wayne, Oakland, and Macomb counties to Medicaid FFS and for eligible services to MHP beneficiaries.

MDCH provides Fee-For-Service (FFS) Medicaid coverage for approximately 5,775 individual beneficiaries, 56,375 individual one-way trips and 3,726 substance abuse trips monthly for Wayne, Macomb and Oakland Counties. In March 2013 there were 512,436 MHP and 150,167 FFS eligible beneficiaries in Wayne, Oakland and Macomb Counties.

1.020 Scope of Work and Deliverables

1.021 In Scope

The Contractor must administer the NEMT program as well as work with the MDCH to establish and maintain the NEMT program. The Contractor must work with MDCH to:

- Administer the NEMT program.
- Assure NEMT to eligible Medicaid beneficiaries.
- Offer current NEMT providers the opportunity to participate.
- Set up a call center to field beneficiary calls so that transportation can be provided to eligible Medicaid beneficiaries.
- Verify that the beneficiaries are eligible to receive NEMT prior to approving and arranging for NEMT.
- Establish provider record keeping requirements and set up a database to track the MDCH NEMT utilization.
- Submit beneficiary level encounters in a format specified by MDCH on a monthly basis.

MDCH will work with the Contractor to provide a process for obtaining verification of Medicaid NEMT eligibility. The Contractor must be able to verify eligibility for transportation services utilizing the Community Health Automated Medicaid Processing System (CHAMPS) Eligibility Inquiry and/or the Health Insurance Portability & Accountability Act of 1996 (HIPAA) 270/271 (Eligibility Inquiry/Response) transaction. The Contractor will not be charged for eligibility verification requests.

The Contractor will be assigned a provider ID number that will allow access to this system. In addition, the Contractor can sign up to use WebDENIS, which is also free for enrolled providers. WebDENIS is Blue Cross/Blue Shield's web-based verification system which providers can use to access the Medicaid eligibility database. Access information can be obtained on the MDCH website at the following link:

http://www.michigan.gov/MDCH/0,1607,7-132-2945_5100-57088--,00.html

NEMT is a limited service for beneficiaries assigned to a managed care organization. NEMT is limited to transportation for community mental health, dental and substance abuse services for Medicaid Managed Care enrollees. Clients who are not Medicaid eligible and any other services not specifically described in the Contract would be considered out of the scope of the Contract.

1.022 Work and Deliverable

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

A. Programs

The Contractor must develop materials, such as pamphlets, flyers, radio/TV spots, direct mailings, etc. for beneficiaries and providers which include outreach and general information about the NEMT based on policy in the DHS Bridges Administrative Manual (BAM) section 825 (see Attachment C). This must include, but not be limited to, information on how to contact the Contractor and schedule service, information regarding the Contractor's policies and procedures, and information on the complaint process. Information must be written at a sixth grade level and should be available (at least) in English, Spanish and Arabic. Sufficient material, such as Informational pamphlets and flyers, must be produced on an as needed basis to respond to all information requests. The Contractor must work with MDCH Medicaid staff regarding development and publication of all printed materials to be distributed and receive prior approval before distributing.

The Contractor must provide beneficiaries, county DHS offices and Medicaid enrolled providers information about this program. Information must be made available to others upon request. The information must describe availability of NEMT services, eligibility for these services, the authorization process and how to access and use these services properly. MDCH must approve all NEMT written materials prior to their distribution.

The Contractor must develop, with approval of MDCH, a Medical Needs Form to be used for all Medivan and Wheelchair Lift Van transportation, for beneficiaries requiring attendants, and for all meals and lodging requests. The Medical Needs Form must be signed and dated by a physician, a physician assistant, or a nurse practitioner. For beneficiaries with CSHCS, forms may be signed by a representative of the local health department. A Standing Order Form may be used for those requiring appointments, more than once weekly on an ongoing basis, and ambulatory beneficiaries used in lieu of a Medical Needs form. If only a Standing Order Form is required it must be signed by a representative of the facility. A form is required for ambulatory transportation that verifies that transportation provided is to a Medicaid covered medical service and provided by a Medicaid enrolled provider.

The Contractor must assure necessary NEMT for services covered by Michigan Medicaid for beneficiaries who do not participate with a MHP. NEMT must be provided only for those medical services that are a benefit of Medicaid. NEMT must be available to obtain medical evidence or receive Medicaid covered service from any Medicaid enrolled provider. This includes the need for chronic and ongoing treatment (i.e. dialysis treatment), prescriptions, medical supplies and/or one time, occasional and ongoing visits for medical care, the need for methadone treatment, need for travel outside the normal service delivery area (such as out of state transportation where medically appropriate), need for overnight stays (including meals and lodging), need for commercial non-emergency transport vehicle (wheelchair lift/Medivan) and need for attendant (parent, caretaker, etc.). The Contractor must assure that it has approved and arranged for the most appropriate transportation for the beneficiary's condition.

The Contractor must evaluate and approve/deny requests and provide NEMT for Medicaid services not covered by a MHP for the managed care population. Dental, substance abuse and community mental health services are not provided by MHPs. MHPs are required to assure a beneficiary's need for transportation for MHP provided services only, including referrals for medical services from specialists or out-of-state medical providers.

NEMT is covered only if there is no other means of transport. If the beneficiary, his/her family, neighbors, friends, relatives, etc. can provide transportation; they are expected to do so without reimbursement. If transportation has been provided to the beneficiary at no cost, it is reasonable to expect this to continue, except in extreme circumstances or hardship.

The Contractor must assure that all eligible beneficiaries have access to the appropriate type of NEMT. The type of transportation available may vary by region because of availability and/or a rural, rather than an urban location.

The Contractor must have an understanding of Centers for Medicare and Medicaid Services (CMS) requirements regarding assurance of NEMT.

The Contractor must have a system to compute the cost of the beneficiaries' medical transportation when verification is received that NEMT has been provided.

The Contractor must have a system to calculate the total number of trips traveled from the beneficiary's home to the medical service destination(s) and back to the beneficiary's home.

The Contractor must have a process, approved by MDCH, for notifying a beneficiary of denial for NEMT services. If reimbursement for NEMT is denied, the beneficiary must be notified of denial, including the reason for denial and the right to appeal the decision by written notice within one business day of the denial. The Contractor must be accessible and/or provide information for hearings, if requested by MDCH. (see Section 1.071 for Standards for Notification of Denial of NEMT Services and Standards for Denying NEMT Services for additional information).

The Contractor must have a plan to provide NEMT to parents, guardians or spouses of beneficiaries receiving Medicaid services who by virtue of age and/or condition need to be accompanied or who may need NEMT to be with a Medicaid beneficiary while the beneficiary is receiving Medicaid covered services.

The Contractor must have a plan to provide NEMT services to eligible beneficiaries to entities that do not charge for care such as Veterans Administration (VA) hospitals where transportation services may be to out-of-state locations.

The Contractor must provide applicants and other requesters of NEMT written information explicitly acknowledging that Medicaid must assure transportation for beneficiaries to and from Medicaid service providers for Medicaid covered services.

The Contractor must implement the policy document that must be followed: BAM 825 in the MDCH manuals (see link in Attachment C).

The Contractor must assess a beneficiary's need for NEMT services. This includes, but is not limited to:

- The beneficiary's program eligibility for non-emergency transportation on the date of service.
- The transportation requested is to and from a Medicaid covered service.
- The beneficiary has no other means of transportation available.
- The least costly, but appropriate, mode of transportation is used.
- The beneficiary is using the closest, but appropriate, provider.

The Contractor must have a process, system and criteria for determining and reporting the appropriate mode of transportation, what NEMT provider to assign it to, and must assure that the transport is completed in a timely, efficient and appropriate manner.

The Contractor must gather and maintain information for, and examine and respond to, changes in member populations and member needs to assure an adequate supply of the necessary types of vehicles and transportation services.

B. Provider Network

The Contractor must establish a comprehensive network of NEMT providers to deliver NEMT to Medicaid beneficiaries. The Contractor must give current NEMT providers the opportunity to participate, if they meet the criteria specified in the Contract, as the basis for establishing their provider network. The provider network must include diverse modes of available transportation that is the least expensive mode of transportation that best meets the physical and medical circumstances of a beneficiary requiring transportation to a medical service. This includes, but is not limited to, wheelchair lift van, medivan, taxi, and public transit. The provider network must also be capable of serving beneficiaries from a variety of cultural and both urban and rural locations. The provider network must be responsive to the cultural, language and physical and/or medical needs of the beneficiaries. The Contractor is responsible for assuring the provider qualifications meet, at a minimum, those outlined in Attachment B. The Contractor must have capacity available through agreements with transportation providers and other arrangements (such as public bus and train service, free services or reduced cost services, volunteers or gas reimbursement) to meet the Medicaid beneficiaries' NEMT needs.

- The Contractor must recruit transportation providers that employ courteous, safe, quality strategies in the delivery of NEMT.
- The Contractor must educate transportation providers regarding rules, regulations, policies, practices and laws relating to the delivery of NEMT to eligible Medicaid beneficiaries.
- The Contractor must ensure that any Subcontractor providing transportation services carry automobile liability insurance with a minimum of $1,000,000 (one million dollars) per occurrence.
- The Contractor must negotiate rates or use other strategies to ensure that the most appropriate NEMT is provided.
- The Contractor must assure that agreements with providers meet the minimum requirements, as referenced in Attachment B, as well as Federal and State of Michigan laws and regulations governing NEMT vehicles and drivers.
- The Contractor must arrange for NEMT for routinely scheduled trips, non-routinely scheduled trips and unscheduled trips. The Contractor must approve and arrange for NEMT through Provider contracts with public, not-for-profit, for-profit organizations and individual qualified operators, including relatives.
- The Contractor must ensure that all beneficiaries, including non-English speaking beneficiaries, can access NEMT.
- The Contractor must assure a culturally diverse provider network that is responsive to the varied needs of the beneficiaries.
- The Contractor must assure they will refrain from contracting with providers who the MDCH and/or MDHS has terminated from the Medicaid program or NEMT program for good cause.
- The Contractor must assure that they will not provide their own vehicles and drivers through the services of any transportation company in which they have an ownership interest.
- The Contractor must establish a network of independent transportation providers to deliver transportation and negotiate individual service delivery rates with each qualified transportation entity.
- The Contractor must make payments to each transportation provider based on authorized services rendered.

C. Call Center

The Contractor must establish and maintain a staffed, toll-free, telephone call center to respond to requests and questions from beneficiaries, beneficiary designated representatives, providers, Medicaid technicians and MDCH. The call center must field requests for transportation services, provide information about transportation services and handle calls to register complaints. The call center must be physically located in the geographic area served by the Contract. Beneficiaries must not incur a charge for placing a call. The Contractor must maintain a dedicated staff to perform the requirements. Beneficiaries must be able to schedule transportation at least 14 days in advance and as few as same-day-service. Professional, prompt and courteous customer service must be a high priority.

- The Contractor must train call center staff and respect a caller's right to privacy and confidentiality.
- The Contractor must maintain a properly functioning and appropriately staffed local and toll-free telephone number available during regular business hours (i.e. 8:00 a.m. through 5:00 p.m. EST Monday through Friday) with 24 hours, seven day a week voice mail, TTY and a facsimile number; and must have the ability to handle inquiries from non-English speaking beneficiaries and those with hearing and speech impairments. The phone system must have capacity to handle the volume of inquiries required to service the beneficiaries.
- The Contractor must provide a staffed after hour access for beneficiaries to inquire about previously scheduled rides or urgent transports (including hospital discharges) outside of normal business hours.
- The Contractor must ensure that they have staff to handle all calls and act as troubleshooters and problem solvers for transportation related questions (and any other issues that may arise). The maximum abandonment rate must remain below 10%, 95% of the time.
- The Contractor must assure that no calls will be answered by clearing the queue (i.e., answering only to ask callers to call back at a later time) or by busy signals, disconnections, or other technical problems that prevent the caller from receiving help from staff.
- The Contractor must educate beneficiaries who habitually call after regular working hours and leave messages requesting transportation.
- The Contractor must process all incoming telephone inquiries for NEMT in a timely (within 24 hours) and responsive manner. The Contractor must have the capability to ensure that the communication and language needs of beneficiaries are addressed.
- The Contractor must assure that beneficiaries with emergency requests are referred or transferred to 911 or an appropriate local emergency or ambulance service.
- The Contractor must be in compliance with HIPAA, see attachment E.

For eligible beneficiaries 18 and older the Contractor must arrange transportation without revealing Medicaid coverage information if callers are not the beneficiary or legal guardian (i.e. medical provider, social worker). If the beneficiary is not eligible for transportation, the Contractor must indicate that the service is denied and the beneficiary will receive a denial letter, but must not reveal any information concerning Medicaid coverage. The Contractor must document why the beneficiary is not the caller.

Pursuant to HIPAA of 1996, the Contractor must protect the confidentiality of all Medicaid beneficiaries and other materials that are maintained in accordance with the Contract. The Contractor must execute a HIPAA Business Associate agreement.

Except for officially approved purposes, directly connected with the administration of the Contract, no information about (or obtained from) any beneficiary in possession of the Contractor must be disclosed to any party other than DHS or MDCH in a form that identifies the beneficiary, without prior written consent of the beneficiary or a minor's parent or guardian. The Contractor must modify and maintain comprehensive confidentiality policies and procedures as approved by the MDCH.

D. Schedule, Assign and Dispatch Trips

The Contractor must utilize scheduling and dispatching software that has been proven effective in a Medicaid NEMT environment to schedule, assign and dispatch trips. The Contractor must employ a technique to schedule beneficiary trips once they are authorized and must ensure that trip assignments are efficient. The scheduling system must be capable of accommodating advanced reservations, subscription service and requests for urgent service. The software should track scheduling tasks for reporting purposes as identified in Section 1.042. The Contractor must determine the most appropriate mode of transportation to meet the beneficiary's medical need, including any special transport requirements for medically fragile or physically/mentally challenged beneficiaries using the considerations identified.

Prior to approving and arranging for NEMT, the Contractor must verify that the beneficiary is eligible to receive NEMT.

When utilizing public transportation, the Contractor must establish procedures for timely distribution of tokens/passes to beneficiaries so that the beneficiaries are present at authorized medical appointments on time. The Contractor must establish adequate monitoring procedures to validate that the tokens/passes were used for authorized NEMT.

The Contractor is encouraged to use volunteer and public transportation to provide the most cost efficient service to the beneficiaries if such transportation is appropriate to meet the needs of the beneficiary.

The Contractor must have procedures in place to verify and document that vehicles used in volunteer transportation are to meet the safety and comfort needs of the beneficiaries including, but not limited to:

- Operating requirements and registration
- Seat belts and child safety seat requirements if appropriate
- Functional heating and air conditioning

The Contractor must have procedures in place to verify and document that the drivers used in volunteer transportation are licensed and insured in accordance with State statutes and rules.

The Contractor must arrange transportation in and out of the State when appropriate for eligible beneficiaries (the Contractor will not be responsible for arranging transportation for beneficiaries who reside outside of Michigan). All requests for out-of-State NEMT services require approval from MDCH.

The Contractor must prevent excessive multi-loading of vehicles and excessively long trips that would require the beneficiary to be in the vehicle more than 45 minutes longer than the average direct travel time or delay the arrival time beyond what is scheduled.

The Contractor must maintain scheduling and dispatching software that has been proven effective in a Medicaid NEMT environment to schedule, assign and dispatch trips.

The Contractor must employ a technique to schedule beneficiary trips once they are authorized and ensure that trip assignments are efficient.

The Contractor must ensure that the scheduling system is capable of accommodating advanced reservations, subscription service and requests for urgent service.

The Contractor must ensure that the chosen scheduling and dispatching software tracks scheduling tasks for reporting purposes (see Section 1.042 for specific requirements).

The Contractor must determine the most appropriate mode of transportation to meet the beneficiary's medical need, including any special transport requirements for medically fragile or physically/mentally challenged beneficiaries using the considerations identified in BAM 825.

1.030 Roles and Responsibilities

1.031 Contractor Staff, Roles, and Responsibilities

The Contractor must identify where Contractor staff will be physically located during the Contract performance.

The Contractor must provide administrative and organizational staff to perform, at a minimum, the functions of the positions described as follows. The Contractor must ensure that all staff has appropriate training, education, experience, liability coverage and orientation to fulfill the requirements of the positions. The Contractor must also provide clerical and support staff to assist in the performance of these functions:

- Administrator/Director: The Contractor must have a full time Administrator/Director with clear authority over general administration and implementation of the provisions and requirements set forth herein.
- Quality Manager must implement and oversee all aspects relating to quality of services provided by the Contractor's staff and Subcontractors. Additionally, the Quality Manager must be responsible for the resolution, tracking and reporting of all complaints and incidents as described herein; ensuring that beneficiary satisfaction surveys are completed as required; and monitoring and directing quality improvement when indicated.
- Customer Service Manager must oversee all aspects relating to customer service operations including determining the appropriateness of NEMT requests, requests for specialized transportation including, but not limited to: medivan, wheelchair van, out-of-state travel, special circumstance transports, attendants and dialysis patients.
- Compliance Manager must perform compliance activities to ensure internal and subcontractor compliance with the provisions and requirements stated herein.
- Customer Service Representative(s) must coordinate communications with beneficiaries and arrange appropriate NEMT services.

1.040 Project Plan

1.041 Project Plan Management

A. Quality Compliance

The Contractor must establish safety and quality standards for the provision of NEMT. Transportation providers must meet health and safety standards for vehicle maintenance, operation and inspection; driver qualifications and training and the delivery of courteous, safe and timely transportation services. A non-emergency equipped vehicle (such as a van taking patients to doctor appointments, etc.) is a limousine and the carrier must have a Limousine Certificate of Authority.

- The Contractor must establish a process for tracking and monitoring NEMT utilization by beneficiaries and providers to detect patterns of abuse or misuse. Additionally, the Contractor must notify MDCH of potential fraud, abuse or misuse of NEMT.
- The Contractor must establish and maintain standardized, approved written procedures for handling all complaints, including documentation requirements. Additionally, the Contractor must notify beneficiaries of the process to use when transportation is refused.
- The Contractor must analyze complaint data to identify common themes and implement system improvements.
- The Contractor must educate and manage beneficiaries who are chronically late, "no-shows" or abusive. The Contractor must document no-shows and abusive behavior in the transportation database; and their process of reporting beneficiaries who misuse emergency services that require NEMT to or from the medical service to the MDCH. If the beneficiary continues to exhibit uncooperative behavior or misuses/abuse NEMT services, services may be denied. Beneficiaries must receive written notice of denial and information regarding their right to an appeal for a denial or reduction of NEMT services.

B. Issues Management

Monitor and Manage Complaints:

The transportation subcontractors and clients must have online access to the electronic complaint tracking log, using the Contractor's system(s). Upon request, plan personnel must be given logins and have review access to the following:

- Complaint editor to monitor specific complaints
- Complaint summary reports to verify satisfaction levels

MDCH must be given access to a Web-based system to access complaints 24x7x365 days a year with real-time data.

Complaint Escalation Process:

The Contractor must have written policies and procedures outlining the complaint, appeal, and escalation processes required to manage issues of concern presented to the Contractor by any individuals or group, including the State. If the complainant is not satisfied with the results of the first- and second-level reviews conducted by staff in the Contractor's main operations office, along with any necessary and appropriate corrective action, a request for a second review can be made verbally or in writing. The Customer Service Manager must enter the request for appeal into the Contractor's system, and the issue must be escalated to the Quality Manager, who must review the complaint and all related documentation. Within 72 hours of receiving the request to appeal, the Quality Manager must respond in writing to the complainant. This communication must outline the results of the second level review and any corrective actions that must be taken. The Contractor must also inform MDCH of the results of the Quality Manager's review. If MDCH has complaints concerning the Contractor's contract compliance or staff behavior, these complaints must be personally handled by the Quality Manager in accordance with MDCH-specified procedures. Any MDCH complaints about the Administrator/Director/General Manager must be handled by the Administrator/Director assigned to the MDCH NEMT contract. The Contractor must automatically assign all complaints a tier designation, in accordance with the complaint type selected at the time of entry. This tiered classification system must be used to code the severity of each complaint.

C. Change Management

If the need for a change to the project plan or provisions is identified by either the State or the Contractor, a meeting is to be called by the initiating party to negotiate the terms of the change. Any change that requires changes to the Contract scope and/or language must be processed through DTMB.

1.042 Reports

The Contractor must submit accurate and complete weekly reports including, but not limited to:

- Call center report by day for both reservations and ride status that includes the number of calls, the average hold time, and the average abandonment percentage.

- Complaint summary which, at a minimum, must include:
    1. Name and contact information of the person filing complaint
    2. Date the complaint filed
    3. Beneficiary information, if applicable
    4. Narrative explaining the detail of the complaint
    5. Relevant trip information pertaining to the complaint
    6. Relevant provider information pertaining to the complaint
    7. Trip log information, if applicable
    8. Outcome/resolution of the complaint
    9. Date complaint resolved/responded to

The Contractor must submit accurate and complete reports to MDCH monthly, no later than the 10th day of the following month, with an annual rollup report. Reports must include, but are not limited to, the following:

- Call center report-including the number of calls, number answered, average speed answered in seconds, average talk time in seconds, number of abandoned calls, average time abandoned in seconds, percentage abandoned.
- Transportation Request Report-summarizing all requests for transportation, authorizations, cancellations, and denials by mode, trips for substance abuse treatment, public transit trips, volunteer transportation, the number of individual riders with at least one reservation, and the number of unduplicated or new riders.
- Transportation Trip Summary-summarizing percentages of all trips by mode, mileage, age and gender, particularly noting percentage increase in public transportation ridership and volunteer transportation.
- Denial Report-numbers and percentages by denial type.
- Miles per trip/per reservation report.
- Beneficiary satisfaction survey (quarterly).
- Complaint and Appeal Summary.
- On-time report, no-show report, missed trip report.
- Trip Report-listing of all completed trips submitted into encounters. The data elements must include beneficiary ID number, date of trip, mode, age, gender, miles per trip, address of pick-up and drop-off.
- Other reports may be requested by MDCH either periodically or on a scheduled basis.

The Contractor must maintain a database to meet the needs of the MDCH, NEMT program and to provide MDCH with quality program management data. The database must be backed up on a daily basis and the Contractor is responsible for all programming functions and costs associated with the maintenance of this database. The database must track beneficiary identification and utilization information.

- The Contractor must track utilization data for each call, including the beneficiary's Medicaid identification number, name, address, phone number, primary language, special needs and required mode.
- The Contractor must maintain person-level computerized data on beneficiaries including determination of beneficiary eligibility and eligibility type (i.e. Medicare/Medicaid, Healthy Kids), availability of suitable modes of transportation, necessity of trip, special needs and results of NEMT request.
- The Contractor must maintain a daily computerized Trip Log that includes the requester name (if different), date/time request, date/time of medical appointment, mode of transportation authorized, denial reason, justification of mode authorized, scheduled pick-up/drop-off time, actual pick-up/drop-off time, escorts, pick-up and drop-off location, subcontracted provider assigned and trip mileage.
- The Contractor must accommodate functions for daily operations, service authorization, trip scheduling, provider reimbursement and MDCH monitoring.
- The Contractor must pull data by beneficiary ID number, name, gender, mode of transportation, date or other identifier to create a history of approvals and denials.
- The Contractor must support MDCH by tracking NEMT utilization and trends, identifying potential NEMT opportunities for improvement and maintaining an information database.

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 Contract:

Acceptance will be based on the PM's / CCI's approval of the reports required in Section 1.042.

1.052 RESERVED

1.060 Proposal Pricing

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

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** for current rates.

1.062 Price Term
Pricing, per year (as defined in Attachment A), is the maximum allowable Per-Member-Per-Month (PMPM) rate that can be charged for the specified timeframe. The PMPM rate is an all-inclusive rate that includes all costs associated with this Contract. Upon MDCH request, an annual review of the PMPM rate will be performed based on the encounter data submitted by the Contractor.

Prices are subject to change at the end of each year (as defined in Attachment A). Such changes must be based on changes in actual costs incurred. Documentation of such changes must be provided with the request for price change in order to substantiate any requested change. DTMB-Procurement reserves the right to consider various pertinent information sources to evaluate price increase requests (such as the CPI and PPI, US City Average, as published by the US Department of Labor, Bureau of Labor Statistics). DTMB-Procurement also reserves the right to consider other information related to special economic and/or industry circumstances, when evaluating a price change request. Changes may be either increases or decreases, and may be requested by either party. Requests for price changes must be RECEIVED IN WRITING AT LEAST 60 DAYS PRIOR TO THEIR EFFECTIVE DATE, and are subject to written acceptance before becoming effective. **The Contractor remains responsible for performing according to the Contract terms at the Contract price for all services rendered before price revisions are approved.**

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 RESERVED

1.070 Additional Requirements

1.071 Additional Terms and Conditions specific to this RFP
The following standards are for clarification of NEMT policy and procedures:

Standards for Minors Traveling Alone

- Children under the age of 12 years of age must be escorted to medically necessary appointments. Child's parent, foster parent, caretaker or legal guardian, as appropriate, must be responsible for providing the escort. However, in a situation where two or more children under the age of 12 are being transported from school to a day program to another program, no escort must be required.

- For children between the ages of 12 to 15 years, a consent letter signed by a parent, foster parent, caretaker or legal guardian must be required for a child to be transported without an escort, unless access to the service is without parental consent as specified by MDCH (i.e., for family planning and mental health treatment).

- For children 16 year of age and older, no consent must be required.

Standards for Non-contract Covered NEMT

- Extended meals and lodging for transplants at the University of Michigan, Harper Hospital and Karmanos Cancer Center is not covered under this Contract and must be referred to MDCH.

- Transportation for beneficiaries who are enrolled in the Maternity Outpatient Support Services (MOMS) program (pregnancy related only) is not covered under this Contract.

- Transportation for day treatment provided by a Community Mental Health Services Program (as part of its treatment package) for children enrolled in the Children's Waiver Program is not covered under this Contract and must be billed directly to the MDCH.

- Transportation is not included under this Contract for beneficiaries enrolled in MHP (07) – except for carved out services (dental, substance abuse and mental health).

- Transportation is not included under this Contract for beneficiaries for Medicaid covered services at a Federally Qualified Health Center (FQHC).

Standards for Contractor Approvals of Mileage, Meals and Lodging

- Mileage and food costs are allowed for daily long distance over four hours.

- Meals and lodging for a parent/guardian, if less than 50 miles from beneficiary's residence, are allowed if the physician states parent/guardian needs to be present 24 hours a day.

- Meals and lodging are allowed for a parent/guardian or caretaker for over 50 miles from beneficiary's residence if outpatient/inpatient treatment is over one day.

- Parking lot fees and toll fees are reimbursable if verified with receipt.

Standards for Special Circumstance Transportation

- Travel is allowed for a beneficiary to receive any Medicaid covered service from any Medicaid enrolled provider for Early and Periodic Screening Diagnosis and Treatment (EPSDT) and Children's Special Health Care Services (CSHCS) for those clients who are dually eligible (Medicare/Medicaid).

- Travel is allowed for family members of beneficiaries who are in an inpatient hospital treatment program, if the family members are part of the structured treatment or therapy program.

- Travel is allowed for one trip for examination and one trip per Medical Review Team (MRT) recommendation for clients claiming disability or blindness.
    - In most cases these beneficiaries will be assigned a beneficiary ID, but will show in pended status.

- The Contractor is responsible for the transport. If an ID has not been assigned the DHS office will contact MDCH and MDCH will give the approval to the Contractor.

- Medical transportation is available to obtain medical evidence or receive any Medicaid covered service from any Medicaid enrolled provider including: chronic and ongoing treatment, prescriptions, medical supplies and one time, occasional and ongoing visits for medical care. Exception: Payment may be made for transportation to V.A. hospitals and hospitals which do not charge for care.

- There may be circumstances where a foster care beneficiary is not residing at the same address listed or a special appointment is required. These appointments would require the approval of MDCH.

Standards for Non-covered Transportation Services

- Transportation is not allowed for beneficiaries covered under the Adult Benefit Waiver Program (3G), Emergency Services only Medicaid (3E), PACE, Plan First, Long Term Care and Facilities (02).

- Transportation is not allowed for non-covered services (e.g., AA meetings, medically unsupervised weight reduction, trip to pharmacies for reasons other than obtaining Medicaid covered items).

- Reimbursement is not allowed for transportation for episodic medical services and pharmacy visits that have already been provided.

- Transportation is not covered if the client, or his/her family, neighbors, friends, relatives, etc. can provide transportation; they are expected to do so without reimbursement. If transportation has been provided to the client at no cost, it is reasonable to expect this to continue, except in extreme circumstances or hardship.

Standards for Denying NEMT Services

- If beneficiary is enrolled in an MHP and transportation is for services other than dental services, mental health or substance abuse. A denial notice is required.

- The transportation requested is not to a Medicaid approved service. A denial notice is required.

- The requested mode of transportation is not deemed necessary (e.g. the beneficiary is requesting a medivan but the medical needs form states it is not required). A denial notice is required.

- The beneficiary has other means of transportation. A denial notice is required.

Standards for Notification of NEMT Services

- Beneficiaries must receive a written notice of denial and information regarding their right to an appeal for a denial or reduction of NEMT services.

- A Hearing Request Form with a postage paid envelope must accompany the notice of denial.

- The denial notice, Hearing Request Form, and envelope must be mailed to the beneficiary within **one** business day after the service is denied.

- A copy of the denial must be made available to MDCH upon request.

- The Contractor must have an employee available to testify at an Administrative hearing if required.

Standards for Data Transmission

The Contractor must provide encounter data in accordance with MDCH specifications, and must also provide monthly reports and an annual report roll-up.

Encounter Data

Encounter data define a set of services provided to a beneficiary by the Contractor for a time period, in this case for the previous month. The encounter data provides aggregate reporting of these services rendered to beneficiaries in an electronic format, typically the nationally recognized HIPAA-compliant 837.

Using a well-defined and stable format, the reporting may be used to populate other information systems and then used for plan monitoring, utilization review, and ad hoc reporting.

Some of the data elements include:

- Beneficiary information – name, member number, DOB, gender, address, program type beneficiary is covered by
- Transportation provider information – tax ID, API or NPI, taxonomy code; name, address, contact information
- Trip information – claim number, DOS, payment, level of service (by HCPCS code), units (trip leg count)

Contractor must provide MDCH the encounter file for each month on or before the last business day of the following month. A sample of the specifications for some selected data is shown in Appendix A. The actual data to be included must be determined and approved through discussion between MDCH's IT contractor or department and Contractor's IT Department.

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 1, 2013 through November 30, 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 services as may be ordered during the Contract period. Quantities specified, if any, are estimates based on prior purchases, and the State is not obligated to purchase in these or any other quantities.

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

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

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

2.008 Form, Function & Utility
If the Contract is for use of more than one State agency and if the Deliverable/Service does not the 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 (1) or more of the provisions of the Contract is declared invalid, the remaining provisions of the Contract remain in full force and effect.

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

2.011 No Waiver of Default
If a party fails to insist upon strict adherence to any term of the Contract then the party has not waived the right to later insist upon strict adherence to that term, or any other term, of the Contract.

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

2.020 Contract Administration

2.021 Issuing Office
The Contract is issued by the Department of Technology, Management and Budget, DTMB-Procurement and DCH (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:

Pamela Platte, Buyer
Procurement
Department of Technology, Management and Budget
Mason Bldg, 2nd Floor
PO Box 30026
Lansing, MI 48909
Email: plattep@michigan.gov
Phone: 517-373-0484

2.022 Contract Compliance Inspector
After DTMB-Procurement receives the properly executed Contract, it is anticipated that the Chief Procurement Officer, DTMB-Procurement, in consultation with MDCH, 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:

Gregory Rivet, Manager
Purchasing Section
Michigan Department of Community Health
Lewis Cass Building
Lansing, MI 48913
Email: rivetg@michigan.gov
Phone: 517-335-5096
Fax: 517-241-4845

2.023 Project Manager
The following individual will oversee the project:

Linda Ramey, Departmental Analyst
Michigan Department of Community Health
400 South Pine Street
Lansing, MI 48909
Email: rameyl@michigan.gov
Phone: 517-335-5198
Fax: 517-241-7813

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

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

Change Requests:

(a) By giving Contractor written notice within a reasonable time, the State must be entitled to accept a Contractor proposal for Change, to reject it, or to reach another agreement with Contractor. Should the parties agree on carrying out a Change, a written Contract Change Notice must be prepared and issued under the Contract, describing the Change and its effects on the Services and any affected components of the Contract (a “Contract Change Notice”).

(b) No proposed Change may be performed until the proposed Change has been specified in a duly executed Contract Change Notice issued by the DTMB-Procurement.

(c) If the State requests or directs the Contractor to perform any activities that Contractor believes constitute a Change, the Contractor must notify the State that it believes the requested activities are a Change before beginning to work on the requested activities. If the Contractor fails to notify the State before beginning to work on the requested activities, then the Contractor waives any right to assert any claim for additional compensation or time for performing the requested activities. If the Contractor commences performing work outside the scope of the Contract and then ceases performing that work, the Contractor must, at the request of the State, retract any out-of-scope work that would adversely affect the Contract.

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

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

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

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

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

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

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

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

2.030 General Provisions

2.031 RESERVED

2.032 Media Releases
ews 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.

2.033 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.

2.034 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.

2.035 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.

2.036 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

2.037 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").

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

2.040 Financial Provisions

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

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

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

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

(b) Each Contractor invoice must show details as to charges by Service/Deliverable component and location at a level of detail reasonably necessary to satisfy the State's accounting and charge-back requirements. Invoices for Services performed on a time and materials basis must show, for each individual, the number of hours of Services performed during the billing period, the billable skill/labor category for such person and the applicable hourly billing rate. Prompt payment by the State is contingent on the Contractor's invoices showing the amount owed by the State minus any holdback amount to be retained by the State in accordance with **Section 1.064**.

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

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

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

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
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.

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

2.060 Contract Management

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

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

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

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

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

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

(f) Liquidated damages may be assessed by the State for Unauthorized Removal as provided in Section 2.243, Liquidated Damages.

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

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

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

2.066 Cooperation with Third Parties
Contractor must cause its personnel and the personnel of any Subcontractors to cooperate with the State and its agents and other contractors including the State's Quality Assurance personnel. The Contractor must provide to the State's agents and other contractors reasonable access to Contractor's Project personnel, systems and facilities to the extent the access relates to activities specifically associated with the Contract and will not interfere or jeopardize the safety or operation of the systems or facilities.

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

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

2.070 Subcontracting by Contractor

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

2.072 State Consent to Delegation
Contractor must not delegate any duties under the Contract to a Subcontractor unless the DTMB-Procurement has given written consent to such delegation. The State reserves the right of prior written approval of all Subcontractors and to require Contractor to replace any Subcontractors found, in the reasonable judgment of the State, to be unacceptable. 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 RESERVED

2.090 Security

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

2.100 Confidentiality

2.101 Confidentiality

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

2.102 Protection and Destruction of Confidential Information

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

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

2.103 RESERVED

2.104 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.

2.105 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.

2.106 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 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 72 hours after becoming aware of the use or disclosure or the shorter time period as is reasonable under the circumstances.

2.107 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 have the right to enter the Contractor's premises or any other places where work is being performed in relation to this Contract. The representatives may inspect, monitor, or evaluate the work being performed at any time. The Contractor must provide reasonable assistance for the State's representatives during inspections.

2.112 Retention of Records
(a) The Contractor must retain all financial and accounting records related to this Contract for a period of 7 years after the Contractor performs any work under this Contract (Audit Period).

(b) If an audit, litigation, or other action involving the Contractor's records is initiated before the end of the Audit Period, the Contractor must retain the records until all issues arising out of the audit, litigation, or other action are resolved or until the end of the Audit Period, whichever is later.

2.113 Examination of Records
(a) The State, upon 10 days notice to the Contractor, may examine and copy any of the Contractor's records that relate to this Contract any time during the Audit Period. The State does not have the right to review any information deemed confidential by the Contractor if access would require the information to become publicly available. This requirement also applies to the records of any parent, affiliate, or subsidiary organization of the Contractor, or any Subcontractor that performs services in connection with this Contract.

(b) In addition to the rights conferred upon the State in paragraph (a) of this section and in accordance with MCL 18.1470, DTMB or its designee may audit the Contractor to verify compliance with the Contract. The financial and accounting records associated with the Contract shall be made available to DTMB or its designee and the auditor general, upon request, during the term of the Contract and any extension of the Contract and for 3 years after the later of the expiration date or final payment under the Contract.

2.114 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 develop, agree upon, and monitor an action plan to promptly address and resolve any deficiencies, concerns, or recommendations in the report.

2.115 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. However, a credit or debit may not be carried forward for more than four invoices or beyond the termination of the Contract. 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 obligations under the Contract must be provided in a timely, professional, and workman-like manner and must meet the performance and operational standards required under the Contract.

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

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

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

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

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

(g) Neither the Contractor nor any affiliates, nor any employee of either, has, must have, or must acquire, any contractual, financial, business, or other interest, direct or indirect, that would conflict in any manner or degree with Contractor's performance of its duties and responsibilities to the State under the Contract or otherwise create an appearance of impropriety with respect to the award or performance of this Agreement. Contractor must notify the State about the nature of the conflict or appearance of impropriety within two 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
For the purpose of this Section, "State" includes its departments, divisions, agencies, offices, commissions, officers, employees, and agents.
(a) The Contractor must provide proof that it has obtained the minimum levels of insurance coverage indicated or required by law, whichever is greater. The insurance must protect the State from claims that may arise out of, or result from, or are alleged to arise out of, or result from, the Contractor's or a Subcontractor's performance, including any person directly or indirectly employed by the Contractor or a Subcontractor, or any person for whose acts the Contractor or a Subcontractor may be liable.
(b) The Contractor waives all rights against the State for the recovery of damages that are covered by the insurance policies the Contractor is required to maintain under this Section. The Contractor's failure to obtain and maintain the required insurance will not limit this waiver.
(c) All insurance coverage provided relative to this Contract is primary and non-contributing to any comparable liability insurance (including self-insurance) carried by the State.
(d) The State, in its sole discretion, may approve the use of a fully-funded self-insurance program in place of any specified insurance identified in this Section.
(e) Unless the State approves otherwise, any insurer must have an A.M. Best rating of "A" or better and a financial size of VII or better, or if those ratings are not available, a comparable rating from an insurance rating agency approved by the State. All policies of insurance must be issued by companies that have been approved to do business in the State.
(f) Where specific coverage limits are listed in this Section, they represent the minimum acceptable limits. If the Contractor's policy contains higher limits, the State is entitled to coverage to the extent of the higher limits.
(g) The Contractor must maintain all required insurance coverage throughout the term of this Contract and any extensions. However, in the case of claims-made Commercial General Liability policies, the Contractor must secure tail coverage for at least three years following the termination of this Contract.
(h) The Contractor must provide, within five business days, written notice to the Director of DTMB-Procurement if any policy required under this section is cancelled. The notice must include the applicable Contract or Purchase Order number.
(i) The minimum limits of coverage specified are not intended, and may not be construed, to limit any liability or indemnity of the Contractor to any indemnified party or other persons.
(j) The Contractor is responsible for the payment of all deductibles.
(k) If the Contractor fails to pay any premium for a required insurance policy, or if any insurer cancels or significantly reduces any required insurance without the State's approval, the State may, after giving the Contractor at least 30 days' 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 require the Contractor to pay that cost upon demand.
(l) 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 Michigan Attorney General.
(m) The Contractor is required to pay for and provide the type and amount of insurance checked ☑ below:

☑ **(i) Commercial General Liability**

Minimal Limits:

$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; and
$1,000,000 Each Occurrence Limit.

Deductible maximum:

$50,000 Each Occurrence

Additional Requirements:

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 the insurance policy contains a waiver of subrogation by the insurance company.

☐ **(ii) Umbrella or Excess Liability**

Minimal Limits:

$10,000,000.00 General Aggregate

Additional Requirements:

Umbrella or Excess Liability limits must at least apply to the insurance required in (i), General Commercial Liability. The Contractor must list the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees, and agents as additional insureds on the certificate. The Contractor also agrees to provide evidence that insurance policies contain a waiver of subrogation by the insurance company.

☑ **(iii) Motor Vehicle**

Minimal Limits:

If a motor vehicle is used in relation to the Contractor's performance, the Contractor must have vehicle liability insurance on the motor vehicle for bodily injury and property damage as required by law.

☑ **(iv) Hired and Non-Owned Motor Vehicle**

Minimal Limits:

$1,000,000 Per Accident

Additional Requirements:

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.

☑ **(v) Workers' Compensation Insurance**

Minimal Limits:

The Contractor must provide Workers' Compensation coverage according to applicable laws governing work activities in the state of the Contractor's domicile. If the applicable coverage is provided by a self-insurer, the Contractor must provide proof of an approved self-insured authority by the jurisdiction of domicile.

For employees working outside of the state of the Contractor's domicile, the Contractor must provide certificates of insurance proving mandated coverage levels for the jurisdictions where the employees' activities occur.

Additional Requirements:

The Contractor must provide the applicable certificates of insurance and a list of states where the coverage is applicable. Contractor must provide proof that the Workers' Compensation insurance policies contain a waiver of subrogation by the insurance company, except where such a provision is prohibited or limited by the laws of the jurisdiction in which the work is to be performed.

☑ **(vi) Employers Liability**

Minimal Limits:

$100,000 Each Incident;
$100,000 Each Employee by Disease
$500,000 Aggregate Disease

Additional Requirements:
The Contractor must list the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees, and agents as additional insureds on the certificate.

☐ **(vii) Employee Fidelity (Crime)**

Minimal Limits:
$1,000,000 Employee Theft Per Loss

Deductible Maximum:
$50,000 Per Loss

Additional Requirements:
Insurance must cover Forgery and Alteration, Theft of Money and Securities, Robbery and Safe Burglary, Computer Fraud, Funds Transfer Fraud, Money Order and Counterfeit Currency.

The Contractor must list the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees, and agents as Loss Payees on the certificate.

☐ **(viii) Professional Liability (Errors and Omissions)**

Minimal Limits:
$3,000,000 Each Occurrence
$3,000,000 Annual Aggregate

Deductible Maximum:
$50,000 Per Loss

☐ **(ix) Medical Malpractice**

Minimal Limits:
(Small Provider)$200,000 Each Occurrence
$600,000 Annual Aggregate

(Large Provider)$1,000,000 Each Occurrence
$3,000,000 Annual Aggregate

Deductible Maximum:
$5,000 Each Occurrence

☑ **(x) Cyber Liability**

Minimal Limits:
$1,000,000 Each Occurrence
$1,000,000 Annual Aggregate

Additional Requirements:
Insurance should cover (a)unauthorized acquisition, access, use, physical taking, identity theft, mysterious disappearance, release, distribution or disclosures of personal and corporate information; (b) Transmitting or receiving malicious code via the insured's computer system; (c) Denial of service attacks or the inability to access websites or computer systems.

The Contractor must list the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees, and agents as additional insureds on the certificate.

☐ **(xi) Property Insurance**

Property Insurance covering any loss or damage to the State-owned office space used by Contractor for any reason under this Contract, and the State-owned 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 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 a subcontract with other insurance provisions, the Contractor must require any Subcontractor to purchase and maintain the insurance coverage required in Section 2.131, Liability Insurance. Alternatively, the Contractor may include a Subcontractor under the Contractor's insurance on the coverage required in that Section. The failure of a Subcontractor to comply with insurance requirements does not limit the Contractor's liability or responsibility.

2.133 Certificates of Insurance

Before the Contract is signed, and not less than 20 days before the insurance expiration date every year thereafter, the Contractor must provide evidence that the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees, and agents are listed as additional insureds as required. The Contractor must provide DTMB-Procurement with all applicable certificates of insurance verifying insurance coverage or providing, if approved, satisfactory evidence of self-insurance as required in Section 2.131, Liability Insurance. Each certificate must be on the standard "Accord" form or equivalent and MUST IDENTIFY THE APPLICABLE CONTRACT OR PURCHASE ORDER NUMBER.

2.140 Indemnification

2.141 General Indemnification

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

2.142 Code Indemnification

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

2.143 Employee Indemnification

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

2.144 Patent/Copyright Infringement Indemnification

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

patent, copyright, trademark or trade secret of any person or entity, which is enforceable under the laws of the United States.

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

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

2.145 Continuation of Indemnification Obligations

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

2.146 Indemnification Procedures

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

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

(b) If Contractor delivers a Notice of Election relating to any claim: (i) the State is entitled to participate in the defense of the claim and to employ counsel at its own expense to assist in the handling of the claim and to monitor and advise the State about the status and progress of the defense; (ii) the Contractor must, at the request of the State, demonstrate to the reasonable satisfaction of the State, the Contractor's financial ability to carry out its defense and indemnity obligations under the Contract; (iii) the Contractor must periodically advise the State about the status and progress of the defense and must obtain the prior written approval of the State before entering into any settlement of the claim or ceasing to defend against the claim and (iv) to the extent that any principles of Michigan governmental or public law may be involved or challenged, the State has the right, at its own expense, to control the defense of that portion of the claim involving the principles of Michigan governmental or public law. But the State may retain control of the defense and settlement of a claim by notifying the Contractor in writing within 10 days after the State's receipt of Contractor's information requested by the State under clause (ii) of this paragraph if the State determines that the Contractor has failed to demonstrate to the reasonable satisfaction of the State the Contractor's financial ability to carry out its defense and indemnity obligations under this Section. Any litigation activity on behalf of the State, or any of its subdivisions under this Section, must be coordinated with the Department of Attorney General. In the event the insurer's attorney represents the State under this Section, the insurer's attorney may be required to be designated as a Special Assistant Attorney General by the Attorney General of the State of Michigan.

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

2.150 Termination/Cancellation

2.151 Notice and Right to Cure

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

2.152 Termination for Cause

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

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

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

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

2.153 Termination for Convenience

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

2.154 Termination for Non-Appropriation

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

(b) If funding for the Contract is reduced by law, or funds to pay Contractor for the agreed-to level of the Services or production of Deliverables to be provided by Contractor are not appropriated or otherwise unavailable, the State may, upon 30 days 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.

2.155 Termination for Criminal Conviction

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

2.156 Termination for Approvals Rescinded

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

2.157 Rights and Obligations upon Termination

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

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

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

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

2.160 Reserved

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 90 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 a comma-delineated format unless otherwise requested by the State. The Contractor must deliver to the State any remaining owed reports and documentation still in Contractor's possession subject to appropriate payment by the State.

2.174 Contractor Software Transition
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. Upon notification by the State, Contractor may be required to freeze all non-critical changes to Deliverables/Services.

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

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

2.180 Stop Work

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

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

2.183 Allowance of Contractor Costs
If the stop work order is not canceled and the work covered by the stop work order is terminated for reasons other than material breach, the termination must be deemed to be a termination for convenience under **Section 2.150**, and the State will pay reasonable costs resulting from the stop work order in arriving at the termination settlement. 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

A claim between the State and the Contractor is not subject to the provisions of Section 2.192, Informal Dispute Resolution, where a party makes a good faith determination that a breach of the Contract by the other party will result in damages so immediate, so large or severe, and so incapable of adequate redress that a temporary restraining order or other 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 must comply with the Elliott-Larsen Civil Rights Act, 1976 PA 453, MCL 37.2101 et seq., as amended, and all applicable federal, State and local fair employment practices and equal opportunity laws as amended. 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., as amended, and the Persons with Disabilities Civil Rights Act, 1976 PA 220, MCL 37.1101, et seq., as amended, 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 and any Subcontractor must comply with all applicable state and federal laws.

2.204 Prevailing Wage
The rates of wages and fringe benefits to be paid each class of individuals employed by the Contractor, its subcontractors, their subcontractors, and all persons involved with the performance of the Contract in privity of contract with the Contractor must not be less than the wage rates and fringe benefits established by the Michigan Department of Licensing and Regulatory Affairs, Wage and Hour Division, schedule of occupational classification and wage rates and fringe benefits for the local where the work is to be performed. The term Contractor must include all general contractors, prime contractors, project managers, trade contractors, and all of their contractors or subcontractors and persons in privity of contract with them.

The Contractor, its subcontractors, their subcontractors and all persons involved with the performance of the Contract in privity of contract with the Contractor must keep posted on the work site, in a conspicuous place, a copy of all wage rates and fringe benefits as prescribed in the contract. You must also post, in a conspicuous place, the address and telephone number of the Michigan Department of Licensing and Regulatory Affairs, the office responsible for enforcement of the wage rates and fringe benefits. The Contractor must keep an accurate record showing the name and occupation of the actual wage and benefits paid to each individual employed in connection with the Contract. This record must be available to the State upon request for reasonable inspection.

If any trade is omitted from the list of wage rates and fringe benefits to be paid to each class of individuals by the Contractor, it is understood that the trades omitted must also be paid not less than the wage rate and fringe benefits prevailing in the local where the work is to be performed.

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 and the Contractor expressly consents to personal jurisdiction in Michigan. With respect to any claim between the parties, the Contractor consents to venue in Ingham County, Michigan, and irrevocably waives any objections to this venue. Contractor agrees to appoint agents in the State of Michigan to receive service of process. .

2.220 Limitation of Liability

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

2.230 Disclosure Responsibilities

2.231 Disclosure of Litigation

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

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

(i) the ability of Contractor (or a Subcontractor) to continue to perform the Contract according to its terms and conditions, or

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

(a) Contractor and its Subcontractors must be able to continue to perform the Contract and any Statements of Work according to its terms and conditions, and

(b) Contractor and its Subcontractors have not and will not engage in conduct in performing the Services which is similar in nature to the conduct alleged in the Proceeding.

(c) Contractor must make the following notifications in writing:

(1) Within 30 days of Contractor becoming aware that a change in its ownership or officers has occurred, or is certain to occur, or a change that could result in changes in the valuation of its capitalized assets in the accounting records, Contractor must notify DTMB-Procurement.

(2) Contractor must also notify DTMB Procurement within 30 days whenever changes to asset valuations or any other cost changes have occurred or are certain to occur as a result of a change in ownership or officers.

(3) Contractor must also notify DTMB Procurement within 30 days whenever changes to company affiliations occur.

2.232 Call Center Disclosure

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

2.233 Bankruptcy and Insolvency

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

(a) the Contractor files for protection under the bankruptcy laws;

(b) an involuntary petition is filed against the Contractor and not removed within 30 days;

(c) the Contractor becomes insolvent or if a receiver is appointed due to the Contractor's insolvency;
(d) the Contractor makes a general assignment for the benefit of creditors; or
(e) the Contractor or its affiliates are unable to provide reasonable assurances that the Contractor or its affiliates can deliver the services under the Contract.

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

2.240 Performance

2.241 Time of Performance

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

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

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

2.242 RESERVED

2.243 Liquidated Damages

The State and the Contractor hereby agree to the specific requirements set forth in this Contract, including but not limited to; Call Center response time, proper mode of transportation to meet the beneficiaries medical need, timely delivery of beneficiaries to appointments. The parties acknowledge that late or improper completion of the Work will cause loss and damage to the State, and that it would be impracticable and extremely difficult to fix the actual damage sustained by the State as a result. The State and the Contractor therefore agree that the State is entitled to collect liquidated damages in the amount of $5,000 and an additional $100 per day for each day Contractor fails to remedy the non-compliance with requirements specified in the contract.

For audits, liquidated damages will be assessed and subject to extrapolation on all services and orders, within the audit sample which are non-compliant with standards specified in the resulting contract without accepted documentation for delay or reason.

2.244 Excusable Failure

Neither party will be liable for any default, damage, or delay in the performance of its obligations that is caused by government regulations or requirements, power failure, electrical surges or current fluctuations, 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; labor disputes, embargoes; injunctions (provided the injunction was not issued as a result of any fault or negligence of the party seeking to have its default or delay excused); or any other cause beyond the reasonable control of a party; provided the non-performing party and its Subcontractors are without fault in causing the default or delay, and the default or delay could not have been prevented by reasonable precautions and cannot reasonably be circumvented by the non-performing party through the use of alternate sources, workaround plans or other means, including disaster recovery plans.

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

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

The Contractor will not have the right to any additional payments from the State as a result of any Excusable Failure occurrence or to payments for Services not rendered/Deliverables not provided as a result of the Excusable Failure condition. Defaults or delays in performance by Contractor which are caused by acts or omissions of its Subcontractors will not relieve Contractor of its obligations under the Contract except to the extent that a Subcontractor is itself subject to an Excusable Failure condition described above and Contractor cannot reasonably circumvent the effect of the Subcontractor's default or delay in performance through the use of alternate sources, workaround plans or other means.

2.250 Approval of Deliverables

2.251 RESERVED

2.252 RESERVED

2.253 RESERVED

2.254 Approval of Deliverables, In General

(a) All Deliverables (Physical Deliverables and Written Deliverables) and Services require formal written approval by the State, according to the following procedures. Formal approval by the State requires the State to confirm in writing that the Deliverable meets its specifications. Formal approval may include the successful completion of Testing as applicable in **Section 2.253**, to be led by the State with the support and assistance of Contractor. The approval process will be facilitated by ongoing consultation between the parties, inspection of interim and intermediate Deliverables and collaboration on key decisions.

(b) The State's obligation to comply with any State Review Period is conditioned on the timely delivery of Deliverables/Services being reviewed.

(c) Before commencement of its review or testing of a Deliverable/Service, the State may inspect the Deliverable/Service to confirm that all components of the Deliverable/Service have been delivered without material deficiencies. If the State determines that the Deliverable/Service has material deficiencies, the State may refuse delivery of the Deliverable/Service without performing any further inspection or testing of the Deliverable/Service. Otherwise, the review period will be deemed to have started on the day the State receives the Deliverable or the Service begins, and the State and Contractor agree that the Deliverable/Service is ready for use and, where applicable, certification by Contractor according to **Section 2.253**.

(d) The State must approve in writing a Deliverable/Service after confirming that it conforms to and performs according to its specifications without material deficiency. The State may, but is not be required to, conditionally approve in writing a Deliverable/Service that contains material deficiencies if the State elects to permit Contractor to rectify them post-approval. In any case, Contractor will be responsible for working diligently to correct within a reasonable time at Contractor's expense all deficiencies in the Deliverable/Service that remain outstanding at the time of State approval.

(e) If, after three opportunities (the original and two (2) repeat efforts), the Contractor is unable to correct all deficiencies preventing Final Acceptance of a Deliverable/Service, the State may: (i) demand that the Contractor cure the failure and give the Contractor additional time to cure the failure at the sole expense of the Contractor; or (ii) keep the Contract in force and do, either itself or through other parties, whatever the Contractor has failed to do, and recover the difference between the cost to cure the deficiency and the contract price plus an additional sum equal to 10% of the cost to cure the deficiency to cover the State's general expenses provided the State can furnish proof of the general expenses; or (iii) terminate the particular Statement of Work for default, either in whole or in part by notice to Contractor provided Contractor is unable to cure the breach. Notwithstanding the foregoing, the State cannot use, as a basis for exercising its termination rights under this Section, deficiencies discovered in a repeat State Review Period that could reasonably have been discovered during a prior State Review Period.

(f) The State, at any time and in its reasonable discretion, may halt the testing or approval process if the process reveals deficiencies in or problems with a Deliverable/Service in a sufficient quantity or of a sufficient severity that renders continuing the process unproductive or unworkable. If that happens, the State may stop using the Service or return the applicable Deliverable to Contractor for correction and re-delivery before resuming the testing or approval process.

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 five Business Days for Written Deliverables of 100 pages or less and 10 Business Days for Written Deliverables of more than 100 pages). 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 Process for Approval of Services

The State Review Period for approval of Services is governed by the applicable Statement of Work (and if the Statement of Work does not state the State Review Period, it is by default 30 Business Days for Services). The State agrees to notify the Contractor in writing by the end of the State Review Period either stating that the Service is approved in the form delivered by the Contractor or describing any deficiencies that must be corrected before approval of the Services (or at the State's election, after approval of the Service). If the State delivers to the Contractor a notice of deficiencies, the Contractor must correct the described deficiencies and within 30 Business Days resubmit the Service in a form that shows all revisions made to the original version delivered to the State. The Contractor's correction efforts must be made at no additional charge. Upon implementation of a corrected Service 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 Service for conformity and that the identified deficiencies have been corrected.

2.257 Process for Approval of Physical Deliverables
The State Review Period for approval of Physical Deliverables is governed by the applicable Statement of Work (and if the Statement of Work does not state the State Review Period, it is by default 30 continuous Business Days for a Physical Deliverable). The State agrees to notify the Contractor in writing by the end of the State Review Period either stating that the Deliverable is approved in the form delivered by the 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 delivers to the Contractor a notice of 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. The Contractor's correction efforts must be made at no additional charge. Upon receipt of a corrected Deliverable from the 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.

2.258 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**. Payment will be made for Deliverables installed and accepted. 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 by State
The State owns all Deliverables as they are works made for hire by the Contractor for the State. The State owns all United States and international copyrights, trademarks, patents, or other proprietary rights in the Deliverables.

2.262 Vesting of Rights
With the sole exception of any preexisting licensed works identified in the SOW, the Contractor assigns, and upon creation of each Deliverable automatically assigns, to the State, ownership of all United States and international copyrights, trademarks, patents, or other proprietary rights in each and every Deliverable, whether or not registered by the Contractor, insofar as any the Deliverable, by operation of law, may not be considered work made for hire by the Contractor for the State. From time to time upon the State's request, the Contractor must confirm the assignment by execution and delivery of the assignments, confirmations of assignment, or other written instruments as the State may request. The State may obtain and hold in its own name all copyright, trademark, and patent registrations and other evidence of rights that may be available for Deliverables.

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 may use the data provided by the Contractor for any purpose. The State must not possess or assert any lien or other right against the Contractor's data. Without limiting the generality of this Section, the State may use personally identifiable information only as strictly necessary to utilize the Services and must disclose the information only to its employees who have a strict need to know the information, except as provided by law. The State must

comply at all times with all laws and regulations applicable to the personally identifiable information. Other material developed and provided to the State remains the State's sole and exclusive property.

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

2.270 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 has access to the State computer system, Contractor must comply with the State's Acceptable Use Policy, see 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.

2.274 Electronic Receipt Processing Standard
All electronic commerce applications that allow for electronic receipt of credit/debit card and electronic check (ACH) transactions must be processed via the Centralized Electronic Payment Authorization System (CEPAS).

2.280 RESERVED

2.290 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, Price Proposal

MONTHLY CAPITATED COST OF NEMT MANGEMENT SERVICES

The Contractor must provide a capitated rate. The cost calculation is all-inclusive for all costs associated with this Contract.

	Year 1 12/01/13-11/30/14	**Year 2** 12/01/14-11/30/15	**Year 3** 12/01/15-11/30/16	**3 Year Total**
A. Eligible Members	713,606*	713,606*	713,606*	
B. Per-Member Per-Month (PMPM) Rate	$1.89	$1.92	$1.95	
C. Contractor's PMPM Payment Amount** (A x B)	$1,348,715.34	$1,370,123.52	$1,391,531.70	
D. Annualized	12	12	12	
E. Grand Total (A x B x C)	$16,184,584.08	$16,441,482.24	$16,698,380.40	$49,324,446.72

*This amount represents MDCH's best effort for a true and accurate beneficiary total for October 2013. Actual beneficiary counts may differ throughout the term of the Contract.

**The Contractor will be paid a PMPM amount. The State shall determine eligible beneficiaries each month when the State calculates the total number of eligible beneficiaries for the purpose of that month's PMPM payment for the Contractor.

Note: Carve out services includes MHP covered beneficiaries for dental, mental health and substance abuse services.

Attachment B, Minimum Transportation Provider Qualifications

General:

- Age 21 or older.
- Read and speak English.
- Valid driver's license appropriate of the class of vehicle operated.
- Physically capable of safely operating the type of motor vehicle being driven and associated equipment.
- Knowledge of the geography and conditions of the required driving environment.
- Pass Criminal background check.
- Clean / safe driving record.
- Adequate liability and vehicle insurance.
- Language competency (ability to communicate in the primary language of the beneficiaries they transport).
- Be culturally aware / demonstrate knowledge of the cultures in the areas they operate and how they will accommodate any special transportation requirements that result from them.

Commercial:

- Must maintain all certifications and licenses for drivers and vehicles required by all public (federal, State or local) transportation laws, regulations, ordinances that apply to the transportation provider.
- Adhere to all laws, rules, and regulations applicable to transportation providers of that type, including those requiring liability insurance.
- Comply with the requirements of the American with Disabilities Act (ADA).
- Operate vehicles that meet the safety and medical needs of the beneficiary.

Non-Commercial: (Volunteer, etc.)

- Have all licenses and certifications required by the government to conduct business and /or operate the types of vehicles used to transport beneficiaries.
- Adhere to all laws, rules, and regulations applicable to drivers and vehicles of the type used.
- A vehicle that meets the safety and medical needs of the beneficiary.

Drivers:

- Possess a current valid state license appropriate for the vehicle(s) being operated.
- Valid demonstration of previous driving record.
  - -no driving convictions OR,
  - -no more than two convictions for moving violations in the last three years.
- Be trained in the operation of all vehicle equipment, first aid, CPR, emergency exits, fire extinguishers, wheelchair lifts, lockdowns, etc.
- Be trained in passenger handling techniques, wheelchair movement and securement, boarding/loading assistance, patient confidentiality and defensive driving.
- Maintain a professional and courteous manner at all times.
- Age 21 or older.
- Be courteous, patient and helpful.
- Be trained in first aid and CPR.
- Be physically fit to drive (provide a signed statement from a licensed physician declaring that he / she does not have a medical condition, a physical condition, including vision impairment [not corrected] and/or a hearing impairment [not corrected] or a mental condition which could interfere with safe driving, safe passenger assistance, the provision of emergency treatment activity, or could jeopardize the health or welfare of patients being transported).
- Must have no prior convictions for a drug or alcohol-related offense in the last five (5) years.
- Must have no convictions of any sexual crime or crime of violence.
- Must have a pre-employment drug test.

Attachment C, Bridges Administrative Manual 825 Link

This is a link to the section in the DHS Bridges Administrative Manual, Department Policy #825 regarding medical transportation:

http://www.mfia.state.mi.us/olmweb/ex/bam/825.pdf

Attachment D, HIPPA Business Associates Addendum

HIPAA BUSINESS ASSOCIATE ADDENDUM

The parties to this Business Associate Addendum ("Addendum") are the State of Michigan, acting by and through the Department of Technology, Management and Budget, on behalf of the Department of Community Health ("State") and _____, ("Contractor"). This Addendum supplements and is made a part of the existing contract(s) or agreement(s) between the parties including the following Contract(s): _____ ("Contract").

For purposes of this Addendum, the State is (check one):

(X) Covered Entity ("CE")

( ) Business Associate ("Associate")

and Contractor is (check one):

( ) Covered Entity ("CE")

(X) Business Associate ("Associate")

RECITALS

A. Under the terms of the Contract, CE wishes to disclose certain information to Associate, some of which may constitute Protected Health Information ("PHI") (defined below). In consideration of the receipt of PHI, Associate agrees to protect the privacy and security of the information as set forth in this Addendum.

B. CE and Associate intend to protect the privacy and provide for the security of PHI disclosed to Associate under the Contract in compliance with the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 ("HIPAA") and regulations promulgated thereunder by the U.S. Department of Health and Human Services (the "HIPAA Regulations") as amended by the Health Information Technology Economic and Clinical Health Act ("HITECH Act") under the American Recovery and Reinvestment Act of 2009, Public Law 111-5 ("ARRA"), and other applicable laws, as amended.

C. As part of the HIPAA Regulations, the Privacy Rule and the Security Rule (defined below) require CE to enter into a contract containing specific requirements with Associate before the disclosure of PHI, as set forth in, but not limited to, 45 CFR §§ 160.103, 164.402, 164.410, 164.502(e), 164.504(e), and 164.314 and contained in this Addendum.

In consideration of the mutual promises below and the exchange of information under this Addendum, the parties agree as follows:

1. Definitions.

a. Except as otherwise defined herein, capitalized terms in this Addendum have the definitions set forth in the HIPAA Regulations at 45 CFR Parts 160, 162 and 164, as amended, including, but not limited to, subpart A, subpart C ("Security Rule"), subpart D (Breach Notification), and subpart E ("Privacy Rule").

b. "Agreement" means both the Contract and this Addendum.

c. "Breach" means the unauthorized acquisition, access, use, or disclosure of Protected Health Information that compromises the security or privacy of the Protected Health Information as defined in 45 CFR 164.402.

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

e. "Impermissible Use or Disclosure" means the acquisition, access, use, or disclosure of Protected Health Information in a manner not permitted under HIPAA that may or may not compromise the security or privacy of the Protected Health Information.

f. "Protected Health Information" or "PHI" has the meaning given to such term under the Privacy Rule and also means, by way of example and without limitation, any information, whether oral or recorded in any form or medium: (i) that relates to the past, present or future physical or mental condition of an individual; the provision of health care to an individual; or the past, present or future payment for the provision of health care to an individual; and (ii) that identifies the individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual.

g. "Protected Information" means PHI provided by CE to Associate or created or received by Associate on CE's behalf.

h. "Security Incident" means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system.

2. Obligations of Associate.

a. Permitted Uses. Associate may not use Protected Information except for the purpose of performing Associate's obligations under the Contract and as permitted under this Agreement. Further, Associate cannot use Protected Information in any manner violates the HIPAA Regulations. Associate may use Protected Information: (i) for the proper management and administration of Associate in carrying out its duties under the Agreement; (ii) to carry out the legal responsibilities of Associate; or (iii) for Data Aggregation purposes for the Health Care Operations of CE. Additional provisions, if any, governing permitted uses of Protected Information are set forth in Appendix 1 to this Addendum.

b. Permitted Disclosures. Associate may not disclose Protected Information in any manner that would constitute a violation of the HIPAA Regulations if disclosed by CE, except that Associate may disclose Protected Information: (i) in a manner permitted under the Agreement; (ii) for the proper management and administration of Associate in carrying out its duties under the Agreement; (iii) as required by law; (iv) for Data Aggregation purposes for the Health Care Operations of CE; or (v) to report violations of law to appropriate federal or state authorities, consistent with 45 CFR § 164.502(j)(1). To the extent that Associate discloses Protected Information to a third party, Associate must obtain, before making any such disclosure: (i) reasonable assurances from such third party that such Protected Information will be held confidential as provided under this Addendum and only disclosed as required by law or for the purposes for which it was disclosed to such third party; and (ii) an agreement to implement reasonable and appropriate safeguards to protect the Protected Information; and (iii) an agreement from such third party to immediately notify Associate of any Impermissible Use, Disclosure, or Breach of the Protected Information, or any Security Incident, to the extent it has obtained knowledge of such an occurrence. Additional provisions, if any, governing permitted disclosures of Protected Information are set forth in Appendix 1.

c. Appropriate Safeguards. Associate must implement appropriate Security Measures as are necessary to protect against the use or disclosure of all forms of Protected Information other than as permitted by the Contract or this Addendum. Associate must maintain a comprehensive written information privacy and security program that includes Security Measures that reasonably and appropriately protect the Confidentiality, Integrity, and Availability of Protected Information relative to the size and complexity of the Associate's operations and the nature and scope of its activities. Security Measures include, without limitation, the valid encryption and password protection of Protected Information and of all portable electronic devices that store Protected Information regardless of the nature and scope of its activities.

d. Reporting of a Breach, Security Incident or Impermissible Use or Disclosure. During the term of the Contract or this Addendum, Associate must notify CE in writing within twenty-four (24) hours of any suspected or actual Breach, Security Incident, or Impermissible Use or Disclosure. Associate must also take (i) prompt corrective action to cure any such event and (ii) any action required by applicable federal and state laws and regulations. Associate will cooperate with CE to mitigate the effects on any Breach, Security Incident, or Impermissible Use or Disclosure. Associate will document the incident and its outcome and will retain such documentation no less than five (5) years.

e. Notification. If a Breach, Security Incident, Impermissible Use or Disclosure occurs, and the PHI is under the control of the Associate or its subcontractor or its agent, the Associate must notify the affected individuals and is responsible for paying the costs associated with the Breach, Security Incident, Impermissible Use or Disclosure and subsequent notification to affected individuals. The Associate will cooperate with the CE in sending out any notification relating to a Breach, Security Incident, or Impermissible Use or Disclosure.

f. Associate's Agents. If Associate uses one or more subcontractors or agents to provide services under this Agreement, and such subcontractors or agents receive or have access to Protected Information, each subcontractor or agent must sign an agreement with Associate containing substantially the same provisions as this Addendum and further identifying CE as a third party beneficiary of the agreement with such subcontractors or agents in the event of any violation of such subcontractor or agent agreement. Associate must (i) implement and maintain sanctions against agents and subcontractors that violate such restrictions and conditions; (ii) mitigate the effects of any such violation; and (iii) be responsible for any activities and costs associated with carrying out any Breach Notification for which an agent or subcontractor is responsible.

g. Access to Protected Information. Associate must make available Protected Information maintained by Associate or its agents or subcontractors in Designated Record Sets to CE for inspection and copying within ten days of a request by CE to enable CE to fulfill its obligations to permit individual access to PHI under the Privacy Rule, including, but not limited to, 45 CFR § 164.524.

h. Amendment of PHI. Within ten days of receipt of a request from CE for an amendment of Protected Information or a record about an individual contained in a Designated Record Set, Associate or its agents or subcontractors must make such Protected Information available to CE for amendment and incorporate any such amendment to enable CE to fulfill its obligations with respect to requests by individuals to amend their PHI under the Privacy Rule, including, but not limited to, 45 CFR § 164.526. If any individual requests an amendment of Protected Information directly from Associate or its agents or subcontractors, Associate must notify CE in writing within ten days of receipt of the request, and then, in that case, only the CE may either grant or deny the request.

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

Associate must forward it within ten days of the receipt of the request to CE in writing. CE must prepare and deliver any such accounting requested. Associate may forward it not disclose any Protected Information except as set forth in Section 2(b) of this Addendum.

j. Governmental Access to Records. Associate must make available its internal practices, books and records relating to the use and disclosure of Protected Information to the Secretary of the U.S. Department of Health and Human Services (the "Secretary"), in a time and manner designated by the Secretary, for purposes of determining CE's compliance with the HIPAA Regulations. Associate must provide to CE a copy of any Protected Information that Associate provides to the Secretary concurrently with providing such Protected Information to the Secretary.

k. Minimum Necessary. Associate (and its agents or subcontractors) must comply with the Minimum Necessary requirements of the Privacy Rule, including, but not limited to 45 CFR §§ 164.502(b) and 164.514(d), by requesting, using, and disclosing only the minimum amount of Protected Information necessary to accomplish the purpose of the request, use or disclosure.

l. Data Ownership. Unless otherwise specified in the Contract, Associate acknowledges that Associate has no ownership rights with respect to the Protected Information. The CE retains all ownership rights of the Protected Information.

m. Retention of Protected Information. Notwithstanding Section 5(d) of this Addendum, Associate and its subcontractors or agents must retain all Protected Information throughout the term of the Contract and must continue to maintain the information required under Section 2(h) of this Addendum for a period of six years from the date of creation or the date when it last was in effect, whichever is later, or as required by law. This obligation survives the termination of the Contract.

n. Destruction of Protected Information. Associate agrees to implement policies and procedures for the final disposition of electronic Protected Information and the hardware and equipment on which it is stored, including but not limited to, removal before re-use, as well as paper or other hard copy media, in accordance with the most recent guidance from the Department of Health and Human Services' Secretary.

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

p. Safeguards During Transmission. Associate is responsible for using Security Measures to reasonably and appropriately maintain and ensure the Confidentiality, Integrity, and Availability of Protected Information transmitted to or on behalf of CE under this Agreement, in accordance with the standards and requirements of the HIPAA Regulations, until such Protected Information is received by CE or the intended recipient, and in accordance with any specifications set forth in Appendix 1.

3. Obligations of CE.

a. Safeguards During Transmission. CE is responsible for using Security Measures to reasonably and appropriately maintain and ensure the Confidentiality, Integrity, and Availability of Protected Information transmitted to Associate under this Agreement, in accordance with the standards and requirements of the HIPAA Regulations, until such Protected Information is received by Associate, and in accordance with any specifications set forth in Appendix 1.

b. Notice of Changes. CE must provide Associate with a copy of its notice of privacy practices produced in accordance with 45 CFR § 164.520, as well as any subsequent changes or limitation(s) to such notice, to the extent such changes or limitations may effect Associate's use or disclosure of Protected Information. CE must provide Associate with any changes in, or revocation of, permission to use or disclose Protected Information, to the extent it may affect Associate's permitted or required uses or disclosures. To the extent that it may affect Associate's permitted use or disclosure of Protected Information, CE must notify Associate of any restriction on the use or disclosure of Protected Information that CE has agreed to in accordance with 45 CFR § 164.522.

4. Term. This Addendum must continue in effect as to each Contract to which it applies until such Contract is terminated or is replaced with a new contract between the parties containing provisions meeting the requirements of the HIPAA Regulations, whichever first occurs. However, certain obligations will continue as specified in this Addendum.

5. Termination.

a. Material Breach. In addition to any other provisions in the Contract regarding breach, a breach by Associate of any provision of this Addendum, as determined by CE, constitutes a material breach of the Agreement and is grounds for termination of the Contract by CE under the provisions of the Contract covering termination for cause. If the Contract contains no express provisions regarding termination for cause, the following apply to termination for breach of this Addendum, subject to 5.b.:

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

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

(3) Compensation. Payment for completed performance delivered and accepted by CE must be at the Contract price.

(4) Erroneous Termination for Default. If, after the CE terminates the Contract because of the Associate's default, it is determined, for any reason, that Associate was not in default, or that Associate's action/inaction was excusable, such termination will be treated as a termination for convenience, and the rights and obligations of the parties will be the same as if the contract had been terminated for convenience, as described in this Addendum or in the Contract.

b. Reasonable Steps to Cure Breach. If CE knows of a pattern of activity or practice of Associate that constitutes a material breach or violation of the Associate's obligations under the provisions of this Addendum or another arrangement and does not terminate this Agreement under Section 5(a), then CE must take reasonable steps to cure such breach or end such violation, as applicable. If CE's efforts to cure such breach or end such violation are unsuccessful, CE must either (i) terminate this Agreement, if feasible or (ii) if termination of this Agreement is not feasible, CE must report Associate's breach or violation to the Secretary of the Department of Health and Human Services.

c. Effect of Termination.

(1) Except as provided in paragraph (2) of this subsection, upon termination of this Agreement, for any reason, Associate must return or destroy all Protected Information that Associate or its agents or subcontractors still maintain in any form, and must retain copies of such Protected Information. If

Associate elects to destroy the Protected Information, Associate must certify in writing to CE that such Protected Information has been destroyed.

(2) If Associate believes that returning or destroying the Protected Information is not feasible, including but not limited to, a finding that record retention requirements provided by law make return or destruction infeasible, Associate must promptly provide CE written notice of the conditions making return or destruction infeasible. Upon mutual agreement of CE and Associate that return or destruction of Protected Information is infeasible, Associate must continue to extend the protections of Sections 2(a), 2(b), 2(c), 2(d), 2(e) and 2(f) of this Addendum to such information, and must limit further use of such Protected Information to those purposes that make the return or destruction of such Protected Information infeasible.

6. No Waiver of Immunity. No term or condition of this Agreement must be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protection, or other provisions of the Michigan Governmental Immunity Act, MCL 691.1401, *et seq*., the Federal Tort Claims Act, 28 U.S.C. 2671 *et seq.*, or the common law, as applicable, as now in effect or hereafter amended.

7. Disclaimer. CE makes no warranty or representation that compliance by Associate with this Addendum, HIPAA or the HIPAA Regulations will be adequate or satisfactory for Associate's own purposes. Associate is solely responsible for all decisions made by Associate regarding the safeguarding of Protected Information and PHI.

8. Certification. To the extent that CE determines an examination is necessary in order to comply with CE's legal obligations under HIPAA relating to certification of its security practices, CE or its authorized agents or contractors, may, at CE's expense, examine Associate's facilities, systems, procedures and records as may be necessary for such agents or contractors to certify to CE the extent to which Associate's security safeguards comply with HIPAA, the HIPAA Regulations or this Addendum.

9. Amendment.

a. Amendment to Comply with Law. The parties acknowledge that state and federal laws relating to data security and privacy are rapidly evolving and that amendment of this Addendum may be required to provide for procedures to ensure compliance with such developments. The parties specifically agree to take such action as is necessary to implement the standards and requirements of HIPAA, the Privacy Rule, the Security Rule and other applicable laws relating to the security or privacy of Protected Information. The parties understand and agree that CE must receive satisfactory written assurance from Associate that Associate will adequately safeguard all Protected Information. Upon the request of either party, the other party agrees to promptly enter into negotiations concerning the terms of an amendment to this Addendum embodying written assurances consistent with the standards and requirements of HIPAA, the Privacy Rule, the Security Rule or other applicable laws. CE may terminate the Agreement upon thirty days written notice if (i) Associate does not promptly enter into negotiations to amend this Agreement when requested by CE under this Section or (ii) Associate does not enter into an amendment to this Agreement providing assurances regarding the safeguarding of PHI that CE, in its sole discretion, deems sufficient to satisfy the standards and requirements of HIPAA, the HIPAA Regulations and other applicable laws.

b. Amendment of Appendix 1. Appendix 1 may be modified or amended by mutual agreement of the parties in writing from time to time without formal amendment of this Addendum.

10. Assistance in Litigation or Administrative Proceedings. Associate must make itself, and any subcontractors, employees or agents assisting Associate in the performance of its obligations under this Agreement, available to CE, at no cost to CE, to testify as witnesses, or otherwise, if someone commences litigation or administrative proceedings against CE, its directors, officers or employees, departments, agencies, or divisions based upon a claimed violation of HIPAA, the HIPAA Regulations or other laws relating to security and privacy of Protected Information, except where Associate or its subcontractor, employee or agent is a named adverse party.

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

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

13. Interpretation and Order of Precedence. This Addendum is incorporated into and becomes part of the Contract. Together, this Addendum and each separate Contract constitute the "Agreement" of the parties with respect to their Business Associate relationship under HIPAA and the HIPAA Regulations. The provisions of this Addendum must prevail over any provisions in the Contract that may conflict or appear inconsistent with any provision in this Addendum. This Addendum and the Contract must be interpreted as broadly as necessary to implement and comply with HIPAA and the HIPAA Regulations. The parties agree that any ambiguity in this Addendum must be resolved in favor of a meaning that complies and is consistent with HIPAA and the HIPAA Regulations. This Addendum supercedes and replaces any previous separately executed HIPAA addendum between the parties. If this Addendum conflicts with the mandatory provisions of the HIPAA Regulations, then the HIPAA Regulations control. Where the provisions of this Addendum differ from those mandated by the HIPAA Regulations, but are nonetheless permitted by the HIPAA Regulations, the provisions of this Addendum control.

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

15. Survival of Certain Contract Terms. Notwithstanding anything in this Addendum to the contrary, Associate's obligations under Section 5(d) and record retention laws ("Effect of Termination") and Section 13 ("No Third Party Beneficiaries") survive termination of this Agreement and are enforceable by CE if the Associate fails to perform or comply with this Addendum.

16. Representatives and Notice.

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

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

Covered Entity Representative:

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

Business Associate Representative:

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

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

IN WITNESS WHEREOF, the parties hereto have duly executed this Addendum as of the Addendum Effective Date.

Associate	**Covered Entity**
[INSERT NAME]	[INSERT NAME]
By:_____	By:_____
Date:_____	Date: _____
Print Name: _____	Print Name:_____
Title:_____	Title:_____