



# 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 **1**  
to  
Contract Number **071B4300053**

<b>CONTRACTOR</b>	DELTA DENTAL PLAN OF MICHIGAN INC
	4100 Okemos Road
	Okemos, MI 48864-3215
	Lisa Eggert
	517-347-5709
	leggert@deltadentalmi.com
	*****1480

<b>STATE</b>	Program Manager	Elizabeth Harrison	ORS
		(517) 284-4565	
	HarrisonE3@michigan.gov		
	Contract Administrator	Mary Ostrowski	DTMB
(517) 284-7021			
OstrowskiM@michigan.gov			

CONTRACT SUMMARY				
<b>DESCRIPTION:</b> MPSERS Dental Benefit Plan Admin.				
INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW	
January 1, 2014	December 31, 2016	2 - 2 Year	December 31, 2016	
PAYMENT TERMS		DELIVERY TIMEFRAME		
ALTERNATE PAYMENT OPTIONS			EXTENDED PURCHASING	
<input type="checkbox"/> P-card <input type="checkbox"/> Direct Voucher (DV) <input type="checkbox"/> Other			<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
MINIMUM DELIVERY REQUIREMENTS				
N/A				
DESCRIPTION OF CHANGE NOTICE				
OPTION	LENGTH OF OPTION	EXTENSION	LENGTH OF EXTENSION	REVISED EXP. DATE
<input checked="" type="checkbox"/>	2-2 Year Options	<input type="checkbox"/>		December 31, 2020
CURRENT VALUE		VALUE OF CHANGE NOTICE	ESTIMATED AGGREGATE CONTRACT VALUE	
\$269,279,902.00		\$ 360,600,000.00	\$629,879,902.00	
<b>DESCRIPTION:</b> Effective 12/21/16, the following amendment is hereby incorporated into the contract. This change includes the following:				
1. Effective 1/1/17, this contract is exercising two-two year options and is increased by \$360,600,000.00. The revised expiration date is 12/31/2020 (Section 2.002).				
2. Please note the Contract Administrator (Section 2.021) has been changed to: Mary Ostrowski Phone: 517-284-7021 Email: ostrowskim@michigan.gov				
3. Please note the Contact Compliance Inspector/Program Manager (Section 2.022) has been changed to: Elizabeth Harrison Phone: 517-284-4565				

Email: harrison3@michigan.gov

4. Please note the Project Manager (Section 2.023) has been changed to:

Danyelle Simon

Phone: 517-284-4576

Email: simond10@michigan.gov

5. Effective 12/21/16, Article 1 – State of Work is updated as per attached CN 1 Article 1 changes.

6. Effective 1/1/17, pricing on this contract is updated per attached Attachment A: Pricing

All other terms, conditions, specification and pricing remain the same. Per Contractor and Agency agreement, DTMB Procurement approval, and State Administrative Board approval on December 20, 2016.

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**FOR THE CONTRACTOR:**

**DELTA DENTAL PLAN OF MICHIGAN INC**

\_\_\_\_\_  
**Company Name**

\_\_\_\_\_  
**Authorized Agent Signature**

\_\_\_\_\_  
**Authorized Agent** (Print or Type)

\_\_\_\_\_  
**Date**

**FOR THE STATE:**

\_\_\_\_\_  
**Signature**

**Tom Falik, Services Division Director**

\_\_\_\_\_  
**Name & Title**

**DTMB Procurement**

\_\_\_\_\_  
**Agency**

\_\_\_\_\_  
**Date**

**CN 1 – Article 1 Changes**

<b>Section</b>	<b>Amended Language</b>
1.022.B.3	The Contractor must only pay Eligible Claims for Eligible Members. If a claim payment for an ineligible member is made, the Contractor must reimburse the Plan Sponsor. If a paid claim or member is later determined to be ineligible and can be identified, the Contractor must reimburse the Plan Sponsor for such payments.
1.022.B.9	The Contractor must undertake responsibility for providing Organizational Determinations, including full and fair review of Claims Appeals by Members that have been denied either in full or in part. Organizational Determinations and Appeal decisions must be communicated to Members within 60 days of the Contractor's receipt of the Appeal or request for Organizational Determination.
1.022.C.1.a	Removed
1.022.C.1.d	Removed
1.022.C.1.e	Abandoned Calls: The monthly call abandonment rate must not exceed 3.00%. Abandoned calls are those Member calls which terminate (i.e., the Member hangs up before the call is answered) after a caller has selected a service option from the available menu and is in the queue for that option.
1.022.C.1.f	Written Inquiry Resolution: The Contractor must respond to 95.00% or more of Written Inquiries within 14 Calendar Days of receipt, 98.00% of all the Member Inquiries must be resolved within 28 Calendar Days and 99.5% of Written Inquiries must be resolved within 60 Calendar Days. Written Inquiries will include those forwarded to the Contractor by the Plan Sponsor and the receipt date will be considered the date the Written Inquiry is received by the Contractor.
1.042.B.1	The Contractor must provide the Data Management Vendor claims data. This information is to be provided to the Data Management Vendor monthly and by a date no later than the 15th Day after the close of each month.

**1.022 (G) – Performance Guarantees/Service Level Agreements (SLAs) (Amended Language):**

<b>SLA #1</b>
Eligibility Uploads
<b>Guarantee</b>
<p>100.00% of all accurate records that pass the Contractor’s validation edits must be uploaded according to the Plan Sponsor’s schedule within one Business Day of receipt.</p> <p>The Contractor must measure its performance on this SLA on a monthly basis and report on a quarterly basis. The SLA report must show weekly activity defined as the number of records uploaded, number of records not accepted, and the timeframe for presenting the discrepancy reports to the Plan Sponsor.</p> <p>Any records that do not pass the Contractor’s validation test must be reported to the Plan Sponsor within two Business Days after the file has been uploaded.</p>
<b>Penalty</b>
<p>The penalty for failure to meet this SLA is 1.00% of Contractor’s monthly Administration Fee for each month missed.</p>
<b>SLA #2</b>
Identification Cards
<b>Guarantee</b>
<p>ID cards for all new Contract holders that pass validation edits of the eligibility upload with effective dates starting more than 14 days from the eligibility upload must be mailed within 10 days.</p> <p>ID cards for all new Contract holders that pass validation edits of the eligibility upload with effective dates starting 14 days or less from the eligibility upload must be mailed within five days. The Contractor must measure monthly and report its performance on this SLA on a quarterly basis. Performance must be substantiated by documentation providing proof of receipt date and mailing date.</p> <p>Accuracy must be measured by sampling ID card production to ensure 100.00% accuracy of information.</p>
<b>Penalty</b>
<p>The penalty for failure to meet the Identification Card Timeliness SLA is 1.00% of Contractor’s monthly Administration Fee for each month missed.</p> <p>The penalty for failure to meet the Identification Card Accuracy SLA is 1.00% of Contractor’s monthly Administration Fee for each month missed.</p>

<b>SLA #3</b>
Contractor Performance Evaluation
<b>Guarantee</b>
The Plan Sponsor will complete the annual satisfaction survey in January respective to the preceding year. The results of this survey will be shared with the Contractor. A 5.00-point scale will be utilized. The Contractor must achieve an overall score of at least 4.00. An overall score under 3.50 will result in an additional penalty.
<b>Penalty</b>
The penalty for failure to meet an overall score of 4.00 is 2.00% of the Contractor's annual Administration Fee. Failure to score at least 3.50 will result in an additional 1.00% penalty of the Contractor's annual Administration Fee.
<b>SLA #4</b>
Member Satisfaction Surveys
<b>Guarantee</b>
One random sample Member satisfaction survey must be completed annually at no additional cost.  The survey must be completed within each Plan Year for the Plan Year. The survey instrument must be presented to the Plan Sponsor for approval of questions and scoring methodology prior to deployment. Plan Sponsor has the authority to request changes and customization to the survey and scoring methodology. The respondent pool must be statistically valid based on the Plan Sponsor's total population (randomly generated sample size sufficient to produce a 95% confidence interval with a margin of error of not greater than +/-3%). Survey results must be available to the Plan Sponsor by Q3 within the Plan Year unless a different date is agreed upon.  Contractor must achieve a score of 4.00 or higher on a 5 point scale (other scoring scales may be used as long as they are equivalent) from 85.00% of the responders.
<b>Penalty</b>
The penalty for failure to produce 85.00% survey satisfaction is 2.00% of Contractor's annual Administration Fee. Failure to produce 80.00% will result in an additional 1.00% penalty of Contractor's annual Administration Fee.  Failure to conduct the survey as required in the Guarantee will result in a 3.00% penalty of Contractor's annual Administration Fee.

<b>SLA #5</b>
Customer Service Call – Average Speed of Answer
<b>Guarantee</b>
On a monthly basis, all calls must be answered within an average of 30 seconds or less.  The Contractor must measure monthly and report their performance on this SLA on a quarterly basis
<b>Penalty</b>
The penalty for failure to meet this SLA is 1.00% of Contractor’s monthly Administration Fee for each month missed.
<b>SLA #6</b>
Customer Service Call - Telephone Servicing Factor
<b>Guarantee</b>
On a monthly basis, 85.00% of calls must have less than 30 seconds elapse between when a caller elects to speak to a customer service representative and when the call is connected to a customer service representative.  The Contractor must measure its performance on this SLA on a monthly basis and report on a quarterly basis.
<b>Penalty</b>
The penalty for failure to meet this SLA is 1.00% of Contractor’s monthly Administration Fee for each month missed.
<b>SLA #7</b>
Customer Service Response Time - Percent of Calls Abandoned
<b>Guarantee</b>
The monthly call abandonment rate must not exceed 3.00% (determined by the number of calls abandoned by the total number of calls).  The Contractor must measure its performance on this SLA on a monthly basis and report on a quarterly basis.
<b>Penalty</b>
The penalty for failure to meet this SLA is 1.00% of Contractor’s monthly Administration Fee for each month missed.

<b>SLA #8</b>
Customer Service Response Time to Written Inquiries
<b>Guarantee</b>
<p>The Contractor must respond to 95.00% or more of Written inquiries within 14 Days of receipt and 98.00% of all Member inquiries must be resolved within 28 Days and 99.50% of Written inquiries must be resolved within 60 Days. Written inquiries will include those forwarded to the Contractor by the Plan Sponsor and measured based on date of receipt by the Contractor.</p> <p>Contractor must measure monthly and report their performance on this SLA on a quarterly basis.</p>
<b>Penalty</b>
<p>The penalty for failure to meet this SLA is 1.00% of Contractor's monthly Administration Fee for each month missed.</p>
<b>SLA #9</b>
Timely Production of Complete Management Reports
<b>Guarantee</b>
<p>The Contractor must provide complete quarterly reports within 45 Days of the end of the quarter, and annual reports within 90 days of Plan year end.</p> <p>The Contractor must measure and report its performance on this SLA on a quarterly or annual basis respectively.</p>
<b>Penalty</b>
<p>For quarterly reports, the penalty for failure to meet the reporting requirements of this SLA is 1.00% of Contractor's quarterly Administration Fee for each quarter missed.</p> <p>For annual reports, the penalty for failure to meet the reporting requirements of this SLA is 1.00% of Contractors' annual Administration.</p>

<b>SLA #10</b>
Appeals Reporting Requirements
<b>Guarantee</b>
<p>The Contractor must administer the Appeals Policies that are compliant with accreditation agency requirements.</p> <p>Reporting will include the response time of Appeal processing (60 Days for post-service).</p> <p>Reporting for appeals to include the Member count, nature of Appeal, timeliness of handling, and outcome (Member resolution).</p> <p>The Contractor must measure its performance on this SLA on a quarterly basis and report on an annual basis.</p>
<b>Penalty</b>
<p>The penalty for failure to meet the response time requirements of this SLA is 1.00% of Contractor's quarterly Administration Fee for each quarter missed.</p>
<b>SLA #11</b>
Timeliness of Data Transmission to the Plan Sponsor's Data Management Vendor
<b>Guarantee</b>
<p>Pursuant to Section 1.042, the Contractor must agree to deliver Claim data files to the Plan Sponsor's Data Management Vendor in an agreed-upon format. Delivery of data files—with all required fields correctly populated—must be completed within 15 Days after the close of each month.</p>
<b>Penalty</b>
<p>The penalty for failure to meet this SLA is 1.00% of Contractor's monthly Administration Fee for each month missed.</p>

<b>SLA #12</b>
Financial Error Rate
<b>Guarantee</b>
The financial error (as defined as the number of claims containing a financial error divided by the total number of claims) must not exceed 1.00%.
The Contractor must measure monthly and report its performance on this SLA on a quarterly basis.
<b>Penalty</b>
The penalty for failure to meet this SLA is 2.00% of Contractor's monthly Administration Fee for each month missed.
<b>SLA #13</b>
Non-financial Error Rate
<b>Guarantee</b>
The non-financial error rate (as defined as the number of claims with a non-financial error divided by the total number of claims) must not exceed 1.00%.
The Contractor must measure monthly and report its performance on this SLA on a quarterly basis.
<b>Penalty</b>
The penalty for failure to meet this SLA is 1.00% of Contractor's monthly Administration Fee for each month missed.
<b>SLA #14</b>
Claims Processing Time
<b>Guarantee</b>
95.00% of all clean claims must be processed within 10 Business Days.
99.00% of all clean claims must be processed within 15 Business Days.
The Contractor must measure its performance on this SLA on a monthly basis and report on a quarterly basis.
<b>Penalty</b>
The penalty for failure to meet this SLA is 1.50% of Contractor's monthly Administration Fee for each month missed.

**Attachment A: Pricing**

	<b>2017</b>	<b>2018</b>	<b>2019</b>	<b>2020</b>
<b>Per Contract Per Month (PCPM) Administration Fee</b>	\$2.45	\$2.52	\$2.58	\$2.63

The PCPM amounts listed in Attachment A will be paid automatically through the Plan Sponsor's enrollment system based on the membership counts in the system on a monthly basis.

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. 071B4300053**  
 between  
**THE STATE OF MICHIGAN**  
 and

NAME & ADDRESS OF CONTRACTOR:	PRIMARY CONTACT	EMAIL
Delta Dental Plan of Michigan, Inc. 4100 Okemos Road Okemos, MI 48864-3215	Lisa Eggert	leggert@deltadentalmi.com
	TELEPHONE	CONTRACTOR #, MAIL CODE
	(517) 347-5709	

STATE CONTACTS	AGENCY	NAME	PHONE	EMAIL
CONTRACT COMPLIANCE INSPECTOR:	DTMB/ORS	Steve Crippen	(517) 322-6857	crippens@michigan.gov
BUYER:	DTMB	Don Mandernach	(517) 241-7233	mandernachd@michigan.gov

CONTRACT SUMMARY:			
<b>DESCRIPTION:</b>			
<b>Administration of the MPSERS Dental Benefit Plan for Eligible Retirants, Dependents, and Cobra Participants for DTMB, Office of Retirement Services</b>			
INITIAL TERM	EFFECTIVE DATE	INITIAL EXPIRATION DATE	AVAILABLE OPTIONS
Three Years	January 1, 2014	December 31, 2016	2, Two Year Options
PAYMENT TERMS	F.O.B	SHIPPED	SHIPPED FROM
Firm for Length of Contract	N/A	N/A	N/A
<b>ALTERNATE PAYMENT OPTIONS:</b>			<b>AVAILABLE TO MiDEAL PARTICIPANTS</b>
<input type="checkbox"/> P-card <input type="checkbox"/> Direct Voucher (DV) <input type="checkbox"/> Other			<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO
<b>MINIMUM DELIVERY REQUIREMENTS:</b>			
N/A			
<b>MISCELLANEOUS INFORMATION:</b>			
N/A			
<b>ESTIMATED CONTRACT VALUE AT TIME OF EXECUTION:</b>			<b>\$269,279,902.00</b>

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

**CONTRACT NO. 071B4300053**  
 between  
**THE STATE OF MICHIGAN**  
 and

NAME & ADDRESS OF CONTRACTOR:	PRIMARY CONTACT	EMAIL
Delta Dental Plan of Michigan, Inc. 4100 Okemos Road Okemos, MI 48864-3215	Lisa Eggert	leggert@deltadentalmi.com
	TELEPHONE	CONTRACTOR #, MAIL CODE
	(517) 347-5709	

STATE CONTACTS	AGENCY	NAME	PHONE	EMAIL
CONTRACT COMPLIANCE INSPECTOR:	DTMB/ORS	Steve Crippen	(517) 322-6857	crippens@michigan.gov
BUYER:	DTMB	Don Mandernach	(517) 241-7233	mandernachd@michigan.gov

CONTRACT SUMMARY:			
DESCRIPTION:			
Administration of the MPSERS Dental Benefit Plan for Eligible Retirants, Dependents, and Cobra Participants for DTMB, Office of Retirement Services			
INITIAL TERM	EFFECTIVE DATE	INITIAL EXPIRATION DATE	AVAILABLE OPTIONS
Three Years	January 1, 2014	December 31, 2016	2, Two Year Options
PAYMENT TERMS	F.O.B	SHIPPED	SHIPPED FROM
Firm for Length of Contract	N/A	N/A	N/A
ALTERNATE PAYMENT OPTIONS:			AVAILABLE TO MiDEAL PARTICIPANTS
<input type="checkbox"/> P-card <input type="checkbox"/> Direct Voucher (DV) <input type="checkbox"/> Other			<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO
MINIMUM DELIVERY REQUIREMENTS:			
N/A			
MISCELLANEOUS INFORMATION:			
N/A			
ESTIMATED CONTRACT VALUE AT TIME OF EXECUTION:		\$269,279,902.00	

**THIS IS NOT AN ORDER:** This Contract Agreement is awarded on the basis of our inquiry bearing the solicitation #0071141113B0000143. 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 #: 071B4300053**

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**FOR THE CONTRACTOR:**

**Delta Dental Plan of Michigan, Inc.**

Firm Name

Authorized Agent Signature

Authorized Agent (Print or Type)

Date

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---

**FOR THE STATE:**

Signature

**Kevin Dunn, Services Division Director**

Name/Title

**DTMB Procurement**

Enter Name of Agency

Date



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

Contract for Administration of the MPSERS Dental Benefit Plan for  
Eligible Retirants, Dependents, and Cobra Participants for DTMB, Office of Retirement Services

Buyer Name: Don Mandernach  
Telephone Number: (517) 241-7233  
E-Mail Address: mandernachd@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.

**Administration Fee** means the agreed upon amount that will be paid to the Contractor by the Plan Sponsor for administration of the Plan.

**A.M. Best Company** means a credit rating organization serving the financial services industries, including the banking and insurance sectors.

**A.M. Best Financial Strength Rating** means an independent opinion, based on a comprehensive quantitative and qualitative evaluation, of a company's balance sheet strength, operating performance and business profile, as determined by A.M. Best Company.

**Appeal** means the formal procedures that address the review of adverse Organization Determinations on the dental services or products an enrollee believes he or she is entitled to receive, including delay in providing, arranging for, or approving services or products on any amounts the enrollee must pay for a product or service after the services have been provided.

**Approved Amount** – means the contractually defined price for Covered Products or Services specified by the Dental Plan and its contracted network providers.

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

**Average Speed of Answer** - The amount of time that elapses once a Member call is placed into the Customer Service queue to the time the Member call is answered by a Customer Service Representative (CSR) divided by the total number of calls determine the Average Speed of Answer.

**Benefit Guide** means the publication that the Member receives which is developed and issued by the Contractor.

**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.

**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.

**CCI** means Contract Compliance Inspector.

**Claim** means a submission for payment of a service.

**Claims Processing** means the procedures that the Contractor uses to review a Claim for Member Eligibility, coverage determinations, Provider payment and Member obligation,

**Coordination of Benefits (COB)** means claims administration when Members are covered by more than one dental plan.

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



**Contractor** means the organization selected to administer the Dental Plan for both Non- Medicare and Medicare Eligible members of the ORS.

**Covered Product or Service** means the dental examinations, cleanings, and procedures that are covered pursuant to the Plan Sponsor's Plan Design.

**Customer Assistance** or **Customer Service** means a web based and/or telephonic system by which Members can make Inquiries about the Plan and the Contractor can answer or resolve them.

**Data Management Vendor** means a third party administrator of the Plan Sponsor's database and reporting systems.

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

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

**Deliverable** means Covered Products or Services and reporting required or identified in a Statement of Work.

**Dental Plan** means a plan that provides coverage for dental services for the Plan Sponsor's Members on behalf of the Plan Sponsor in accordance with this contract and RFP.

**Dependent** means an individual who satisfies, through a Contract Holder, all of the eligibility criteria necessary to receive dental coverages under the Plan Sponsor's Plan and is identified by the Plan Sponsor to the Contractor.

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

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

**Eligibility** means the status of an individual with respect to their coverage under the Plan as determined by Plan Sponsor.

**Eligibility System** means the database maintained by the Contractor that contains information on the effective dates of coverage for all Members that can be accessed by authorized individuals.

**Eligible Claim** means a submission for payment of a Covered Product or Service that is covered by the Plan, pursuant to the Plan Design.

**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.

**Explanation of Benefits (EOB)** means written statement sent to a Member, from the Contractor, after a claim has been reported, indicating the benefits and charges covered or not covered by the Plan.

**Fee Schedule** means the list of the charges established or agreed to by Network Providers and the Contractor for specific medical devices or services.

**Fully Insured** means a plan where an entity contracts with another organization to assume financial responsibility for the group's member claims and for all incurred administrative costs.



**Grievance** means any complaint or dispute, other than one involving an Organization Determination, expressing dissatisfaction with the manner in which a Dental Plan or delegated entity provides dental services, regardless of whether any remedial action can be taken. Grievances may include complaints regarding the timeliness, appropriateness, access to, and/or setting of a provided item or service. An enrollee or their representative may make the complaint or dispute, either orally or in writing, to a Dental Plan, provider, or facility.

**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).

**Health Plan** means a plan that provides health coverage for the Plan Sponsor's Members on behalf of the Plan Sponsor.

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

**Identification Card** means the card produced by the Contractor that documents the Member's eligibility and coverage under the plan.

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

**Inquiry** means any oral or written request to the Contractor, one of its subcontractors, or received by Plan Sponsor and forwarded on to Contractor, that does not involve a request for Organization Determination/exception request.

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

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

**Member Communications Meetings** means meetings held jointly by the Plan Sponsor and the Contractor at locations throughout Michigan and at out-of-state location to inform Members on Plan issues and to answer Member questions.

**Member Materials** means those materials published by the Contractor for distribution to Members.

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

**Network Provider** means a Provider who has an agreement with the Contractor to provide Covered Products or Services to Members.

**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.

**Organizational Determination** is a decision by the Contractor to approve prior to service delivery a request for services or products and/or a determination by the Contractor to cover services or products after they have been obtained by a member.

**ORS** means Office of Retirement Services.

**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.



**Pass-Through Pricing** means that all charges to the Plan are equal to the Contractor's payments to Providers without any additional charges that have not been explicitly disclosed to the Plan Sponsor.

**Pharmacy Benefits Manager (PBM)** means a third party administrator of prescription pharmaceutical programs that has been assigned a Business Identification Number (BIN) by The National Council for Prescription Drug Programs, Inc. (NCPDP) and provides Pharmacy products and services for the Plan Sponsor's Members on behalf of the Plan Sponsor.

**Plan** means the Plan Sponsor's program which provides dental coverage to Members.

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

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

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

**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.

**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.

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

**Provider** means a dental care professional or facility that provides Covered Products or Services to Members.

**Provider Network** means that set of Providers with which the Contractor has contracted to provide Covered Products or Services to Members.

**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.

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

**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.



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

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

**SLA** means Service Level Agreement or Performance Guarantee.

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

**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.

**SSAE 16** means an auditing standard developed by the American Institute of Certified Public Accountants (AICPA).

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

**Telephone Servicing Factor** means the average time elapsed between when a caller elects to speak to a customer service representative and when the call is connected to a customer service representative.

**Transparency** means the full disclosure by the Contractor as to all of its sources of revenue that enables the Plan Sponsor (and its agents), as well as complete and full access to all information necessary to determine and verify that the Contractor has met all terms of this Contract and satisfied all Pass-Through Pricing requirements.

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

**Vision Plan** means a plan to provide for vision screening, eye glasses and contact lenses for the Plan Sponsor's Members on behalf of the Plan Sponsor.

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

**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.

**Written Inquiries** means any Inquiry, other than telephonic Inquiries, and includes letters, email, fax, or web portal.



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

### **1.010 Project Identification**

#### **1.011 Project Request**

This is a Contract for the Administration of Post-Employment Dental Benefit coverage for Members including Retirants, beneficiaries, COBRA participants, and their Dependents of the Michigan Public School Employees Retirement System (MPERS), administered by DTMB, Office of Retirement Services (ORS).

The Plan is to be effective and the Contractor must begin implementing all services to the Members, without interruption, January 1, 2014, unless the Plan Sponsor extends, at its sole discretion due to exigent circumstances, the implementation by up to three months. No payment will be made to the Contractor during the implementation period. The implementation period begins with the Contract award date through the date the plan is effective.

#### **1.012 Background**

ORS administers the MPERS Plan, which provides post-employment health coverage to non-Medicare eligible and Medicare eligible Retirants, beneficiaries and their Dependents enrolled in the health plan. Health coverage is provided to eligible retired employees of local school districts, intermediate school districts, tax-supported community or junior colleges, and certain universities. Financing for MPERS is provided through public school employer contributions, School Aid Fund contributions, and Contract Holder premiums. Approximately 155,000 of the 192,000 total MPERS Retirants are enrolled in one of the health insurance coverage options offered by the Retirement System. Total Members enrolled in one of the health insurance coverage options offered by the Retirement System is approximately 223,000.

Approximately 254,000 Members, with 159,000 Contract Holders, are currently enrolled in the self-funded Dental Plan. This represents approximately 90% of those eligible to join the Plan. Members are not required to be enrolled in one of the health insurance coverage options in order to be eligible for the Dental Plan.

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

#### **1.021 In Scope**

Services and products considered within the scope of this Contract include, but are not limited to, the following:

- (A) Provide a fully functional Dental Plan for the Members which encompass and manages the needs of an older, retired population.
- (B) Provide Covered Products or Services that meet or exceed current industry standards in the administration of Eligibility, Claims Processing and Member Service, and review and administration of Grievances and Appeals.
- (C) Partner with the ORS to manage the Plan effectively and collaborate with ORS to ensure the future success and ability of the Plan to continue to offer competitive dental coverage.
- (D) Provide financial management, reporting and analytical support that meet or exceed current industry standards.
- (E) Ensure Transparency for all Services provided on behalf of the Plan Sponsor.
- (F) Provide the Plan Sponsor with the lowest cost-per-service and highest discount levels that the Contractor has negotiated with Providers, either on its own behalf or that of its other customers for similar products covered under this Contract.

#### **1.022 Work and Deliverable**

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

**(A) Plan Design***Requirements:*

1. The Contractor must administer the plan in accordance with the Plan Design.
2. The Contractor must provide the Plan Design as directed by the Plan Sponsor.
3. The Contractor must provide all necessary administrative functions. This must include, but is not limited to:
  - (a) Producing materials and brochures educating members on the Dental Plan;
  - (b) Assisting ORS with customized employee communications at no additional expense;
  - (c) Processing claims;
  - (d) Providing monthly, quarterly and year-end reporting;
  - (e) Providing exceptional customer service;
  - (f) Support the Plan Sponsor's strategic planning process for future benefit enhancements and/or changes.
4. Eligibility will include eligible retired Public School Employees and their dependents and is detailed in Public Act 300 of 1980.
5. No participant will lose eligibility for benefits through pre-existing condition exclusions as a result of a change in carrier at transfer or during the duration of the Contract.
6. The Contractor must provide support of strategic planning efforts and identify areas of improvement upon request including, but not limited to, comparative analysis of the Plan Sponsor's membership to other like groups across the Contractor's book of business.
7. The Plan Design is subject to change throughout the duration of this Contract term. The Contractor must implement Plan changes as requested by the Plan Sponsor in a timely fashion.
8. The Contractor must provide independent ratings of financial strength to the Plan Sponsor such as an A.M. Best Financial Strength Rating.
9. The Contractor's participating providers must not balance bill members. Under the PPO (Standard) Plan, Delta Dental Premier Providers will be allowed to charge to the member the difference between the Delta Dental PPO Dentist Fee and the Maximum Approved fee for Delta Dental Premier providers.

**(B) Claims Services***Requirements:*

1. The Contractor must adhere to all Service Level Agreements pursuant to § 1.022 (G).
2. The Contractor must administer claims in conformity with Plan Design as described in section 1.022(A) and in compliance with any changes made to the Plan Design by the Plan Sponsor.
3. The Contractor must only pay Eligible Claims.
4. The Contractor must only charge against the Plan Sponsor's account Claim payments authorized under the Plan Sponsor's Plan Design.
5. The Contractor must maintain confidentiality of all data collected by the Contractor, according to all applicable laws, rules and regulations.
6. The Contractor must capture and store all Plan Sponsor required Claim data elements involved in the processing or payment of Claims and be willing to transfer the data to the Plan Sponsor's Data Management Vendor upon request.



7. The Contractor must have the ability to capture additional Claim data elements, if requested by the Plan Sponsor, and to transfer them to the Plan Sponsor's Data Management Vendor upon request.
8. The Contractor must provide a detailed Claims Paid Report to the Plan Sponsor on an annual basis if requested by the Plan Sponsor as described in 1.042 (A).
9. The Contractor must undertake responsibility for providing Organizational Determinations, including full and fair review of Claims Appeals by Members that have been denied either in full or in part. Organizational Determinations and Appeal decisions must be communicated to Members within 30 days of the Contractor's receipt of the Appeal or request for Organizational Determination.
10. The Contractor's system must comply with HIPAA. The Contractor must provide the Plan Sponsor with an annual attestation that it meets this Requirement.
11. The Contractor's Claims payment system must be able to identify fraud and abuse.
12. The Contractor must have procedures for handling overpayments and recoveries from the Provider or Member to ensure that both the Plan Sponsor and the Member pay according to the Plan Design.
13. The Contractor must provide the State access to all back-up source materials, reports, books, records, computer programs and all other information and documentation relating to each plan, as reasonably required, so that the State and/or its designated officers, agents and accounts, can conduct a financial examination and/or audit of the plans.

### **(C) Member Support**

#### *Requirements:*

1. The Contractor must adhere to all requirements listed below, and where applicable must meet or exceed all Service Level Agreements pursuant to § 1.022 (G).
  - (a) First Call Resolution: 95.00% percent or greater of Member calls to the Contractor's toll-free telephone line must be resolved within 24 hours of a Customer Service Representative's receipt of the call. A call is considered unresolved if a Member calls the Contractor's toll-free telephone line with the same 'reason for call' within the immediately subsequent five day period. The Members following up on same issue within seven calendar days cannot be considered resolved.
  - (b) Average Speed of Answer: On a monthly basis the average of calls must be answered within 30 seconds or less.
  - (c) Telephone Servicing Factor: On a monthly basis, 85.00% of calls must have less than 30 seconds elapse between when a caller elects to speak to a customer service representative and when the call is connected to a customer service representative.
  - (d) Response Time--Blockage Rate (busy signal): The monthly blockage rate must not exceed 2.00%. Blockage is defined as a caller receiving a busy signal.
  - (e) Abandoned Calls: The monthly call abandonment rate must not exceed 3.00% after being connected for at least 40 seconds. Abandoned calls are those Member calls which terminate (i.e., the Member hangs up before the call is answered) after a caller has selected a service option from the available menu and is in the queue for that option.
  - (f) Written Inquiry Resolution: The Contractor must respond to 95.00% or more of Written Inquiries within 14 Calendar Days of receipt, 98.00% of all the Member Inquiries must be resolved within 28 Calendar Days and 100.00% of Written Inquiries must be resolved within 60 Calendar Days. Written Inquiries will include those forwarded to the Contractor by the Plan Sponsor and the receipt date will be considered the date the Written Inquiry is received by the Contractor.



2. The Contractor must provide a Customer Service call center, where it will maintain staff dedicated to supporting the needs of the Plan Sponsor's Members. The State prefers that the call center is located in Michigan. The Customer Service call center must provide at a minimum:
  - (a) A single front-end toll-free Plan Sponsor dedicated telephone number with touch-tone routing (if necessary) for the Customer Service staff to respond to the Member requests for participating Provider locations, for questions on Claims and access, and complaints about the Providers and Services.
  - (b) A Customer Service system scalable to future demand.
  - (c) The Contractor must have an advanced telephone system that provides the Plan Sponsor with management tracking and reporting capabilities. The Contractor must adhere to all reporting standards pursuant to § 1.042.
  - (d) A voice response system with a user-friendly menu.
  - (e) Information on how to access Customer Services must be clearly communicated in all Plan specific booklets and newsletters and Identification Cards.
    - (1) The Contractor must attempt to resolve the Member's telephonic issues during the initial contact with the Member.
    - (2) For those issues not resolved immediately, the Contractor must send Members a written telephonic or electronic response to their issues within 10 Business Days of receipt of the call. This response must either resolve the outstanding issue(s) or inform the Member as to when resolution can be expected.
3. The Contractor must provide web-based support to the Plan Sponsor and its Members. This must be a Plan-specific website dedicated solely to the Plan Sponsor and Members. The web-based system must include, but not be limited to, the following:
  - (a) Capability to provide the Members with secure access to information specific to their own Claims and enrollment.
  - (b) Ability to list the Providers based on accessibility to the Member's home address or zip code.
  - (c) Capability to answer the Member questions about the Plan (Q&A).
  - (d) The Contractor must be able to provide the Members access to designated electronic Plan-specific documents on the Contractor's Plan-specific website.
4. The Contractor must utilize, at a minimum, a telephone system that is as sophisticated as an Automatic Call Distribution (ACD) telephone system.
5. The Contractor's Customer Service team must log and manage incoming calls and correspondence.
6. The Contractor must target improvement opportunities using the call tracking system.
7. The Contractor must record and review calls for quality monitoring purposes.

#### **(D) Provider Network**

##### *Requirements:*

1. The Contractor must manage and maintain a national network of the Providers in areas where the Members reside. This network must provide high quality service and control and reduce the cost of dental care.



2. The Contractor must have and use a valid process to credential, monitor and re-credential Network Providers.
3. The Contractor must be able to add providers to the Provider Network.
4. The Contractor must support Provider access to Protected Health Information (PHI) by means of a secured Internet portal.
5. For a self-funded arrangement, the Contractor must provide Pass-Through Pricing to the Plan Sponsor.
6. The Contractor must not charge the Plan Sponsor, or any Member, any amount above that which is paid to the Provider under the terms of the Contract between the Contractor and the Provider.
7. A disruption analysis must be performed to determine the potential network access disruption that would result from the Contract award by identifying all 'in network' and 'out of network' providers based on the list of providers currently utilized by the Plan Sponsor's Members. The Contractor must provide to the Plan Sponsor a summary of how many members are currently going to Network Providers that would not be covered by the Contractor's proposed Provider Network.
8. The Contractor must have a process in place to audit Network Providers for compliance with Contract terms and ensure the accurate administration of the Dental Plan.

**(E) Member Communications Materials and Meetings**

*Requirements:*

1. Communication Materials:
  - (a) The Contractor must prepare and distribute, at its own cost, announcements, letters, notices, brochures, forms, Identification Cards, Benefit Guides, postage and other supplies and Services for distribution to the Members.
    - (i) ID cards for all new Contract holders that pass validation edits of the eligibility upload with effective dates starting more than 14 days from the eligibility upload must be mailed within 10 days.
    - (ii) ID cards for all new Contract holders that pass validation edits of the eligibility upload with effective dates starting 14 days or less from the eligibility upload must be mailed within five days.
    - (iii) Contractor may use whatever communication methodology it considers appropriate, taking into account the time sensitivity of the message as mutually agreed upon by the Contractor and the Plan Sponsor. This includes, but is not limited to: email, member meetings, current Plan Sponsor publications (e.g. the quarterly medical plan newsletter), and social media. Contractor recognizes that the quarterly medical plan newsletter is not mailed to all members receiving the dental benefit, so that newsletter cannot be the only method of communication.
  - (b) Customized Member communications must be provided, by the Contractor to Members, at no additional charge and are subject to the Plan Sponsor's approval. This also includes co-branding materials with the name of the Contractor and the Plan Sponsor, where desired by the Plan Sponsor.
  - (c) All communication materials must be approved by the Plan Sponsor in advance of distribution. All communication materials presented to the Plan Sponsor for approval must allow at least seven business days for review and editing. This applies to all information developed, provided, and/or distributed by the Contractor to the Members about the Plan—including those placed on the Contractor's Plan Sponsor-specific website-- including, but not limited to:



- (1) The Plan Sponsor-specific welcome kit including a summary of benefits for currently enrolled Members, if a new Contractor is selected (approximately 254,000 each), and for new Members throughout the duration of this Contract (approximately 20,000 each year). It must also be available upon request by the members. These materials must meet the following criteria:
    - (i) Display of identifying logo designated by the Plan Sponsor
    - (ii) Be printed in large type readability (e.g., equal or equivalent to Arial 12 point font size)
  - (2) Quarterly submission to the Member newsletter published and distributed by the Plan Sponsor's Health Plan informing membership of current events, dental health and wellness, and any plan updates.
- (d) The Contractor must provide content for the Plan Sponsor's quarterly Member newsletter in collaboration with the Health Plan, Vision Plan, and PBM Contractors.
  - (e) Explanation of Benefits that details charges, Approved Amounts, copays, outstanding benefit limits and contact information for following up with Inquiries, Grievances and/or Appeals. It is acceptable to the Plan Sponsor if EOBs are provided electronically and only sent in hard-copy form upon the Member request.
  - (f) The Contractor must not sell email addresses or demographic information of the Members and can only disclose email addresses or demographic information to partners with the approval of our Members.
  - (g) The Contractor must provide Identification Cards to all the members.
  - (h) The Contractor must provide Benefit Guides to all the members.
2. Member Communication Meetings:
- (a) The Contractor must provide speakers at meetings designated by the Plan Sponsor at no additional charge to the Plan Sponsor. Meeting requests may vary from year-to-year, but will include up to 10 day-long sessions out-of-state (primarily Florida and Arizona, but could include other U.S. states, as directed by the Plan Sponsor, based on the Member's geographic location) and up to 13 day-long sessions in Michigan, of which three may be in the Upper Peninsula. All meetings will require the combined participation of the Contractor, up to two representatives from MPSERS, the Health Plan Contractor, the PBM Contractor, the Vision Plan Contractor, and HMO Contractors as deemed appropriate by the Plan Sponsor. The Dental Plan Contractor will be responsible for their own travel arrangements, but the planning and organizing of these meetings is the responsibility of the Health Plan provider. Associated cost for these meetings is to be shared equally with the other MPSERS vendors.
  - (b) In addition to the MPSERS' designated meetings, the Contractor may receive requests for speakers from the Member support organizations. A reasonable effort must be made to accommodate requests for in-state meetings at no charge to the retiree support organizations or the Plan Sponsor.
3. Member Satisfaction
- (a) Member Satisfaction: The Contractor must measure Member satisfaction within the Plan Year for the current Plan Year and report results to the Plan Sponsor. All areas where the Member satisfaction levels are low must be remedied by the Contractor within a timeframe acceptable to the Plan Sponsor. Sample sizes of responses must be sufficient to produce statistically valid results. The methodology for gauging and monitoring this requirement,



including the survey instrument and scoring methodology, is subject to the Plan Sponsor approval. This survey must be done on a Plan Sponsor specific basis.

**(F) Enrollment and Eligibility**

The Plan Sponsor is responsible for transmitting eligibility and enrollment information for the Members. The Plan Sponsor has the sole authority to determine the effective date of a Member, including retroactive adjustments.

Eligibility information for the Members will be transferred to the Contractor from the Plan Sponsor by a secure electronic medium including all necessary information with respect to current enrollees at a date to be determined by the Plan Sponsor.

Payment of Administration Fee/premiums is predicated on the enrollment records of the Plan Sponsor.

*Requirements:*

1. The Contractor must comply with all applicable requirements of HIPAA, as amended.
2. The Contractor must maintain the Member information. Any changes, additions or terminations of the Member enrollment information or changes or additions to the Member demographic information (including email addresses) must originate from or be directed back to the Plan Sponsor. The Contractor must not make any changes to the Member information that would lead to the Contractor and the Plan Sponsor having different information for the same Member.
3. The Contractor must maintain a Member's enrollment in the Plan unless otherwise notified by the Plan Sponsor regardless of notifications from any other source.
4. The Contractor must support the Plan Sponsor in confirming the Member Eligibility.
5. The Contractor must have the capability to accept electronic data transfer on a weekly basis from the Plan Sponsor, in a HIPAA compliant 834 format, inclusive of all fields contained in the RFP's Attachment E, 834 File Layout, and which is provided through a data exchange gateway. The Contractor must also have the capability to conduct full enrollment audits on an as-needed basis. The Contractor must be able to terminate by absence. The Contractor must work with the Plan Sponsor in the implementation of secure data transfers for all exchanges.
6. The Contractor is responsible for any changes, and any associated costs therein, to their systems or processes required to support the receipt and processing of the Plan Sponsor's enrollment files. The Contractor must work with the Plan Sponsor to develop a timeline for implementation and testing of any system changes. The Contractor is expected to maintain a testing environment for such purposes.
7. The Contractor must accept enrollment files on a weekly basis, more frequently if necessary.
8. The Contractor must have validation edits in place to ensure, for each data load, that all fields are properly populated and readable. 100.00% of all accurate records that pass the Contractor's validation edits must be uploaded according to the Plan Sponsor's schedule within one Business Day with confirmation of changes submitted to the Plan Sponsor. Any records that do not pass the Contractor's validation tests must be reported to the Plan Sponsor within two Business Days after the file has been uploaded. All discrepancy reporting must be in the format defined by the Plan Sponsor.
9. Upon verbal notification from the Plan Sponsor, the Member eligibility and/or enrollment updates must be completed in real-time.
10. The Contractor must use the Plan Sponsor's data exchange gateway for all electronically sent administrative communications that include PHI, including transport of electronic files containing confidential information.



11. The Contractor must provide to the Plan Sponsor, by means of a secured Internet portal, access to the system used to maintain Eligibility.
12. The Contractor must provide to the Providers, by means of a secured Internet portal, access to Eligibility.

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

*Requirements:*

The Contractor must ensure that the SLAs are measurable using the Contractor’s standard management information systems. Every SLA must have a report provided that is deemed adequate by the Plan Sponsor to verify the SLA has been met; SLAs without a corresponding report will be deemed unmet and subject to the penalty. The Plan Sponsor reserves the right to independently verify the Contractor’s assessment of its performance, either by State employee or third party review. Disagreements regarding SLAs will be subject to Dispute Resolution (§ 2.190).

Within 45 Days after the end of each calendar quarter, the Contractor must provide the Plan Sponsor with a report assessing the Contractor’s performance under each SLA for the Plan Sponsor, and provide payment for any applicable penalties to the Plan Sponsor. Any metric that is reported must be accompanied by supporting documentation.

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

<b>SLA #1</b>
Eligibility Uploads
<b>Guarantee</b>
100.00% of all accurate records that pass the Contractor’s validation edits must be uploaded according to the Plan Sponsor’s schedule within one Business Day of receipt.  The Contractor must measure its performance on this SLA on a monthly basis and report on a quarterly basis. The SLA report must show weekly activity defined as the number of records uploaded, number of records not accepted, and the timeframe for presenting the discrepancy reports to the Plan Sponsor.  Any records that do not pass the Contractor’s validation test must be reported to the Plan Sponsor within two Business Days after the file has been uploaded.
<b>Penalty</b>
The penalty for failure to meet this SLA is 1.00% per month if not met, of the total month’s Administrative Fees paid to the Contractor by the Plan Sponsor for each month that the SLA is not met.



<b>SLA #2</b>
Identification Cards
<b>Guarantee</b>
ID cards for all new Contract holders that pass validation edits of the eligibility upload with effective dates starting more than 14 days from the eligibility upload must be mailed within 10 days.  ID cards for all new Contract holders that pass validation edits of the eligibility upload with effective dates starting 14 days or less from the eligibility upload must be mailed within five days. The Contractor must measure monthly and report its performance on this SLA on a quarterly basis. Performance must be substantiated by documentation providing proof of receipt date and mailing date.  Accuracy must be measured by sampling ID card production to ensure 100.00% accuracy of information.
<b>Penalty</b>
The penalty for failure to meet the Identification Card Timeliness SLA is 1.00% of the monthly Administration Fee for each month missed.  The penalty for failure to meet the Identification Card Accuracy SLA is 1.00% of the monthly Administration Fee for each month missed.

<b>SLA #3</b>
Contractor Performance Evaluation
<b>Guarantee</b>
The Plan Sponsor will complete the annual satisfaction survey in January respective to the preceding year. The results of this survey will be shared with the Contractor. A 5.00-point scale will be utilized. The Contractor must achieve an overall score of at least 4.00. An overall score under 3.50 will result in an additional penalty.
<b>Penalty</b>
The penalty for failure to meet an overall score of 4.00 will result in the assessment of 2.00% of the Contractor's annual Administration Fee. Failure to score at least 3.50 will result in an additional 1.00% penalty of the Contractor's annual Administration Fee.

<b>SLA #4</b>
Member Satisfaction Surveys
<b>Guarantee</b>
One random sample Member satisfaction surveys must be completed annually at no additional cost.  The surveys must be completed within each Plan Year for the Plan Year. The survey instrument must be presented to the Plan Sponsor for approval of questions and scoring methodology prior to deployment. Plan Sponsor has the authority to request changes and customization to the survey and scoring methodology. The respondent pool must be statistically valid based on the Plan Sponsor's total population (randomly generated sample size sufficient to produce a 95% confidence interval with a margin of error of not greater than +/-3%). Survey results must be available to the Plan Sponsor by Q3 within the Plan Year unless a different date is agreed upon.  Contractor must achieve a score of 4.00 or higher on a 5 point scale (other scoring scales may be used as long as they are equivalent) from 85.00% of the responders.
<b>Penalty</b>



<b>SLA #4</b>
The penalty for failure to produce 85.00% survey satisfaction is 2.00% of Contractor's annual Administration Fee. Failure to produce 80.00% will result in an additional 1.00% penalty of Contractor's annual Administration Fee.
Failure to conduct the survey as required in the Guarantee will result in a 3.00% penalty of Contractor's annual Administration Fee.

<b>SLA #5</b>
Customer Service Call – Average Speed of Answer
<b>Guarantee</b>
On a monthly basis the average of calls must be answered within 30 seconds or less.
The Contractor must measure monthly and report their performance on this SLA on a quarterly basis
<b>Penalty</b>
The penalty for failure to meet this SLA is 1% per month not met, of the total monthly Administration Fees paid to the Contractor by the Plan Sponsor for each month that the SLA is not met.

<b>SLA #6</b>
Customer Service Call - Telephone Servicing Factor
<b>Guarantee</b>
On a monthly basis, 85.00% of calls must have less than 30 seconds elapse between when a caller elects to speak to a customer service representative and when the call is connected to a customer service representative.
The Contractor must measure its performance on this SLA on a monthly basis and report on a quarterly basis.
<b>Penalty</b>
The penalty for failure to meet this SLA is 1.00% of Contractor's Administration Fee for the month missed.

<b>SLA #7</b>
Customer Service Response Time - Percent of Calls Abandoned
<b>Guarantee</b>
The monthly call abandonment rate must not exceed 3.00% (determined by the number of calls abandoned by the total number of calls).
The Contractor must measure its performance on this SLA on a monthly basis and report on a quarterly basis.
<b>Penalty</b>
The penalty for failure to meet this SLA is 1.00% of Contractor's monthly Administration fee for each month missed.



<b>SLA #8</b>
Customer Service Response Time to Written Inquiries
<b>Guarantee</b>
The Contractor must respond to 95.00% or more of Written inquiries within 14 Days of receipt and 98.00% of all Member inquiries must be resolved within 28 Days and 99.50% of Written inquiries must be resolved within 60 Days. Written inquiries will include those forwarded to the Contractor by the Plan Sponsor and measured based on date of receipt by the Contractor.
Contractor must measure monthly and report their performance on this SLA on a quarterly basis.
<b>Penalty</b>
The penalty for failure to meet this SLA is 1.00% of Contractor's administrative fee for each month missed.

<b>SLA #9</b>
Timely Production of Complete Management Reports
<b>Guarantee</b>
The Contractor must provide complete quarterly reports within 45 Days of the end of the quarter, and annual reports within 90 days of Plan year end.
The Contractor must measure and report its performance on this SLA on a quarterly or annual basis respectively.
<b>Penalty</b>
For quarterly reports, the penalty for failure to meet the reporting requirements of this SLA is 1.00% per quarter not met, of the total quarterly Administrative Fee paid to the Contractor by the Plan Sponsor for each quarter that the SLA is not met.
For annual reports, the penalty for failure to meet the reporting requirements of this SLA is 1.00% of the total annual Administrative Fee paid to the Contractor by the Plan Sponsor for.

<b>SLA #10</b>
Appeals Reporting Requirements
<b>Guarantee</b>
The Contractor must administer the Appeals Policies that are compliant with accreditation agency requirements.
Reporting will include the response time of Appeal processing (60 Days for post-service).
Reporting for appeals to include the Member count, nature of Appeal, timeliness of handling, and outcome (Member resolution).
The Contractor must measure its performance on this SLA on a quarterly basis and report on an annual basis.
<b>Penalty</b>
The penalty for failure to meet the response time requirements of this SLA is 1.00% per quarter not met, of the total monthly Administrative Fee paid to the Contractor by the Plan Sponsor for each quarter that the SLA is not met.



<b>SLA #11</b>
Timeliness of Data Transmission to the Plan Sponsor's Data Management Vendor
<b>Guarantee</b>
Pursuant to Section 1.042, the Contractor must agree to deliver Claim data files to the Plan Sponsor's Data Management Vendor in an agreed-upon format. Delivery of data files—with all required fields correctly populated—must be completed within 15 Days after the close of each month.
<b>Penalty</b>
The penalty for failure to meet the SLA for monthly reports is 1.00% of the Contractor's monthly Administration Fee for each month not met.

<b>SLA #12</b>
Financial Error Rate
<b>Guarantee</b>
The financial error (as defined as the number of claims containing a financial error divided by the total number of claims) must not exceed 1.00%.
The Contractor must measure monthly and report its performance on this SLA on a quarterly basis.
<b>Penalty</b>
The penalty for failure to meet this SLA is 2.00% for each month missed of Contractor's monthly Administration Fee.

<b>SLA #13</b>
Non-financial Error Rate
<b>Guarantee</b>
The non-financial error rate (as defined as the number of claims with a non-financial error divided by the total number of claims) must not exceed 1.00%.
The Contractor must measure monthly and report its performance on this SLA on a quarterly basis.
<b>Penalty</b>
The penalty for failure to meet this SLA is 1.00% for each month missed of the Contractor's monthly Administration Fee.

<b>SLA #14</b>
Claims Processing Time
<b>Guarantee</b>
95.00% of all clean claims must be processed within 10 Business Days.
99.00% of all clean claims must be processed within 15 Business Days.
The Contractor must measure its performance on this SLA on a monthly basis and report on a quarterly basis.
<b>Penalty</b>
The penalty for failure to meet this SLA is 1.50% for each month missed of Contractor's Administration Fee for the month.



## **(H) Audits**

The Plan Sponsor intends to periodically (at least once every two years) perform on-site audits of Contractors. The Contractor must make records associated with the administration of the Plan available to, and must cooperate with, such auditors and audits as the State of Michigan or the Plan Sponsor may designate. The Contractor must maintain and make available to the State's auditors one or all of the following claim source documents for the audit:

1. Paper claim submission – Original document or microfilm or print-out of imaged claim document.
2. Optical Character Recognition (OCR) – Copy of original paper document.
3. Electronic Data Interchange (EDI) – Documentation of original submitted data (in a readable format) as it appeared when received by administrator.

The State's current approach has been to audit two Plan Years at one time, conducted within 12 months of the end of the second year audited. The State reserves the right to change this approach without prior notice.

1. The Contractor must work toward NIST accreditation. Contractor must strictly adhere to the principles of NIST compliance as a foundation for all decisions relating to the protection of ePHI contained or processed in Contractor's systems. Contractor must be evaluated on these standards annually and the results must be shared with ORS. If material concerns are identified, Contractor must work with ORS to remedy them within an appropriate timeframe as recommended by the evaluator.
2. The Contractor must comply with and conduct an external SSAE 16 audit. All audit findings must be reported to the Plan Sponsor and promptly resolved subject to review by the Plan Sponsor.

### **1.030 Roles and Responsibilities**

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

Pursuant to § 2.060, *Contract Management*, the Contractor must provide sufficient staffing resources for completion of the tasks and services as defined in this Contract. As part of its project/work-plan, the Contractor must also provide a detailed description of its company accreditations, licenses, and requirements listed below, and a detailed description of its key staff, additional staff, and its subcontractors as related to this project, for final review and approval by the respective, assigned State Contract Compliance Inspector (CCI), as follows:

The State will have 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, the Contractor will notify the State of the proposed assignment, will introduce the individual to the appropriate State representatives, and will provide the State with a resume and any other information about the individual reasonably requested by the State. The State reserves the right to interview the individual before granting written approval. In the event the State finds a proposed individual unacceptable, the State must provide a written explanation including reasonable detail outlining the reasons for the rejection. Additionally, the State's request must be based on legitimate, good-faith reasons. Proposed alternative for the individual denied, must be fully qualified for the position.

Re-assignment of Personnel at the State's Request: The State reserves the right to require the removal from the Project of the 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.

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

Key Personnel who are NOT located in Michigan must be made available to the Plan Sponsor at the Contractor's Michigan office (or at another location in Michigan as approved by the Plan Sponsor or CCI, as designated by the State) on a regular basis (as determined or scheduled by Plan Sponsor or CCI, as designated by the State). This includes, but is not limited to, all Member meetings and Board meetings, as well as onsite meetings with the Plan Sponsor staff at a frequency determined by the Plan Sponsor. The Bidder must have assigned not less than the following Key Personnel, subject to the requirements in § 2.062:

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

**(B) Additional Staff:**

Additional staff assignments are not considered key, but their roles are considered an integral compliment to the roles, responsibilities, and abilities of the Contractor's key-staff. These roles may include not only the staff roles listed below but also may include other IT-System Technicians, Security Specialists, Accounting or Audit staff, Administrative support staff, etc. The Contractor must include a detailed description of these additional roles in its project / implementation plan to be approved by the State's CCI and the Plan Sponsor:

1. Enrollment & Customer Service Specialist(s)
2. Dentist
3. Implementation Manager

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

Sub-Contractors are not considered key, but their roles are considered an integral compliment to the roles, responsibilities, and abilities of the Contractor's key-staff and additional staff. Pursuant to § 2.044, *Subcontracting by Contractor*, delegation of any portion of the services is subject to written, pre-approval by the State, and Contractor must include a detailed description of these roles and responsibilities in its project / implementation plan.

**Additional Contractor Staff, Roles, and Responsibilities:**

1. The Contractor must promptly notify the Plan Sponsor of administrative changes in the Contractor's systems or procedures that impact the Plan Sponsor and/or Members.
2. The Contractor must participate in meetings with the Plan Sponsor as determined by the Plan Sponsor. The Contractor must review all open projects and present the status, progress and results of each project. The Contractor must provide data and cost analysis upon request.
3. Quarterly meetings must be held at a location as determined by the Plan Sponsor, and additional meetings may be held each year, for the purpose of:



- (a) The Contractor's performance on Service Level Agreements. The Contractor must meet with the Plan Sponsor to review plan performance, report on progress, and identify improvement opportunities.
  - (b) The Contractor's comprehensive review of the cost and utilization experience of the Plan, including but not limited to:
    - (1) Proposed solutions to performance variances (such as cost, utilization, and administrative performance and their root causes.
    - (2) Working collectively with the Plan Sponsor's other benefits administrators (such as Health Plan, PBM and Vision Plan) on joint Plan improvement projects.
4. The Contractor must participate in strategic planning sessions to provide the following:
- (a) Data analysis with commensurate recommendations and cost-benefit analysis to provide support for proposed plan modifications.
  - (b) Review of changes in the market and identification of emerging trends.
  - (c) Provide seminars on related topics for the Plan Sponsor.

### **1.040 Project Plan**

#### **1.041 Project Plan Management**

The Contractor must carry out this Contract under the direction and control of the ORS; all transition and implementation plans are subject to the approval of the Plan Sponsor and the State's CCI.

- (A) There must be continuous liaising with the Contractor during this Contract and particularly during any process involving ORS partners or the Plan Sponsor. The ORS CCI and Plan Sponsor must meet with the Contractor's SAM for initial review of the Contractor's work plan prior to beginning service delivery and then periodically, as needed. The meetings must provide for reviewing progress and providing necessary guidance to the Contractor regarding the timing of activities and solving issues or problems.
- (B) The project plan (also referred to as the *implementation plan or the work plan*) and the corresponding timeline or calendar must describe in detail:
  - 1. All major project milestones;
  - 2. The anticipated outcomes for each milestone;
  - 3. Detailed discussion on how to manage a possible transition process from the prior Contractor, if applicable;
  - 4. All tasks, duties, or responsibilities associated with implementation on January 01, 2014 unless the Plan Sponsor extends, at its sole discretion due to exigent circumstances, the implementation by up to three months.
- (C) The plan must also describe in detail:
  - 1. The Contractor's project management approach, including identifying methods, tools, and processes intended for oversight and completion of the implementation.
  - 2. Any anticipated issues/changes, when they may arise, and how those issues will be conveyed to the appropriate State staff, and include suggested resolution or risk mitigation strategies to the issue(s).
  - 3. Final Disruption Analysis and a plan for averting disruptions and communicating any disruptions to affected members.
  - 4. A detailed protocol and escalation communication process; the plan must also provide escalation procedures and contact information for issues that may need to be escalated above the SAM.



5. Any additional information or considerations for timely implementation pursuant to the contract requirements.

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

1. A detailed calendar or schedule for the Implementation Period;
2. Final draft of implementation plan submitted to CCI and the Plan Sponsor within five State-business days from Contract award date, including the Contractor's project plan management approach and detailed explanation of any identifying methods, tools, and processes, intended for oversight and completion of the implementation for January 01, 2014;
3. Final approval of Implementation Plan obtained from CCI, 14 days after submission of draft;

**1.042 Reports**

(A) The Contractor must provide proper and timely analysis and reports, in a format as determined by the Plan Sponsor.

1. Quarterly Reports

The following reports must be produced within 45 calendar days of the end of the quarter:

- (a) Claims Paid Report, if requested by the Plan Sponsor, showing number of services, charges, Approved Amounts, copays, and plan payments, with the following additional splits (separate reports for each):
  - 1) By participating and non-participating providers
  - 2) By the Contract Holder and dependents, by major categories or service description
  - 3) Turnaround time in payment of claims
  - 4) Professional reviews and/or audits (Including the Statement on Standards for Attestation Engagements (SSAE 16)).
- (b) Performance Standard Guarantee Report detailing and providing backup for the Service Level Agreements.
- (c) Quarterly Claims and Service Experience report for meetings with the Plan Sponsor.
- (d) Appeal reporting that details the count, appealed issue, date received by the Contractor, date addressed by the Contractor, and results of the Appeal.
- (e) Grievance reporting that details the count, grieved issue, and any action items taken to resolve the situation.

2. Annual Reports

The following reports must be produced within 90 calendar days of the end of the year:

- (a) Management Summary Report, full financial and enrollment experience, including the items shown in the quarterly reports, summarized to an annual basis.



(b) Claims Paid Report if requested by the Plan Sponsor, showing number of services, charges, Approved Amounts, copays, and plan payments, with the following additional splits (separate reports for each):

- 1) By participating and non-participating providers
- 2) By the Contract Holder and Dependents, by major categories or service description
- 3) Turnaround time in payment of claims
- 4) Professional reviews and/or audits (Including the SSAE 16)

(c) Coordination of the Claim Activity Report, subdivided by claims coordinated with the Plan Sponsor's health plan.

(d) Detailed Claims Report, of detailed claims data paid for the year.

(B) The Contractor must agree to work with the Data Management Vendor in a manner inclusive of, but not necessarily limited to, the following:

1. The Contractor must provide the Data Management Vendor claims data. This information is to be provided to the Data Management Vendor monthly and by a date no later than the 15<sup>th</sup> Day from the last day of the reporting quarter.
2. Data must be securely maintained for the duration of this Contract. Upon termination or expiration of the Contract, the Contractor must deliver all data to the Data Management Vendor within 10 days.
3. The Contractor is responsible for all expenses, including the cost of any subcontractors, related to producing the data and providing it to the Data Management Vendor. In addition, Contractor shall be responsible for any costs incurred by the Data Management Vendor that are a direct result of a negligent act of the Contractor or any expenses Data Management Vendor incurs due to Contractor's request to change the file format transmission. All expenses under this section shall be no greater than the actual costs incurred by the Data Management Vendor, provided no costs are passed on to the Plan Sponsor.
4. The Contractor is required to work with the Data Management Vendor, including developing any process improvement procedures needed to correct all issues that impede or prevent accurate data reporting from the database.

(C) The Plan Sponsor, or its designee, reserves the right to examine the Contractor's database for the Plan to determine whether the Contractor is in compliance with the data requirements of this Contract.

**1.050 Acceptance**

**1.051 Criteria**

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

- Timeliness of meetings and report completion;
- Adherence to Implementation Plan and approved calendar;
- Adherence to Performance Guarantees / Service Level Agreements;
- Demonstrated considerable knowledge and expertise of dental care administration programs.

**1.052 Final Acceptance – Reserved**



### **1.060 Proposal Pricing**

#### **1.061 Proposal Pricing**

See pricing in **Attachment A, Pricing**.

The 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 the Contractor for the expense at the State's current travel reimbursement rates. See [www.michigan.gov/dtmb](http://www.michigan.gov/dtmb) for current rates.

#### **1.062 Price Term**

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

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

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

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

#### **1.064 Holdback – Reserved**

### **1.070 Additional Requirements**

#### **1.071 Records Management and Retention**

- (1) The Contractor must have a records management policy in place.
- (2) The Contractor must have a process in place to securely store and maintain physical and electronic records.
- (3) The Contractor must ensure that only authorized staff has access to records.
- (4) The Contractor must have a disaster recovery plan.
- (5) The Contractor must ensure that all staff or other personnel that handles records are trained on the policies and procedures for keeping the records secure and that retention and disposal is handled appropriately.
- (6) The Contractor must perform routine self-audit and monitoring activities of their records management program, including monitoring policies and procedures to ensure compliance.
- (7) All Contractor personnel must comply with the State's security and acceptable use policies for State IT equipment and resources. See <http://www.michigan.gov/dit>. Furthermore, Contractor personnel must agree to the State's security and acceptable use policies before the Contractor personnel will be accepted as a resource to perform work for the State. The Contractor must present these documents to the prospective employee before the Contractor presents the individual to the State as a proposed resource. Contractor staff must comply with all Physical Security procedures in place within the facilities where they are working.
- (8) The Contractor must have, in place, a security plan that details the security requirements of the information system, identifies security controls that satisfy those requirements, and enables periodic reviews and/or timely revisions responsible to system and provide to the CCI updates and organizational changes.



- (9) The Contractor must comply with the compliance requirements of all State and federal Laws, including but not limited to:
- Health Insurance Portability and Accountability Act (HIPAA);
  - Financial Modernization Act of 1999 (Gramm-Leach-Bliley)
  - Michigan Identity Theft Protection Act, MCL 445.61 et seq;
  - Michigan Social Security Number Privacy Act, MCL 445.82 et seq.
  - Payment Card Industry Data Security Standard (PCI DSS)
- (10) The Contractor must annually conduct assessments of risks and threats for unauthorized access, use, or disruption on information systems that support the Plan Sponsor.
- (11) The Contractor must protect the confidentiality, integrity, and availability of State of Michigan data that is generated, accessed, modified, transmitted, stored, disposed, or used by the system, irrespective of the medium on which the data resides and regardless of format (such as in electronic, paper or other physical form).
- (12) The Contractor must implement measures to provide physical and environmental protection and accountability for tapes, diskettes, printouts, and other media containing Agency personal, confidential and sensitive information to prevent the loss of confidentiality, integrity, or availability of information including data or software, when stored outside the system.
- (13) The Contractor must limit information system access to authorized users, processes acting on behalf of authorized users, or devices (including other information systems) and to the types of transactions and functions that authorized users are permitted to exercise.
- (14) The Contractor must have authentication controls and account management (for end-user and administrator accounts) for the application/system, including, but not limited to:
- Account lock out after specified number of failed login attempts;
  - Forced use of strong passwords;
  - Forced periodic password change;
  - Use of unique userid;
  - Role-based permissions
- (15) The Contractor must be responsible for ensuring application controls are in place and functioning properly within their organization.
- (16) The Contractor must have a system auditing policy that creates, protects, and retains information system audit log records.
- (17) The Contractor must have a system of controls in place when changes (including emergency / non-routine and configuration) to existing IT resources are logged, authorized, tested, approved, and documented.
- (18) The Contractor must have, in place, a contingency plan to detect and respond to incidents including those involving potential unauthorized access, use, or disclosure of protected information.
- (19) The Contractor must have a system of controls in place to restrict physical access to their organization's facilities and data centers to authorized personnel.
- (20) The Contractor must provide security awareness training required for their employees at minimum on a semi-annual basis.
- (21) The Contractor must have security controls employed for web application(s) to provide a high level of security to protect confidentiality of data transmitted over the public internet.
- (22) The contractor must have a copy on file of their personnel security policy and related documents describing hiring practices that include mandatory background check procedures



## **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 January 1, 2014 through December 31, 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 two-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 meet the form, function, and utility required by that State agency, that agency may, subject to State purchasing policies, procure the Deliverable/Service from another source.

## 2.009 Reformation and Severability

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

## 2.010 Consents and Approvals

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

## 2.011 No Waiver of Default

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

## 2.012 Survival

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

## 2.020 Contract Administration

### 2.021 Issuing Office

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

Don Mandernach, Buyer  
Procurement  
Department of Technology, Management and Budget  
Mason Bldg, 2nd Floor  
PO Box 30026  
Lansing, MI 48909  
Email: mandernachd@michigan.gov  
Phone: (517) 241-7233

### 2.022 Contract Compliance Inspector

After DTMB-Procurement receives the properly executed Contract, it is anticipated that the Chief Procurement Officer of DTMB-Procurement, in consultation with the Office of Retirement Services will direct the person named below, or any other person so designated, to monitor and coordinate the activities for the Contract on a day-to-day basis during its term. However, monitoring of the Contract implies **no authority to change,**



**modify, clarify, amend, or otherwise alter the prices, terms, conditions and specifications of the Contract as that authority is retained by DTMB Procurement.** The CCI for the Contract is:

Steve Crippen  
Office of Retirement Services  
Department of Technology, Management and Budget  
7150 Harris Drive  
Dimondale, MI 48821  
crippens@michigan.gov  
Phone 517-322-6857  
Fax 517-322-6145

### **2.023 Project Manager**

The following individual will oversee the project:

Mark Howard  
Office of Retirement Services  
Department of Technology, Management and Budget  
7150 Harris Drive  
Dimondale, MI 48821  
HowardM4@michigan.gov  
Phone 517-636-0147  
Fax 517-322-6145

### **2.024 Change Requests**

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

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

Change Requests:

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

**2.025 Notices**

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

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

**2.026 Binding Commitments**

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

**2.027 Relationship of the Parties**

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

**2.028 Covenant of Good Faith**

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

**2.029 Assignments**

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

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

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

**2.030 General Provisions****2.031 Administrative Fee And Reporting - Reserved****2.032 Media Releases**

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

**2.033 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. The State must pay for all costs and expenses incurred in obtaining and maintaining any necessary easements or right of way.

**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. The Contractor must continue or recover all systems necessary for Services within 72 hours of any 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) State agrees to reimburse Contractor for the actual cost of claims on a weekly basis and the administrative service fee on a monthly basis. Contractor shall not be obligated to accept partial or late payments and acceptance of a partial or late payment will not waive State's remedies under this Contract, or otherwise modify the terms herein.

(b) The State shall maintain funds necessary to satisfy its obligations under this Contract.



- (c) Payment for administrative service fees shall be due on the fifth of each month.
- (d) Contractor shall invoice the State for the cost of claims for the preceding week every Tuesday. Payment shall be due via Electronic Funds Transfer within three business days of the date the invoice is emailed unless otherwise communicated.
- (e) The State is responsible for the full amount of all invoices regardless of any contribution owed by the subscribers. Contractor shall not be responsible for collecting any contributions from subscribers.
- (f) If required by Contractor, State shall deposit an amount specified as a "Prefund" with Contractor. The Prefund shall serve as a deposit to offset against any untimely or partial payments from State. In the event Contractor uses any of the Prefund to offset untimely or partial payments, Contractor shall submit an invoice to the State in the amount necessary to replenish the Prefund. If the Contractor fails to timely replenish the Prefund, Delta Dental shall be entitled to suspend services, terminate the Contract following fifteen days written notice to cure and other remedies allowed by law.

#### **2.045 Pro-ration - Reserved**

#### **2.046 Antitrust Assignment**

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

#### **2.047 Final Payment**

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

#### **2.048 Electronic Payment Requirement**

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

### **2.050 Taxes**

#### **2.051 Employment Taxes**

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

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

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

### **2.060 Contract Management**

**2.061 Contractor Personnel Qualifications**

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

**2.062 Contractor Key Personnel**

- (a) The Contractor must provide the CCI with the names of the Key Personnel.
- (b) Key Personnel must be dedicated as defined in the Statement of Work to the Project for its duration in the applicable Statement of Work with respect to other individuals designated as Key Personnel for that Statement of Work.
- (c) The State reserves the right to recommend and approve in writing the initial assignment, as well as any proposed reassignment or replacement, of any Key Personnel. Before assigning an individual to any Key Personnel position, Contractor must notify the State of the proposed assignment, must introduce the individual to the appropriate State representatives, and must provide the State with a resume and any other information about the individual reasonably requested by the State. The State reserves the right to interview the individual before granting written approval. In the event the State finds a proposed individual unacceptable, the State must provide a written explanation including reasonable detail outlining the reasons for the rejection.
- (d) Contractor must not remove any Key Personnel from their assigned roles on the Contract without the prior written consent of the State. The Contractor's removal of Key Personnel without the prior written consent of the State is an unauthorized removal ("Unauthorized Removal"). Unauthorized Removals does not include replacing Key Personnel for reasons beyond the reasonable control of Contractor, including illness, disability, leave of absence, personal emergency circumstances, resignation or for cause termination of the Key Personnel's employment. Unauthorized Removals does not include replacing Key Personnel because of promotions or other job movements allowed by Contractor personnel policies or Collective Bargaining Agreement(s) as long as the State receives prior written notice before shadowing occurs and Contractor provides 30 days of shadowing unless parties agree to a different time period. The Contractor with the State must review any Key Personnel replacements and appropriate transition planning must be established. Any Unauthorized Removal may be considered by the State to be a material breach of the Contract, in respect of which the State may elect to exercise its termination and cancellation rights.
- (e) The Contractor must notify the Contract Compliance Inspector and the Contract Administrator at least 10 business days before redeploying non-Key Personnel, who are dedicated to primarily to the Project, to other projects. If the State does not object to the redeployment by its scheduled date, the Contractor may then redeploy the non-Key Personnel.

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

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

**2.064 Contractor Personnel Location**

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

**2.065 Contractor Identification**

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

**2.066 Cooperation with Third Parties**

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

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

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

**2.068 Contract Management Responsibilities**

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

**2.070 Subcontracting by Contractor****2.071 Contractor Full Responsibility**

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

**2.072 State Consent to Delegation**

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



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

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

### **2.074 Flow Down**

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

### **2.075 Competitive Selection**

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

## **2.080 State Responsibilities**

### **2.081 Equipment**

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

### **2.082 Facilities**

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

## **2.090 Security**

### **2.091 Background Checks**

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



## **2.092 Security Breach Notification**

If the Contractor breaches this Section, the Contractor must (i) promptly cure any deficiencies and (ii) comply with any applicable federal and state laws and regulations pertaining to unauthorized disclosures. Contractor and the State will cooperate to mitigate, to the extent practicable, the effects of any breach, intrusion, or unauthorized use or disclosure. Contractor must report to the State, in writing, any use or disclosure of Confidential Information, whether suspected or actual, other than as provided for by the Contract within 72 hours of becoming aware of the use or disclosure or the shorter time period as is reasonable under the circumstances.

## **2.093 PCI Data Security Standard**

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

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

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

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

## **2.100 Confidentiality**

### **2.101 Confidentiality**

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

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

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



and of any Subcontractor having access or continued access to the State's Confidential Information may be required to execute an acknowledgment that the employee has been advised of Contractor's and the Subcontractor's obligations under this Section and of the employee's obligation to Contractor or Subcontractor, as the case may be, to protect the Confidential Information from unauthorized use or disclosure.

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

### **2.103 Exclusions**

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

### **2.104 No Implied Rights**

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

### **2.105 Respective Obligations**

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

## **2.110 Records and Inspections**

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

The State's authorized representatives, at reasonable times and with 10 days prior notice, 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, to the extent the access will not reasonably interfere with or jeopardize the safety or operation of Contractor's systems or facilities. 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 seven 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 Warranty of Merchantability**

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

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

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

### **2.124 Warranty of Title**

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

### **2.125 Equipment Warranty – Reserved**

### **2.126 Equipment to be New - Reserved**

### **2.127 Prohibited Products - 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 (3) years following the termination of this Contract.
- (h) The Contractor must provide, within five (5) 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 2.13.1, 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 2.13.1, 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**

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

### **2.142 Code Indemnification**

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

### **2.143 Employee Indemnification**

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

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

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

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

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



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

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

### **2.146 Indemnification Procedures**

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

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

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

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

### **2.150 Termination/Cancellation**

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

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



### **2.152 Termination for Cause**

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

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

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

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

### **2.153 Termination for Convenience**

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

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

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

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



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

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

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

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

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

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

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

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

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

#### **2.158 Reservation of Rights**

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

#### **2.160 Termination by Contractor**



### **2.161 Termination by Contractor**

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

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

## **2.170 Transition Responsibilities**

### **2.171 Contractor Transition Responsibilities**

If the State terminates the Contract, for convenience or cause, or if the Contract is otherwise dissolved, voided, rescinded, nullified, expires or rendered unenforceable, the Contractor agrees to comply with direction provided by the State to assist in the orderly transition of equipment, services, software, leases, etc. to the State or a third party designated by the State. If the Contract expires or terminates, the Contractor agrees to make all reasonable efforts to effect an orderly transition of services within a reasonable period of time that in no event will exceed 30 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 - Reserved**

### **2.175 Transition Payments**

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

### **2.176 State Transition Responsibilities**

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

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



## **2.180 Stop Work**

### **2.181 Stop Work Orders**

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

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

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

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

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

## **2.190 Dispute Resolution**

### **2.191 In General**

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

### **2.192 Informal Dispute Resolution**

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

(i) The representatives of Contractor and the State must meet as often as the parties reasonably deem necessary to gather and furnish to each other all information with respect to the matter in issue which the parties believe to be appropriate and germane in connection with its resolution. The representatives must discuss the problem and negotiate in good faith in an effort to resolve the dispute without the necessity of any formal proceeding.



- (ii) During the course of negotiations, all reasonable requests made by one (1) party to another for non-privileged information reasonably related to the Contract must be honored in order that each of the parties may be fully advised of the other's position.
- (iii) The specific format for the discussions will be left to the discretion of the designated State and Contractor representatives, but may include the preparation of agreed upon statements of fact or written statements of position.
- (iv) Following the completion of this process within 60 calendar days, the Director of Procurement, DTMB, or designee, must issue a written opinion regarding the issue(s) in dispute within 30 calendar days. The opinion regarding the dispute must be considered the State's final action and the exhaustion of administrative remedies.

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

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

### **2.193 Injunctive Relief**

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

### **2.202 Unfair Labor Practices**

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

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

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



## **2.204 Prevailing Wage**

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

### **2.220 Limitation of Liability**

#### **2.221 Limitation of Liability**

Neither the Contractor nor the State is liable to each other, regardless of the form of action, for consequential, incidental, indirect, or special damages. This limitation of liability does not apply to claims for infringement of United States patent, copyright, trademark or trade secrets; to claims for personal injury or damage to property caused by the gross negligence or willful misconduct of the Contractor or the State; 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, at the request of the caller, the location of its call or contact center.

### **2.233 Bankruptcy**

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

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

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



## **2.240 Performance**

### **2.241 Time of Performance**

- (a) Contractor must use commercially reasonable efforts to provide the resources necessary to complete all Services and Deliverables according to the time schedules contained in the Statements of Work and other Exhibits governing the work, and with professional quality.
- (b) Without limiting the generality of **Section 2.241(a)**, Contractor must notify the State in a timely manner upon becoming aware of any circumstances that may reasonably be expected to jeopardize the timely and successful completion of any Deliverables/Services on the scheduled due dates in the latest State-approved delivery schedule and must inform the State of the projected actual delivery date.
- (c) If the Contractor believes that a delay in performance by the State has caused or will cause the Contractor to be unable to perform its obligations according to specified Contract time periods, the Contractor must notify the State in a timely manner and must use commercially reasonable efforts to perform its obligations according to the Contract time periods notwithstanding the State's failure. Contractor will not be in default for a delay in performance to the extent the delay is caused by the State.

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

- (a) SLAs will be completed with the following operational considerations:
- (i) SLAs will not be calculated for individual Incidents where any event of Excusable Failure has been determined; Incident means any interruption in Services.
  - (ii) SLAs will not be calculated for individual Incidents where loss of service is planned and where the State has received prior notification or coordination.
  - (iii) SLAs will not apply if the applicable Incident could have been prevented through planning proposed by Contractor and not implemented at the request of the State. To invoke this consideration, complete documentation relevant to the denied planning proposal must be presented to substantiate the proposal.
  - (iv) Time period measurements will be based on the time Incidents are received by the Contractor and the time that the State receives notification of resolution based on 24x7x365 time period, except that the time period measurement will be suspended based on the following:
    1. Time period(s) will not apply where Contractor does not have access to a physical State Location and where access to the State Location is necessary for problem identification and resolution.
    2. Time period(s) will not apply where Contractor needs to obtain timely and accurate information or appropriate feedback and is unable to obtain timely and accurate information or appropriate feedback from the State.
- (b) Chronic Failure for any Service(s) is defined as three unscheduled outage(s) or interruption(s) on any individual Service for the same reason or cause or if the same reason or cause was reasonably discoverable in the first instance over a rolling 30 day period. Chronic Failure will result in the State's option to terminate the effected individual Service(s) and procure them from a different vendor for the chronic location(s) with Contractor to pay the difference in charges for up to three additional months. The termination of the Service must not affect any tiered pricing levels.
- (c) Root Cause Analysis must be performed on any business critical outage(s) or outage(s) on Services when requested by the Contract Administrator. Contractor must provide its analysis within two weeks of outage(s) and provide a recommendation for resolution.
- (d) All decimals must be rounded to two decimal places, with five and greater rounding up and four and less rounding down, unless otherwise specified.

### **2.243 Liquidated Damages - Reserved**



#### **2.244 Excusable Failure**

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

##### **2.252 Delivery of Deliverables**

Where applicable, the Statements of Work/POs contain lists of the Deliverables to be prepared and delivered by Contractor including, for each Deliverable, the scheduled delivery date and a designation of whether the Deliverable is a document ("Written Deliverable"), a good ("Physical Deliverable") or a Service. All Deliverables must be completed and delivered for State review and written approval and, where applicable, installed according to the State-approved delivery schedule and any other applicable terms and conditions of the Contract.

##### **2.253 Testing - 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 (3) 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 (5) 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 – Reserved**

#### **2.258 Final Acceptance**

Unless otherwise stated in the Article 1, Statement of Work or Purchase Order, "Final Acceptance" of each Deliverable must occur when each Deliverable/Service has been approved by the State following the State Review Periods identified in **Sections 2.251-2.257**. Payment will be made for Deliverables 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**

Except as otherwise set forth herein, all data and information provided to Contractor by or on behalf of the State, and all data and information derived therefrom, is the exclusive property of the State ("State Data"). Upon request, Contractor must provide to the State, or a third party designated by the State, all State Data within 10 calendar days of the request and in the format requested by the State as long as such request is commercially reasonable. No State Data may be used for any marketing purposes without prior written permission. The State and the Contractor will continue to own their respective proprietary technologies and materials developed before entering into the Contract. Notwithstanding the anything to the contrary claims processing technology/systems and data developed, supplemented, provided or derived by Contractor in conjunction with oral health research, administration or claims processing (such as but not limited to processing policies, maximum allowable fees, provider and panel information, benefit determinations, and policy codes) is considered proprietary and will remain the property of Contractor.

#### **2.262 Vesting of Rights - Reserved**

#### **2.263 Rights in Data - Reserved**

#### **2.264 Ownership of Materials - Reserved**

#### **2.270 State Standards - Reserved**

#### **2.280 Extended Purchasing Program - Reserved**

#### **2.290 Environmental Provision - Reserved**

#### **2.300 Other Provisions - Reserved**



**Attachment A, Pricing**

<b>Delta Dental</b>	<b>2014</b>	<b>2015</b>	<b>2016</b>
Per Contract Per Month (PCPM) Administration Fee	\$2.29	\$2.37	\$2.45

(The PCPM amounts listed in Attachment A will be paid automatically through Clarety based on the membership counts in ORS's system on a monthly basis)