



STATE OF MICHIGAN ENTERPRISE PROCUREMENT

Department of Technology, Management, and Budget
525 W. Allegan, Lansing MI 48913
P.O. Box 30026, Lansing, MI 48909

NOTICE OF CONTRACT

CONTRACT NO. **511B6600072**
between
THE STATE OF MICHIGAN
and

CONTRACTOR	Accenture LLP
	3000 Town Center, Suite 2400
	Southfield, MI 48075
	Gary Glickman
	(703) 947-1565
	gary.glickman@accenture.com
	ID# 2904

STATE	Program Manager	Dawne Velianoff, LMSW, MUP	MVHS
		(517) 243-5878	
		VelianoffD@michigan.gov	
STATE	Contract Administrator	Kerri Bielski, Buyer	GRHV
		(616) 364-5327	
		BielskiK@michigan.gov	

CONTRACT SUMMARY			
DESCRIPTION: Turnaround Specialist Services for the Michigan Veterans Health System			
INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW
09/29/2016	09/30/2017	Two 1-year options	
PAYMENT TERMS		DELIVERY TIMEFRAME	
0.75%15/Net45			
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			
MISCELLANEOUS INFORMATION			
N/A			
ESTIMATED CONTRACT VALUE AT TIME OF EXECUTION			\$625,000.00

FOR THE CONTRACTOR:

Accenture, LLP

Company Name

Gary Glickman

Authorized Agent Signature

Gary Glickman

Authorized Agent (Print or Type)

September 27, 2016

Date

FOR THE STATE:

Lacey Wilke

Signature

Lacey Wilke, Procurement Manager

Name & Title

Department of Technology, Management and Budget

Agency

9/29/16

Date

STATE OF MICHIGAN

Contract No. 511B6600072
Turnaround Specialist Services

SCHEDULE A STATEMENT OF WORK CONTRACT ACTIVITIES

Failure to comply with any of the requirements below may result in the termination of this Contract.

A. IN GENERAL. Contractor will perform the following Contract Activities pursuant to this Statement of Work:¹

1. Provide a comprehensive educational and training plan with materials and resources targeting all staff (all shifts), including contract employees, on the following:
 - a. Interventions for reportable events and proper documentation;
 - b. Liability as related to license (professional/facility);
 - c. Quality assurance policy using the quality assurance program improvement program (QAPI); and
 - d. Guardianship, competency, food waivers and housing.
2. Provide State staff (all shifts) (with an emphasis on the administrative, management, and staff development teams) with training materials outlining the capabilities of obtaining staff, volunteers and contracted staff and provide ad hoc delivery support to State trainers.
3. Develop a training plan that includes training and education for staff (all shifts) on Centers for Medicare & Medicaid Services (CMS), State of Michigan (SOM) and Federal Veterans Affairs (VA) regulations as outlined in the links in footnote 1 below.
4. Provide consultation, education and in-service training to individuals, employees, members, groups, resident councils, etc. This may include but is not limited to professional staff of physicians, nurses, social workers, dietitians and recreational therapy aides, guardians/DPOA as requested.
5. Provide education and training for staff, volunteers, and contracting staff to align with Office of Auditor General (OAG) audit findings and VA survey findings as outlined in the links in footnote 1.
6. Provide recommendations for implementation and training/streamlining business services on accounts payable, third party reimbursement, medical billing, procurement, and member finance services.
7. Within the Comprehensive After Action Report, provide written recommendations for overall improvement of the management and operation of the State Veteran Homes (SVHs).
8. Work with professionals and other agencies as needed to align Michigan Veteran Health System (MVHS) training with CMS, SOM and VA Regulations. This includes consists of: Health Department, Fire Chef, City of Marquette, City of Grand Rapids, contract companies, and CMS.

B. HIPAA. Contractor will:

1. Not share any protected health information (PHI) provided by the State that falls within HIPAA requirements.
2. Only use PHI for the purposes of this Contract.
3. Have written policies and procedures addressing the use of PHI that falls under the HIPAA requirements. The policies and procedures must meet all applicable federal and state requirements including HIPAA regulations. These policies and procedures must include restricting access to the PHI by the Contractor's employees.
4. Have a policy and procedure to report to the State Program Manager unauthorized use or disclosure of PHI that falls under HIPAA requirements of which the Contractor becomes aware.
5. In accordance with HIPAA requirements, Contractor is liable for any claim, loss or damage relating to unauthorized use or disclosure of PHI received from the State.

¹ The following links identify the focus areas for the Contractor to develop and deliver training to the State on:

[http://www.cms.gov/Medicare/Provider-Enrollment-and-](http://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/GuidanceforLawsAndRegulations/index.html?redirect=/GuidanceforLawsAndRegulations/01_Overview.asp)

[Certification/GuidanceforLawsAndRegulations/index.html?redirect=/GuidanceforLawsAndRegulations/01_Overview.asp](http://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/GuidanceforLawsAndRegulations/index.html?redirect=/GuidanceforLawsAndRegulations/01_Overview.asp)

<http://www.medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Delivery-Systems/Institutional-Care/Nursing-Facilities-NF.html>

<http://www.michiganveterans.com/Home/Veterans-Home/Michigan-Veteran-Health-System>

[http://www.michiganveterans.com/Home/Veterans-Home/Administration-and-Public-Documents-\(1\)](http://www.michiganveterans.com/Home/Veterans-Home/Administration-and-Public-Documents-(1))

6. Contractor will not require access to the State's PHI to perform Contract Activities, and the State will restrict Contractor's access to such data. Contractor will enter into a business associate agreement (BAA) if Contractor will require access to PHI to perform Contract Activities (see Attachment A).

C. PROJECT PLAN. Within 10 calendar days of the Effective Date (or later if the State Program Manager so authorizes), Contractor must submit a final project plan to the State Program Manager for review and approval. The final project plan must include: (a) the Contractor's organizational chart with names and title of personnel assigned to the project, which must align with the staffing stated in Contractor's bid, and contain such detail as specified by the State; and (b) the project breakdown showing sub-projects, tasks, critical milestones, project deliverables, and resources required.

D. PERSONNEL. Contractor's Key Personnel:

1. Are directly responsible for the day-to-day operations of the Contract.
2. Must be specifically assigned to the State account, be knowledgeable on the contractual requirements, and respond to State inquiries within one business day.
3. Must be on-site at each SVH as necessary to accomplish the Contract Activities.
4. Must have a minimum of 5 years' experience with successful retention of Medicare/Medicaid certification and 5 years' experience in consulting with a specialty in working with Medicare/Medicaid compliance requirements in a long term care facility setting.
5. Must assure that on-site, adequate, competent supervision is accessible to Contractor's staff assigned to this Contract at all times.
6. Must be dedicated to the Contract Activities for the Contract's duration.
7. Must not be removed by Contractor 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 Removal does not include replacing Key Personnel for reasons beyond the reasonable control of Contractor, including illness, disability, leave of absence, personal emergency circumstances, resignation or for-cause termination of the Key Personnel's employment.
8. The State reserves the right to refuse admission to any of its facilities or programs to any member of Contractor's staff who fails to maintain proper credentialing, fails to meet applicable state, federal, or industry standards of care and practice or who may compromise the security of the facilities and staff.

E. MEETINGS. Contractor and Key Personnel must attend the following meetings:

1. In-person kick-off meeting with MVHS identified stakeholders within one week of Effective Date.
2. Weekly meetings via videoconference or telephone with MVHS Project Manager or identified MVHS stakeholders.
3. Either party may request additional meetings as it deems appropriate in order to successfully manage the ongoing activities for this project.

F. REPORTING. All reports must be provided to the State Program Manager and the State Contract Administrator. The State may require more frequent reporting if, in the sole discretion of the State Program Manager, it is deemed necessary or appropriate under the circumstances. All reports and Contract Activities must be in an electronic format approved by the State Program Manager.

1. **Monthly reports:** Contractor must provide detailed reports including proposed timetables and updates on the status of Contract Activities on a monthly basis in Word, Excel, etc. Contractor must provide a monthly service activity report to the State Program Manager by the 15th of each month. It must include: a narrative report describing progress on the Contract's activities.
2. **Templates:** Contractor must work with the State Program Manager or other designated staff to design templates for all deliverables, including status reports, issue tracking, and other project documents. The template designs are critical to ensuring that the deliverables and other project documents are in a format agreed to by the State Program Manager. Contractor must have sufficient technological capability to accurately record, develop and electronically submit reports on all required Contract Activities.
3. **Final report:** A cumulative final report (aka, Comprehensive After Action Report) is due 15 days before the end of the Contract term. Any challenges or deviations from the approved project plan shall be included in the comprehensive after action report.
4. **IT system:** Contractor must maintain an IT system in cooperation with the State. If Contractor utilizes outside IT system, it must be compatible with the State. This system is to include collecting basic demographic data about the users of the service provided and other important data such as: source of training curriculum, employee pre-posttest, duration of planning/executing etc., as agreed to by MVHS and the grantee(s). For the purposes of this project, the Contractor will utilize the State's pre-identified learning management system.

G. DELIVERABLES

The following deliverables ("Deliverables") prepared by Contractor hereunder shall constitute Contract Activities subject to Section 17 (Acceptance) of the Contract:

Description	Tasks
Deliverable 1: Assess, Plan, and Quick Wins	Task 1: Project Plan Task 2: Quick Wins Strategy Task 3: Landscape Analysis Task 4: Recommendations and Insight Report
Deliverable 2: Training Design	Task 1: Develop Training Plan Task 2: Create Training Task 3: Develop Communications Plan Task 4: Develop Training Content and Delivery Materials
Deliverable 3: Pilot and Deliver Training	Task 1: Plan Task 2: Deliver Training
Deliverable 4: Monitor and Evaluate	Task 1: Monitor Task 2: Evaluate Task 3: Comprehensive After Action Report

The parties will document in writing mutually agreeable acceptance criteria and procedures that will apply to the above Deliverables.

H. MISCELLANEOUS

1. Contractor operates under the direction of the State Program Manager.
2. Contractor's staff may be required to work on-site or attend meetings at the MVAA office location at the Phoenix Building located at 222 Washington Square North, 5th Floor in Lansing, MI or at either of the SVHs. When business needs allow and after obtaining approval, contractor staff may also complete some work remotely.
3. Meeting locations will be determined by the State Program Manager.
4. Contractor's toll-free telephone number is 877-889-9009. Contractor's representative must be available for calls during the hours of 8 am to 5 pm EST.
5. Contractor must provide Contract Activities during the State's normal working hours Monday – Friday 7:00 a.m. to 6:00 p.m. EST, and possible night and weekend hours depending on the requirements of the project.
6. Contractor may not have subcontractors lead this project; however, the contractor may identify approved subject matter advisors that can help inform the project.
7. The authorizing document for the Contract will be a purchase order for authorized fixed costs.
8. Invoices must include: (a) date; (b) purchase order number; (c) quantity; (d) description of the Contract Activities; (e) unit price; (f) shipping cost (if any); and (g) total price. Overtime, holiday pay, and travel expenses will not be paid.
9. Contractor must notify the Contract Administrator and State Program Manager at least 10 business days before redeploying non-Key Personnel who are dedicated to primarily to the Contract Activities 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.
10. Contractor will protect Confidential Information and State Data as provided in the Contract.
11. The State will be responsible for obtaining any consent required for Contractor's use of any third party products provided by the State or for Contractor's access to State Data, to the extent necessary for Contractor to perform its obligations hereunder. This requirement shall not apply to third party products or subcontractors provided by Accenture.
12. The State will provide any software and hardware (e.g., applicable learning management system access) necessary for Contractor to perform its obligations under the Contract except that Contractor will provide its own laptop computers for its personnel with standard Microsoft Office applications loaded.
13. The State acknowledges that Contractor's performance of the Contract is dependent, in part, on the State's prompt and effective performance of its responsibilities, including availability of resources, timely decisions and timely approvals. Contractor will have no liability with respect to its inability to perform the Contract Activities resulting from the State's failure to perform.
14. The State will be responsible for determining if and how it will use and implement Contract Activities and whether the Contract Activities, including any revised processes implemented pursuant to this Contract, meet the State's requirements and applicable internal guidelines and long-term goals.

STATE OF MICHIGAN

Request For Proposal No. 051116B0008896
Turnaround Specialist Services

SCHEDULE B PRICING MATRIX

PRICING MATRIX

1. The Contractor will provide a detailed breakdown on the attached pricing sheet for the compensation proposed, e.g., hourly rates, number of proposed hours per task, unit prices, cost per task, cost per deliverable, etc. If Contractor will be reimbursed for any other expenses, describe them and any cost limits in this section. The Contractor will not be reimbursed for travel expenses, including hotel, mileage, meals, parking, etc. The Contractor is required to break down costs by acceptance of deliverables, time periods, invoicing, labor vs. non-labor, etc. as appropriate to the subject of the SOW and deliverables.
2. The Contractor is encouraged to offer quick payment terms. The number of days must not include processing time for payment to be received by the Contractor's financial institution.

Quick payment terms: 0.75 % discount off invoice if paid within 15 days after receipt of invoice.

3. By submitting its proposal, the Contractor certifies that the prices were arrived at independently, and without consultation, communication, or agreement with any other Contractor.

The following table represents the deliverable billing points and fixed price for each set of deliverables.
IMPORTANT INFORMATION: Bidder must include a break-down of proposed staff, title, est # of hours per staff member, hourly wage by staff member, and a proposed fixed price total cost by line item (see sample attached). Bidder shall provide a separate project plan and pricing sheet for the DJJHV and the GRHV location.

This is a proposed example of each deliverable requirement and list of tasks associated with each deliverable. Contractor may choose to utilize an alternate format.

Description	Proposed Cost/Price
Deliverable 1: Assess, Plan, and Quick Wins <i>Please note, this overarching deliverable also includes underpinning program management support, applicable tasks e.g., weekly status report and communication plan are assumed within the overall deliverable. There are a number of supporting activities that are outlined in the Preliminary Project Plan</i>	\$124,600
Task 1: Project Plan	\$31,150
Task 2: Quick Wins Strategy	\$31,150
Task 3: Landscape Analysis	\$31,150
Task 4: Recommendations and Insight Report	\$31,150
Deliverable 2 :Training Design <i>Please note, this overarching deliverable also includes underpinning program management support, applicable tasks e.g., weekly status report and communication plan are assumed within the overall deliverable. There are a number of supporting activities that are outlined in the Preliminary Project Plan</i>	\$249,200
Task 1: Develop Training Plan	\$62,300
Task 2: Create Training	\$62,300

SCHEDULE B PRICING MATRIX
 Contract No. 511B6600072

Task 3: Develop Communications Plan	\$62,300
Task 4: Develop Training Content and Delivery Materials	\$62,300
Deliverable 3: Pilot and Deliver Training <i>Please note, this overarching deliverable also includes underpinning program management support, applicable tasks e.g., weekly status report and communication plan are assumed within the overall deliverable. There are a number of supporting activities that are outlined in the Preliminary Project Plan</i>	\$186,900
Task 1: Plan and Conduct Training Pilot	\$93,450
Task 2: Deliver Training	\$93,450
Deliverable 4: Monitor and Evaluate <i>Please note, this overarching deliverable also includes underpinning program management support, applicable tasks e.g., weekly status report and communication plan are assumed within the overall deliverable. There are a number of supporting activities that are outlined in the Preliminary Project Plan</i>	\$62,300
Task 1: Monitor	\$20,767
Task 2: Evaluate	\$20,767
Task 3: Comprehensive After Action Report	\$20,766
TOTAL PROPOSED BID PRICE	\$623,000

SCHEDULE B PRICING MATRIX
 Contract No. 511B6600072

Labor Category	Proposed Staff	Schedule Hourly Rate	Deliverable 1		Deliverable 2		Deliverable 3		Deliverable 4	
			Hours	Total Price						
Account Leadership	Gary Glickman	\$400	11	\$4,400	24	\$9,600	44	\$17,600	6	\$2,400
Project Manager	Joseph Kenney	\$310	160	\$49,600	320	\$99,200	240	\$74,400	80	\$24,800
Training Lead	Allison Fisher	\$300	104	\$31,200	208	\$62,400	156	\$46,800	52	\$15,600
Business Consultant	TBC Business Consultant	\$243	160	\$38,896	320	\$77,792	80	\$19,448	0	0
Junior Subject Matter Advisor	Maggie Pollard	\$300	8	\$2,400	16	\$4,800	12	\$3,600	4	\$1,200
Subject Matter Advisor	Philip Poley	\$450	2	\$900	0	0	0	0	0	0
Subject Matter Advisor	Marjorie Boaegart	\$450	2	\$900	0	0	0	0	0	0
Subject Matter Advisor	Kristin Thorn	\$450	2	\$900	0	0	0	0	0	0
Training Developer Lead	Sumana Dey *offshore Accenture employee	\$90	0	0	160	\$14,400	20	\$1,800	0	0
Training Developer	TBC Training Developer *offshore Accenture employee	\$50	0	0	320	\$16,000	40	\$2,000	0	0

Please note: The scheduled hourly Management Consulting rates reflected above are specific to this project; subsequent work orders and/or deliverables may require negotiation. At project start, Accenture can work with MVHS to develop unique project plans and pricing sheet for the DJJHV and the GRHV location.



STATE OF MICHIGAN

STANDARD CONTRACT TERMS

This STANDARD CONTRACT (“**Contract**”) is agreed to between the State of Michigan (the “**State**”) and Accenture LLP. (“**Contractor**”), an Illinois partnership. This Contract is effective on September 29, 2016 (“**Effective Date**”), and unless terminated, expires on September 30, 2017.

This Contract may be renewed for up to two (2) additional one (1) year periods. Renewal is at the sole discretion of the State and will automatically extend the Term of this Contract. The State will document its exercise of renewal options via Contract Change Notice.

The parties agree as follows:

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

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

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

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

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

If to State:	If to Contractor:
Kerri L. Bielski Grand Rapids Home for Veterans 3000 Monroe Ave NE, Grand Rapids, MI 49505 BielskiK@michigan.gov	Kathleen “Lisa” Cawley Accenture LLP 3000 Town Center, Ste 2400 Southfield, MI 48075 kathleen.cawley@accenture.com

(616) 364-5327	(859) 248-1187
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3. **Contract Administrator.** The Contract Administrator for each party is the only person authorized to modify any terms of this Contract, and approve and execute any change under this Contract (each a “**Contract Administrator**”):

State:	Contractor:
Kerri L. Bielski Grand Rapids Home for Veterans 3000 Monroe Ave NE, Grand Rapids, MI 49505 BielskiK@michigan.gov (616) 364-5327	Gary Glickman Accenture LLP 800 North Glebe Road, Suite 300 Arlington, VA 22203 gary.glickman@accenture.com (301) 520-6356

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

State:	Contractor:
Dawne Velianoff, LMSW, MUP Michigan Veteran Health System 3000 Monroe Ave NE, Grand Rapids, MI 49505 VelianoffD@michigan.gov (517) 243-5878	Joseph Kenney Accenture LLP 1345 Avenue of the Americas, New York, NY 10105joseph.kenney@accenture.com (917) 452-3945

5. **Performance Guarantee.** Contractor must at all times have financial resources sufficient, in the opinion of the State, to ensure performance of the Contract and must provide financial reports demonstrating such sufficiency upon request.
6. **Insurance Requirements.** Contractor must maintain the insurances identified below and is responsible for all deductibles. All required insurance must: (a) protect the State from claims that result from Contractor's or a subcontractor's performance; and (b) be provided by a company with an A.M. Best rating of "A -" or better, and a financial size of VII or better.

7.

Required Limits	Additional Requirements
Commercial General Liability Insurance	
<u>Minimal Limits:</u> \$1,000,000 Each Occurrence Limit \$1,000,000 Personal & Advertising Injury Limit \$2,000,000 General Aggregate Limit \$2,000,000 Products/Completed Operations	Contractor must have a blanket/automatic additional insured endorsement or have their policy endorsed to add "the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees, and agents" as additional insureds using endorsement CG 20 10 11 85, or both CG 2010 07 04 and CG 2037 07 0.
Umbrella or Excess Liability Insurance	
<u>Minimal Limits:</u> \$5,000,000 General Aggregate	Contractor must have their policy endorsed to add "the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees, and agents" as additional insureds.
Automobile Liability Insurance	
<u>Minimal Limits:</u> \$2,000,000 Per Occurrence	Contractor must have a blanket/automatic additional insured endorsement or have their policy: (1) endorsed to add "the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees, and agents" as additional insureds; and (2) include Hired and Non-Owned Automobile coverage.
Workers' Compensation Insurance	
<u>Minimal Limits:</u> Coverage according to applicable laws	Waiver of subrogation, except where waiver is prohibited by law.

governing work activities.	
Employers Liability Insurance	
<u>Minimal Limits:</u> \$500,000 Each Accident \$500,000 Each Employee by Disease \$500,000 Aggregate Disease.	
Professional Indemnity Insurance	
<u>Limits:</u> <u>\$3,000,000 Per Claim</u> <u>\$3,000,000 Aggregate</u>	Professional Indemnity including cyber liability coverage. Such coverage shall address supplier's liability in the performance of services under the contract for: (1) unauthorized access or use of a computer system or network; (2) denial of service attacks; (3) receipt or transmission of malicious code; (4) failure to protect confidential, personal or corporate information; (5) wrongful collection of confidential, personal or corporate information; and, (6) violation of privacy laws, statutes or regulations in connection with an event described in (4) or (5).

If any of the required policies provide **claims-made** coverage, the Contractor must: (a) provide coverage with a retroactive date before the effective date of the contract or the beginning of Contract Activities; and (b) maintain coverage and provide evidence of coverage for at least three (3) years after completion of the Contract Activities.

Contractor must: (a) provide insurance certificates to the Contract Administrator, containing the agreement or purchase order number, at Contract formation and within 20 calendar days of the expiration date of the applicable policies; and (b) notify the Contract Administrator within 5 business days if any insurance is cancelled. Failure to maintain the required insurance does not limit this waiver.

This Section is not intended to and is not be construed in any manner as waiving, restricting, expanding, or limiting the liability of either party for any obligations under this Contract (including any provisions hereof requiring Contractor to indemnify, defend and hold harmless the State).

8. Reserved.

9. Reserved.

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

11. Intellectual Property. Upon the delivery of any Contract Activities and the State's payment for same, Contractor automatically grants to the State a perpetual, irrevocable, nontransferable, non-exclusive, royalty-free, paid-up right and license to use, copy, modify and prepare derivative works of said Contract Activities, for purposes of the State's internal or governmental purposes. All other intellectual property rights in the Contract Activities remain in and/or are assigned to Contractor. The State will have no rights in any Contractor intellectual property existing prior to commencement of Contractor's performance of the relevant Contract Activities, or developed outside the scope of such Contract Activities, that are proprietary to Contractor or to third parties.

12. Staffing. The State's Contract Administrator may require Contractor to remove or reassign personnel by providing a notice to Contractor detailing the lawful basis for such removal.

13. Background Checks. Upon request, Contractor must perform background checks on all employees and subcontractors and its employees prior to their assignment. The scope is at the discretion of the State and documentation from Contractor certifying that each assigned resource has passed all required background checks must be provided as requested. Contractor is responsible for all costs associated with the requested background checks.

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

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

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

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

17. Acceptance. Contract Activities are subject to inspection and testing by the State within fourteen (14) calendar days of the State's receipt of them ("**State Review Period**"), unless otherwise provided in Schedule A. Contract Activities will be deemed accepted if State does not reject Contract Activities by providing written notice within the State Review Period after delivery specifically identifying the manner in which Contract Activities fail to materially comply with their applicable specifications. If the Contract Activities are not fully accepted by the State, the State will notify Contractor by the end of the State Review Period that either: (a) the Contract Activities are accepted, but noted deficiencies must be corrected; or (b) the Contract Activities are rejected. If the State finds material deficiencies, it may: (i) reject the Contract Activities without performing any further inspections; (ii) demand performance at no additional cost; or (iii) terminate this Contract in accordance with Section 24, Termination for Cause.

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

If Contractor is unable or refuses to correct the deficiency within the time response standards set forth in this

Contract, the State may cancel the Contract. The State, or a third party identified by the State, may perform the Contract Activities and recover the difference between the cost to cure and the Contract price plus an additional 10% administrative fee.

18. Reserved.

19. Reserved.

20. Reserved.

21. Terms of Payment. Invoices must conform to the requirements communicated from time-to-time by the State. All undisputed amounts are payable within 45 days of the State's receipt. Contractor may only charge for Contract Activities performed as specified in Schedule A. Invoices must include an itemized statement of all charges. The State is exempt from State sales tax for direct purchases and may be exempt from federal excise tax, if Services purchased under this Agreement are for the State's exclusive use. Notwithstanding the foregoing, all prices are inclusive of taxes, and Contractor is responsible for all sales, use and excise taxes, and any other similar taxes, duties and charges of any kind imposed by any federal, state, or local governmental entity on any amounts payable by the State under this Contract.

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

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

Without prejudice to any other right or remedy it may have, the State reserves the right to set off at any time any amount then due and owing to it by Contractor against any amount payable by the State to Contractor under this Contract; provided the State raises a dispute in accordance with Section 48 (Dispute Resolution).

22. Liquidated Damages. Liquidated damages, if applicable, will be assessed as described in Schedule A.

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

24. Termination for Cause. The State may terminate this Contract for cause if Contractor, as reasonably determined by the State: (a) endangers the value integrity, or security of any State location, data, or personnel; (b) becomes insolvent, petitions for bankruptcy court proceedings, or has an involuntary bankruptcy proceeding filed against it by any creditor; (c) engages in any conduct that may expose the State to liability; (d) breaches any of its material duties or obligations and fails to cure such breach within thirty (30) days from written notice of breach, or (e) commits multiple breaches of its obligations under this Contract which the State determines constitutes a material breach and are not all cured within fifteen (15) days following receipt of written notice of such material breach (provided, that additional individual breaches by Contractor after the initial cure will immediately result in termination for cause without any cure period). Any reference to specific breaches being material breaches within this Contract will not be construed to mean that other breaches are not material.

If the State terminates this Contract under this Section, the State will issue a termination notice specifying whether Contractor must: (a) cease performance immediately, or (b) continue to perform for a specified period, subject to the preceding paragraph. If it is later determined that Contractor was not in breach of the Contract, the termination will be deemed to have been a Termination for Convenience, effective as of the same date, and the rights and obligations of the parties will be limited to those provided in Section 25, Termination for Convenience.

If the State terminates this Contract under this Section 24, the State will only pay for amounts due to Contractor for Contract Activities accepted by the State on or before the date of termination, subject to the State's right to set off any amounts owed by the Contractor for the State's reasonable costs in terminating this Contract. The Contractor must pay all reasonable costs incurred by the State in terminating this Contract for cause, including administrative costs, attorneys' fees, court costs, transition costs, and any costs the State incurs to procure the Contract Activities from other sources

25. Termination for Convenience. Upon no less than fifteen (15) days written notice, the State may immediately terminate this Contract in whole or in part without penalty and for any reason, including but not limited to, appropriation or budget shortfalls. The termination notice will specify whether Contractor must: (a) cease performance of the Contract Activities immediately, or (b) continue to perform the Contract Activities in accordance with Section 26, Transition Responsibilities. If the State terminates this Contract for convenience, the State will pay all amounts due to Contractor for Contract Activities completed by Contractor on or before the date of termination, all reasonable costs, as determined by the State, for State approved Transition Responsibilities.

26. Transition Responsibilities. Upon termination or expiration of this Contract for any reason, Contractor must, for a period of time specified by the State (not to exceed 90 calendar days), provide all reasonable transition assistance requested by the State, to allow for the expired or terminated portion of the Contract Activities to continue without interruption or adverse effect, and to facilitate the orderly transfer of such Contract Activities to the State or its designees. Such transition assistance may include, but is not limited to: (a) continuing to perform the Contract Activities at the established Contract rates; (b) taking all reasonable and necessary measures to transition performance of the work, including all applicable Contract Activities, training, equipment, software, leases, reports and other documentation, to the State or the State's designee; (c) taking all necessary and appropriate steps, or such other action as the State may direct, to preserve, maintain, protect, or return to the State all materials, data, property, and confidential information provided directly or indirectly to Contractor by any entity, agent, vendor, or employee of the State; (d) transferring title in and delivering to the State, at the State's discretion, all completed or partially completed deliverables prepared under this Contract as of the Contract termination date; and (e) preparing an accurate accounting from which the State and Contractor may reconcile all outstanding accounts (collectively, "**Transition Responsibilities**"). This Contract will automatically be extended through the end of the transition period.

27. General Indemnification. Contractor must defend, indemnify and hold the State, its departments, divisions, agencies, offices, commissions, officers, and employees harmless, without limitation, from and against any and all third party actions, claims, losses, liabilities, damages, costs, attorney fees, and expenses (including those required to establish the right to indemnification), arising out of or relating to: (a) any breach by Contractor (or any of Contractor's employees, agents, subcontractors, or by anyone else for whose acts any of them may be liable) of any of the promises, agreements, representations, warranties, or insurance requirements contained in this Contract; (b) any infringement, misappropriation, or other violation of any intellectual property right or other right of any third party, subject to Section 28 (Infringement Remedies); (c) any bodily injury, death, or damage to real or tangible personal property caused by the negligence or willful misconduct of Contractor (or any of Contractor's employees, agents, subcontractors, or by anyone else for whose acts any of them may be liable); and (d) any acts or omissions of Contractor (or any of Contractor's employees, agents, subcontractors, or by anyone else for whose acts any of them may be liable) in performance of its obligations hereunder.

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

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

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

28. Infringement Remedies. If, in either party's opinion, any piece of equipment, software, commodity, or service supplied by Contractor or its subcontractors, or its operation, use or reproduction, is likely to become the subject of a copyright, patent, trademark, or trade secret infringement claim, Contractor must, at its expense: (a) procure for the State the right to continue using the equipment, software, commodity, or service, or if this option is not reasonably available to Contractor, (b) replace or modify the same so that it becomes non-infringing; or (c) accept its return by the State with appropriate credits to the State against Contractor's charges and reimburse the State for any losses or costs incurred as a consequence of the State ceasing its use and returning it. The foregoing remedies constitute The State's sole and exclusive remedies and Contractor's entire liability with respect to infringement. Contractor will not indemnify the State, however, if the claim of infringement is caused by: (a) The State's modification of the Deliverable or use of the Deliverable other than as contemplated by this Agreement; (b) The State's failure to use corrections or enhancements made available by Contractor; or (c) The State's use of the Deliverable in combination with any product or information not owned or developed by Contractor.

29. Limitation of Liability. . Neither party shall be liable for consequential, incidental, indirect or special damages, regardless of the nature of the action.

IN NO EVENT WILL EITHER PARTY'S AGGREGATE LIABILITY TO THE OTHER PARTY UNDER THIS CONTRACT, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY OR BY STATUTE OR OTHERWISE, FOR ANY CLAIM RELATED TO OR ARISING UNDER THIS CONTRACT, EXCEED THE MAXIMUM AMOUNT OF FEES SPECIFIED IN THE STATEMENT OF WORK.

Exceptions: The Limitation of Liability above shall not apply to: (i.) Contractor's obligation to indemnify under Sections 27(b), (27(c), and 28 of this Contract or (ii) damages arising from either party's gross negligence or intentional misconduct.

30. Disclosure of Litigation, or Other Proceeding. Contractor must notify the State within 14 calendar days of receiving notice of any litigation, investigation, arbitration, or other proceeding (collectively, "**Proceeding**") involving Contractor, a subcontractor, or an officer or director of Contractor or subcontractor, that arises during the term of the Contract, including: (a) a criminal Proceeding; (b) a parole or probation Proceeding; (c) a Proceeding under the Sarbanes-Oxley Act; (d) a civil Proceeding involving: (1) a claim that might reasonably be expected to adversely affect Contractor's viability or financial stability; or (2) a governmental or public entity's claim or written allegation of fraud; or (e) a Proceeding involving any license that Contractor is required to possess in order to perform under this Contract.

31. Reserved.

32. State Data.

a. Ownership. The State's data ("State Data," which will be treated by Contractor as Confidential Information) includes: (a) the State's data collected, used, processed, stored, or generated as the result of the Contract Activities; (b) personally identifiable information ("PII") collected, used, processed, stored, or generated as the result of the Contract Activities, including, without limitation, any information that identifies an individual, such as an individual's social security number or other government-issued identification number, date of birth, address, telephone number, biometric data, mother's maiden name, email address, credit card information, or an individual's name in combination with any other of the elements here listed; and, (c) personal health information ("PHI") collected, used, processed, stored, or generated as the result of the Contract Activities, which is defined

under the Health Insurance Portability and Accountability Act (HIPAA) and its related rules and regulations. State Data is and will remain the sole and exclusive property of the State and all right, title, and interest in the same is reserved by the State. This Section survives the termination of this Contract.

b. **Contractor Use of State Data.** Contractor is provided a limited license to State Data for the sole and exclusive purpose of providing the Contract Activities, including a license to collect, process, store, generate, and display State Data only to the extent necessary in the provision of the Contract Activities. Contractor must: (a) keep and maintain State Data in strict confidence, using such degree of care as is appropriate and consistent with its obligations as further described in this Contract and applicable law to avoid unauthorized access, use, disclosure, or loss; (b) use and disclose State Data solely and exclusively for the purpose of providing the Contract Activities, such use and disclosure being in accordance with this Contract, any applicable Statement of Work, and applicable law; and (c) not use, sell, rent, transfer, distribute, or otherwise disclose or make available State Data for Contractor's own purposes or for the benefit of anyone other than the State without the State's prior written consent. This Section survives the termination of this Contract.

c. **Extraction of State Data.** Contractor must, within five (5) business days of the State's request, provide the State, without charge and without any conditions or contingencies whatsoever (including but not limited to the payment of any fees due to Contractor), an extract of the State Data in the format specified by the State.

d. **Backup and Recovery of State Data.** Unless otherwise specified in Schedule A, Contractor is responsible for maintaining a backup of State Data and for an orderly and timely recovery of such data. Unless otherwise described in Schedule A, Contractor must maintain a contemporaneous backup of State Data that can be recovered within two (2) hours at any point in time.

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

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

a. **Meaning of Confidential Information.** For the purposes of this Contract, the term "**Confidential Information**" means all information and documentation of a party that: (a) has been marked

“confidential” or with words of similar meaning, at the time of disclosure by such party; (b) if disclosed orally or not marked “confidential” or with words of similar meaning, was subsequently summarized in writing by the disclosing party and marked “confidential” or with words of similar meaning; or (c) should reasonably be recognized as confidential information of the disclosing party under the circumstances. The term “Confidential Information” does not include any information or documentation that was: (a) subject to disclosure under the Michigan Freedom of Information Act (FOIA); (b) already in the possession of the receiving party without an obligation of confidentiality; (c) developed independently by the receiving party, as demonstrated by the receiving party, without violating the disclosing party’s proprietary rights; (d) obtained from a source other than the disclosing party without an obligation of confidentiality; or, (e) publicly available when received, or thereafter became publicly available (other than through any unauthorized disclosure by, through, or on behalf of, the receiving party). For purposes of this Contract, in all cases and for all matters, State Data is deemed to be Confidential Information.

- b. Obligation of Confidentiality. The parties agree to hold all Confidential Information in confidence and not to copy, reproduce, sell, transfer, or otherwise dispose of, give or disclose such Confidential Information to third parties other than employees, agents, or subcontractors of a party who have a need to know in connection with this Contract or to use such Confidential Information for any purposes whatsoever other than the performance of this Contract. The parties agree to advise and require their respective employees, agents, and subcontractors of their obligations to keep all Confidential Information confidential. Disclosure to a subcontractor is permissible where: (a) use of a subcontractor is authorized under this Contract; (b) the disclosure is necessary or otherwise naturally occurs in connection with work that is within the subcontractor's responsibilities; and (c) Contractor obligates the subcontractor in a written contract to maintain the State's Confidential Information in confidence. At the State's request, any employee of Contractor or any subcontractor may be required to execute a separate agreement to be bound by the provisions of this Section.
- c. Cooperation to Prevent Disclosure of Confidential Information. Each party must assist the other party in identifying and preventing any unauthorized use or disclosure of any Confidential Information. Without limiting the foregoing, each party must advise the other party immediately in the event either party learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this Contract and each party will cooperate with the other party in seeking injunctive or other equitable relief against any such person.
- d. Remedies for Breach of Obligation of Confidentiality. Each party acknowledges that breach of its obligation of confidentiality may give rise to irreparable injury to the other party, which damage may be inadequately compensable in the form of monetary damages. Accordingly, a party may seek from a court of competent jurisdiction injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies which may be available, to include, in the case of the State, at the sole election of the State, the immediate termination, without liability to the State, of this Contract or any Statement of Work corresponding to the breach or threatened breach.
- e. Surrender of Confidential Information upon Termination. Upon termination of this Contract or a Statement of Work, in whole or in part, each party must, within 5 calendar days from the date of termination, return to the other party any and all Confidential Information received from the other party, or created or received by a party on behalf of the other party, which are in such party's possession, custody, or control; provided, however, that Contractor must return State Data to the State following the timeframe and procedure described further in this Contract. Should Contractor or the State determine that the return of any Confidential Information is not feasible, such party must destroy the Confidential Information and must certify the same in writing within 5 calendar days from the date of termination to the other party. However, the State's legal ability to destroy Contractor data may be restricted by its retention and disposal schedule, in which case Contractor's Confidential Information will be destroyed after the retention period expires.

34. Reserved.

35. Reserved.

36. Reserved.

37. Records Maintenance, Inspection, Examination, and Audit. The State or its designee may audit Contractor to verify compliance with this Contract. Contractor must retain, and provide to the State or its designee and the

auditor general upon request, all financial and accounting records related to the Contract through the term of the Contract and for 4 years after the latter of termination, expiration, or final payment under this Contract or any extension (“**Audit Period**”). If an audit, litigation, or other action involving the records is initiated before the end of the Audit Period, Contractor must retain the records until all issues are resolved.

Within 10 calendar days of providing notice, the State and its authorized representatives or designees have the right to enter and inspect Contractor's premises or any other places where Contract Activities are being performed, and examine, copy, and audit all records related to this Contract, Contractor must cooperate and provide reasonable assistance. If any financial errors are revealed, the amount in error must be reflected as a credit or debit on subsequent invoices until the amount is paid or refunded. Any remaining balance at the end of the Contract must be paid or refunded within 45 calendar days. Any audit required by the State shall be conducted in a manner to reasonably avoid interference with Contractor's operations. In no event shall a direct competitor of Contractor (as identified by the Contractor in advance of the audit) be retained by the State to conduct such audit.

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

- 38. Representations.** Contractor represents: (a) Contractor is the owner or licensee of any Contract Activities that it licenses, sells, or develops and Contractor has the rights necessary to convey title, ownership rights, or licensed use; (b) all Contract Activities are delivered free from any security interest, lien, or encumbrance and will continue in that respect;(c) the Contract signatory has the authority to enter into this Contract; (d) all information furnished by Contractor in connection with the Contract fairly and accurately represents Contractor's business, properties, finances, and operations as of the dates covered by the information, and Contractor will inform the State of any material adverse changes; and (e) all information furnished and representations made in connection with the award of this Contract is true, accurate, and complete, and contains no false statements or omits any fact that would make the information misleading. A breach of this Section is considered a material breach of this Contract, which entitles the State to terminate this Contract under Section 24, Termination for Cause.

THE WARRANTIES IN THIS AGREEMENT ARE CONTRACTOR'S ONLY EXPRESS WARRANTIES CONCERNING THE SERVICES, ANY DELIVERABLES AND ANY WORK PRODUCT, AND ARE MADE EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES AND REPRESENTATIONS, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY, INFORMATIONAL CONTENT, SYSTEMS INTEGRATION, INTERFERENCE WITH ENJOYMENT OR OTHERWISE.

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

- 40. Compliance with Laws.** Contractor must comply with all federal, state and local laws, rules and regulations applicable to Contractor as a provider of consulting Services. The State shall at all times comply with all federal, state and local laws, rules and regulations applicable to it as a governmental entity. Contractor is not providing any legal advice under this Contract. Without limiting the foregoing, Contractor is not warranting or certifying that the implementation of specific technology or processes will ensure State's compliance with applicable laws. While Contractor personnel working on this Contract may be familiar with the general regulatory environment in their capacity as information-technology and management-consulting professionals, they will work under the direction of State and its legal counsel regarding the specific legal and regulatory requirements under which State operates.

41. Reserved.

42. Reserved.

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

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

45. Governing Law. This Contract is governed, construed, and enforced in accordance with Michigan law, excluding choice-of-law principles, and all claims relating to or arising out of this Contract are governed by Michigan law, excluding choice-of-law principles. Any dispute arising from this Contract must be resolved in Michigan Court of Claims. Contractor consents to venue in Ingham County, and waives any objections, such as lack of personal jurisdiction or *forum non conveniens*. Contractor must appoint agents in Michigan to receive service of process.

46. Non-Exclusivity. Nothing contained in this Contract is intended nor will be construed as creating any requirements contract with Contractor. This Contract does not restrict the State or its agencies from acquiring similar, equal, or like Contract Activities from other sources.

47. Force Majeure. Neither party will be in breach of this Contract because of any failure arising from any disaster or acts of God that are beyond their control and without their fault or negligence. Each party will use commercially reasonable efforts to resume performance. Contractor will not be relieved of a breach or delay caused by its subcontractors. If immediate performance is necessary to ensure public health and safety, the State may immediately contract with a third party.

48. Dispute Resolution. The parties will endeavor to resolve any Contract dispute in accordance with this provision. The dispute will be referred to the parties' respective Contract Administrators or Program Managers. Such referral must include a description of the issues and all supporting documentation. The parties must submit the dispute to a senior executive if unable to resolve the dispute within 15 business days. The parties will continue performing while a dispute is being resolved, unless the dispute precludes performance. A dispute involving payment does not preclude performance.

Litigation to resolve the dispute will not be instituted until after the dispute has been elevated to the parties' senior executive and either concludes that resolution is unlikely, or fails to respond within 15 business days. The parties are not prohibited from instituting formal proceedings: (a) to avoid the expiration of statute of limitations period; (b) to preserve a superior position with respect to creditors; or (c) where a party makes a determination that a temporary restraining order or other injunctive relief is the only adequate remedy. This Section does not limit the State's right to terminate the Contract.

49. Media Releases. News releases (including promotional literature and commercial advertisements) pertaining to the Contract or project to which it relates must not be made without prior written State approval, and then only in accordance with the explicit written instructions of the State.

50. Website Incorporation. The State is not bound by any content on Contractor's website unless expressly incorporated directly into this Contract.

51. Entire Agreement and Order of Precedence. This Contract, which includes Schedule A – Statement of Work, and expressly incorporated schedules and exhibits, is the entire agreement of the parties related to the Contract Activities. This Contract supersedes and replaces all previous understandings and agreements between the parties for the Contract Activities. If there is a conflict between documents, the order of precedence is: (a) first,

this Contract, excluding its schedules, exhibits, and Schedule A – Statement of Work; (b) second, Schedule A – Statement of Work as of the Effective Date; and (c) third, schedules expressly incorporated into this Contract as of the Effective Date. NO TERMS ON CONTRACTOR'S INVOICES, ORDERING DOCUMENTS, WEBSITE, BROWSE-WRAP, SHRINK-WRAP, CLICK-WRAP, CLICK-THROUGH OR OTHER NON-NEGOTIATED TERMS AND CONDITIONS PROVIDED WITH ANY OF THE CONTRACT ACTIVITIES WILL CONSTITUTE A PART OR AMENDMENT OF THIS CONTRACT OR IS BINDING ON THE STATE FOR ANY PURPOSE. ALL SUCH OTHER TERMS AND CONDITIONS HAVE NO FORCE AND EFFECT AND ARE DEEMED REJECTED BY THE STATE, EVEN IF ACCESS TO OR USE OF THE CONTRACT ACTIVITIES REQUIRES AFFIRMATIVE ACCEPTANCE OF SUCH TERMS AND CONDITIONS.

52. **Severability.** If any part of this Contract is held invalid or unenforceable, by any court of competent jurisdiction, that part will be deemed deleted from this Contract and the severed part will be replaced by agreed upon language that achieves the same or similar objectives. The remaining Contract will continue in full force and effect.
53. **Waiver.** Failure to enforce any provision of this Contract will not constitute a waiver.
54. **Survival.** The provisions of this Contract that impose continuing obligations, including warranties and representations, termination, transition, insurance coverage, indemnification, and confidentiality, will survive the expiration or termination of this Contract.
55. **Contract Modification.** This Contract may not be amended except by signed agreement between the parties (a "**Contract Change Notice**"). Notwithstanding the foregoing, no subsequent Statement of Work or Contract Change Notice executed after the Effective Date will be construed to amend this Contract unless it specifically references a Section in this Contract it intends to amend.
56. **Third Party Warranties.** Contractor must assign or otherwise transfer to the State or its designee any manufacturer's warranty for the Contract Activities.

GRAND RAPIDS HOME FOR VETERANS
ADMINISTRATIVE POLICIES AND PROCEDURES

Policy Number: 01-04-B2
Policy Subject: **BUSINESS ASSOCIATES**
Effective Date: 03/05/2015
Responsible Persons: Administrator
Division Directors
Prepared/Submitted by: Sharon Gregory, Privacy Officer

Policy: It is the policy of Grand Rapids Home for Veterans to comply with member privacy rights and their individually identifiable health information as required by the health Insurance Portability and Accountability Act (HIPAA), Standards for Privacy of Individually identifiable health Information, 45 CFR Parts 160 and 164, Health Insurance Reform: Security Standards, 45 CFR Parts 160, 162, and 164, and all Federal and State regulations and their interpretive guidelines.

Purpose: To define who is a business associate to the Grand Rapids Home for Veterans.

References: Health Insurance Portability and Accountability Act, Standards for Privacy of Individually Identifiable Health Information, 45 CFR part 164, Health Insurance Reform: Security Standards, 45 CFR Parts 160, 162, and 164.

Attachments 1. Business Associate Agreement

Approved by:

Sara Dunne, Administrator

Review Date

DEFINITIONS:

Protected Health Information (PHI): Any member demographic or health related information that may be used to identify a specific member.

Electronic Protected Health Information (ePHI) – Any member demographic or health information that is created, received, maintained or transmitted by or on behalf of the Facility.

Business Associate: Any person or organization that assists GRHV in the coordination of benefits and/or service delivery.

Health Care Operations: Functions and administrative tasks of a health care entity.

Routine Access: The ability to review, inspect, use, or store member protected health information within the information system or hard copy documents and the communication of the protected health information within parameters of an approved job function.

PROCEDURE

1. Business Associates may be any person or organization that performs or assists in the performance of functions or activities that use or disclose Protected Health Information in order to carry out function on behalf of GRHV.
2. Examples of Business Associates include, but are not limited to, agency legal council, health information consultant, pharmacy consultant, transcription service, and financial auditors.
3. Business Associates are included as part of GRHV's health care operations.
4. All Business Associates must provide satisfactory assurances that member protected health information is utilized and disclosed in a manner consistent with GRHV's policies and procedures and as outlined in the Business Associate Agreement.
5. These assurances include:
 - a. Identification of the uses and disclosures of member PHI permitted under contract.
 - b. Restriction of the use and disclosures, of member PHI as outlined and permitted under contract.
 - c. Requiring the Business Associate to establish and implement safeguards to prevent use and disclosure of member PHI other than as provided for by contract.
 - d. Develop and implement a reporting process for uses and disclosures that occur outside of the contract or Business Associate Agreement.
 - e. Require the Business Associate to apply the same restrictions and conditions on use and disclosure of member PHI for any of its agents or subcontractors to whom it may forward member PHI.
 - f. Make internal practices, policies and procedures and records relating to the use and disclosure of member PHI available to the Department of Health and Human Services for the purpose of determining compliance with the HIPAA Privacy and Security Regulations.
 - g. Return, if feasible, all members PHI to GRHV upon termination of the contract and destruction of any copies of PHI. If return and/or destruction is not possible, the Business Associate will extend contractual protections to the use and disclosure of the information for the purpose that make its return or destruction impossible.
 - h. Provision for review and possible termination of the contract if the Business Associate violates the contractual provisions.

**Grand Rapids Home for Veterans
BUSINESS ASSOCIATE AGREEMENT**

DEFINITIONS

Terms use, but not otherwise defined, in this Agreement shall have the same meaning as those terms in 45 CFR 160.103, 164.306, 164.308, 164.314 and 164.501.

Business Associate [Business Associate] shall mean _____.

Covered Entity [Covered Entity] shall mean the Grand Rapids Home for Veterans (GRHV), 3000 Monroe NW, Grand Rapids, MI 49505.

Individual [Individual] shall have the same meaning as the term [individual] in 45 CFR 164.501 and shall include a person who qualifies as a personal representative in accordance with 45 CFR 164.502(g).

Privacy Rule [Privacy Rule] shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR part 160 and part 164, sub parts A and E.

Security Rule [Security Rule] shall mean Health Insurance Reform: Security Standards at 45 CFR Parts 160, 162, and 164.

Protected Health Information [PHI] shall have the same meaning as the term protected health information in 45 CFR 164.501, limited to the information created or received by Business Associate from or on behalf of GRHV.

Electronic Protected Health Information [ePHI] - Any member demographic or health information that is created, received, maintained or transmitted by or on behalf of the Facility.

Required By Law [Required By Law] shall have the same meaning as the term required by lawin 45 CFR 164.4.01.

Secretary [Secretary] shall mean the Secretary of the Department of Health and Human Services or his designee.

Obligations and Activities of Business Associate

1. Business Associate agrees to not use or further disclose PHI other than as permitted or required by the Agreement or as Required by Law.
2. Business Associate agrees to implement administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the that it creates, receives, maintains, or transmits on behalf of the covered entity as required by 164.314 (2).
3. Business Associate agrees to use appropriate safeguards to prevent use or disclosure of the PHI other than as provided by this Agreement.
4. Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate isolation of the requirements of this Agreement.
5. Business Associate agrees to report to GRHV any use or disclosure of the PHI not provided for by this Agreement or any security incident of which it becomes aware.
6. Business Associate agrees to ensure that any agent, including a subcontractor to whom it provides PHI received from or created or received by Business Associate on behalf of GRHV agrees to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such information.
7. Business Associate agrees to provide access, at the request of GRHV, and in the time and manner designated by GRHV, to PHI in a Designated Record Set to GRHV or, as directed by GRHV, to an Individual in order to meet the requirements under 45 CFR 164.524.

8. Business Associate agrees to make any amendments(s) to PHI in a Designated Record Set that the GRHV directs or agrees to pursuant to 45 CFR 164.526 at the request of GRHV or an Individual, and in the time and manner designated by GRHV.
9. Business Associate agrees to make internal practices, books, and records relating to the use and disclosure of PHI received from, or created or received by Business Associate on behalf of, GRHV available to the GRHV, or at the request of the GRHV to the Secretary, in a time and manner designated by the GRHV or the Secretary, for purposes of the Secretary determining GRHV's compliance with the Privacy and Security Rule.
10. Business Associate agrees to document such disclosures of PHI and information related to such disclosures as would be required for GRHV to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR 164.528.

Permitted Uses and Disclosures by Business Associate

General Use and Disclosure Provisions

Except as otherwise limited in this Agreement, Business Associate may use or disclose PHI on behalf of, or to provide services to, GRHV for the following purposes, as outlined in Exhibit A, if such use or disclosure of PHI would not violate the Privacy or Security Rule if done by GRHV.

Specific Use and Disclosure Provisions

1. Except as otherwise limited to this Agreement, Business Associate may use PHI for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Businesses Associate.
2. Except as otherwise limited to this Agreement, Business Associate may disclose PHI for the proper management and administration of the Business Associate, provided that disclosures are required by law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as required by law or for the purpose for which it was disclosed to the person and the person notifies the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.
3. Except as otherwise limited by this Agreement, Business Associate may use PHI to provide Data Aggregation services to GRHV as permitted by 42 CFR 164.504(e)(2)(i)(B).

Obligations of the Grand Rapids Home for Veterans

Provisions for GRHV to inform Business Associate of Privacy and Security Practices and Restrictions

1. GRHV shall provide Business Associate with the notice of privacy practices that GRHV produces in accordance with 45 CFR 164.520, as well as any changes to such notice.
2. GRHV shall provide Business Associate with any change in, or revocation or, permission by Individual to use or disclose PHI, if such changes affect Business Associates permitted or required uses and disclosures.
3. GRHV shall notify Business Associate of any restriction to the use or disclosure of PHI that GRHV has agreed to in accordance with 45 CFR 164.522.

Permissible Requests by Covered Entity

GRHV shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under the Privacy or Security Rule if done by GRHV.

Term and Termination

- a. Term. The Term of this Agreement shall be effective as of April 20, 2005, and shall terminate when all PHI provided by GRHV to Business Associate, or created or received by Business Associate on behalf of GRHV, is destroyed or returned to GRHV, or, it is unfeasible to return or destroy PHI, protections are extended to such information, in accordance with the termination provisions in this Section.

Acknowledged and agreed as of April 20, 2005.

By: _____

Sara Dunne, Administrator
Grand Rapids Home for Veterans

EXHIBIT A

This Exhibit A is made between COVERED ENTITY and BUSINESS ASSOCIATE to the Business Associate Agreement, between the parties and is hereby incorporated by reference as if repeated in its entirety within that Agreement.

For purposes of this agreement the following services are agreed to:

- For transcription services
- For coordination with outpatient therapy providers
- For Hospice services
- For data analysis
- For utilization review
- For payment activities; claims transmission
- For billing
- For quality assurance
- For practice management
- For benefit management
- For legal services representation
- For management and evaluation of temporary staff by the staffing agency
- For accounting services
- For accreditation
- For financial services
- For data processing or administration
- For consulting services
- For physician services
- For laboratory testing
- For health information services
- For pharmaceutical services
- For dental services
- For administrative functions
- For clinical services
- For patient transport
- Other _____