

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

STATE OF MICHIGAN
 DEPARTMENT OF LICENSING & REGULATORY AFFAIRS
 PROCUREMENT
 P.O. BOX 30004, LANSING, MI 48909
 OR
 611 W. OTTAWA, LANSING, MI 48933

NOTICE OF CONTRACT NO. 641B3200004
 between
THE STATE OF MICHIGAN
 and

NAME & ADDRESS OF CONTRACTOR:	PRIMARY CONTACT	EMAIL
Health Services Advisory Group, Inc. 3133 E. Camelback Road, Suite 300 Phoenix, AZ 85016-4501	Mary Ellen Dalton	mdalton@hsag.com
	TELEPHONE	CONTRACTOR #, MAIL CODE
	(734) 525-6945	

STATE CONTACTS	AGENCY	NAME	PHONE	EMAIL
CONTRACT COMPLIANCE INSPECTOR:	LARA	Karen Sage	(517) 241-6347	sagek@michigan.gov
BUYER:	Procurement	Shay Gaffey	(517) 335-1971	gaffeys@michigan.gov

CONTRACT SUMMARY:			
DESCRIPTION: DFIS Consumer Guide			
INITIAL TERM	EFFECTIVE DATE	INITIAL EXPIRATION DATE	AVAILABLE OPTIONS
Three Years	06/01/2013	05/31/2016	Two (one-year options)
PAYMENT TERMS	F.O.B	SHIPPED	SHIPPED FROM
Net 45	Destination	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:			
The terms and conditions of this contract are those of solicitation #RFP-641R3200783 and this Contract Agreement. In the event of any conflicts between the specifications, and terms and conditions, indicated by the State and those indicated by the vendor, those of the State take precedence.			
ESTIMATED CONTRACT VALUE AT TIME OF EXECUTION:			\$28,348.00

THIS IS NOT AN ORDER: This Contract Agreement is awarded on the basis of our inquiry bearing the solicitation #641R3200783.

Notice of Contract #: 641B3200004

FOR THE CONTRACTOR:

Health Services Advisory Group, Inc.

Firm Name

Mary Ellen Dalton

Authorized Agent Signature

Mary Ellen Dalton, PhD, MBA, RN - CEO

Authorized Agent (Print or Type)

5/17/13

Date

FOR THE STATE:

LeAnn Droste

Signature

LeAnn Droste, Procurement Services Director

Name/Title

Dept. Of Licensing & Regulatory Affairs

Enter Name of Agency

May 8, 2013

Date

DEFINITIONS

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DEFINITIONS

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

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

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

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

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

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

CCI means Contract Compliance Inspector.

Days means calendar days unless otherwise specified.

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

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

DTMB means the Michigan Department of Technology Management and Budget.

DIFS means the Michigan Department of Insurance and Financial Services.

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

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

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

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

LARA means the Michigan Department of Licensing and Regulatory Affairs.

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

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

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

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

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

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

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

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

SLA means Service Level Agreement.

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

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

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

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

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

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

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

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

Article 1 – Statement of Work (SOW)

NOTICE TO ALL BIDDERS: *It is the bidder's responsibility to complete each bidder response section, in each article, completely and in detail. No assumptions should be made that the State is aware of any bidder's capabilities, staffing, prior experience, past performance or any other required information. The evaluation will be based on the information submitted with the proposal according to the terms of the RFP.*

As stated in Section 3.012 of this document, Bidders are reminded that the sole point of contact concerning the RFP is the Buyer, listed on the cover page of this document, in LARA-Purchasing. Any communication by a potential Bidder in regards to this RFP with anyone other than the Buyer during the RFP process may result in disqualification and/or debarment.

Throughout this RFP, language referring to Contract or Contractor(s) refers to any Contract awarded from this RFP. This RFP in itself is not to be construed as a Contract.

1.010 Project Identification

1.011 Project Request

This is an RFP for collection and analysis of the appropriate current audited Health Employer Data Information Set (HEDIS) and Consumer Assessment of Healthcare Providers and Systems (CAHPS) data and provide quality of care information required to be included in the annual HMO consumer guide for Michigan's commercial health maintenance organizations (HMO) as required by MCL 500.3580. This is a formal request to prospective Bidders to solicit bids or price quotations. Bidders must submit written proposals according to the instructions contained within this document, discussing how they will meet the specific requirements.

Any awarded Contract(s) between the State and any awarded Contractor(s) is a separate document, whose terms are limited by Article 2.

1.012 Background

DIFS is required by Section 3580 of the Insurance Code, PA 218 of 1956, as amended, to prepare and publish an annual consumer guide including the quality of health care services provided to the citizens of Michigan by commercial HMOs [MCL 500.3580(2)(b)]. The resulting HMO consumer guide is posted to the DIFS web site and can be accessed by the employers and residents of Michigan providing access to consistent and reliable information regarding health care services provided by Michigan's commercial HMOs.

1.020 Scope of Work and Deliverables

1.021 In Scope

The Contractor shall be required to conduct the collection, validation, and analysis of each commercial HMO's current year's HEDIS performance measures and CAHPS results. Both of these data sources are nationally accepted standards used by the managed care industry to evaluate HMOs for the provision of health care services (HEDIS data) and member satisfaction (CAHPS data). The Contractor must have the technical ability and expertise to gather, analyze, validate, and produce the necessary information and data required for the annual HMO consumer guide,

The Contractor shall provide its analysis plan for addressing the requirements of MCL 500.3580(2)(b). The analysis plan may include but is not limited to addressing the following:

1. Reporting individual HMO scores for the measurements of quality care as required in MCL 500.3580(2)(b). The Contractors measuring and scoring of the requirements may include, but is not limited to the following reporting categories. Category scores shall be based on the current year's audited HEDIS and CAHPS 5.0 measures. The final listing of individual measurements may be modified to reflect measures that may have been modified, retired, or new reportable measures that have been added.
 - a. Category I - Access to Service (CAHPS)
 - i. Getting needed care (CAHPS composite)
 - ii. Getting care quickly (CAHPS composite)
 - iii. Customer Service (CAHPS composite)
 - iv. Overall rating of health plan
 - v. Call abandonment
 - vi. Call answer timelines
 - vii. Adults' Access to Preventive/Ambulatory Health Services (Ages 20-44 and 45 to 64)(Combined age groups)
 - b. Category II – Qualified Doctors
 - i. How well doctors communicate (CAHPS composite)
 - ii. Overall rating of personal doctor
 - iii. Overall rating of specialist seen most often
 - iv. Overall rating of health care
 - c. Category III - Staying Healthy (HEDIS)
 - i. Breast Cancer Screening (combined age groups)
 - ii. Cervical Cancer Screening
 - iii. Childhood Immunization Status (Combo 3)
 - iv. Chlamydia Screening in Women (combined age groups)
 - v. Colorectal Cancer Screening
 - vi. Flu Shots for Adults 50-64
 - vii. Prenatal and Postpartum Care (Timeliness of Prenatal Care)
 - viii. Prenatal and Postpartum Care (Postpartum Care)
 - ix. Well-Care Visits
 - Well-Child Visit in the First 15 Months of Life (6+ visits)
 - Well-Child Visits in the Third, Fourth, Fifth and Sixth Year of Life
 - Adolescent Well Care Visits
 - d. Category IV - Getting Better
 - i. Antibiotic Overuse and Misuse
 - Appropriate Treatment for Children with Upper Respiratory Infection
 - Appropriate Testing for Children with Pharyngitis
 - Avoidance of Antibiotic Treatment in Adults with Acute Bronchitis
 - ii. Initiation and Engagement of Alcohol and Other Drug Dependence Treatment
 - Initiation
 - Engagement
 - iii. Medical Assistance with Smoking Cessation and Tobacco Use Cession
 - Advising Smokers to Quit
 - Discussing Smoking Cessation Medications
 - Discussing Smoking Cessation Strategies
 - iv. Use of Imaging Studies for Low Back Pain
 - e. Category v – Living with Illness
 - i. Antidepressant Medication Management

- Effective acute phase treatment
- Effective continuation phase treatment
- ii. Cholesterol Management for Patients with Cardiovascular Conditions
 - Cholesterol (LDL-C) Screening
 - Control of Cholesterol (< 100 mg/dL)
- iii. Controlling High Blood Pressure
- iv. Comprehensive Diabetes Care
 - Hemoglobin A1c (HbA1c) testing
 - HbA1c poorly control (> 9.0%)*
 - LDL-C screening
 - LDL-C control (LDL < 100 mg/dL)
 - Eye exam (retinal) performed
 - Kidney disease (nephropathy) monitored
 - Blood Pressure Control (<130/80 mmHg)
 - Blood Pressure Control (<140/90 mmHg)
- v. COPD
 - Use of spirometry testing in the assessment and diagnosis of COPD
 - Pharmacotherapy management of COPD exacerbation
 - Dispensed a systemic corticosteroid within 14 days of the event
 - Dispensed a bronchodilator within 30 days of the event
- vi. Disease Modifying Anti-Rheumatic Drug Therapy in Rheumatoid Arthritis
- vii. Follow-up After Hospitalization for Mental Illness (7 days)
- viii. Use of Appropriate Medications for People with Asthma (Combined age groups)

Explain how the information will be gathered, analyzed and reported per the requirements in MCL 500.3580(2)(b).

Bidder Response:

Health Services Advisory Group, Inc. (HSAG) is fully prepared to gather, analyze, and report commercial health maintenance organization (HMO) Healthcare Effectiveness Data and Information Set (HEDIS[®]) and Consumer Assessment of Healthcare Providers and Systems (CAHPS[®]) data to the Michigan Department of Insurance and Financial Services (DIFS) for purposes of developing an HMO Consumer Guide to be published on the Web.^{1,2}

HSAG is familiar with the stipulations set forth in MCL 500.3580(2)(b) and is fully prepared to meet these requirements. HSAG will ensure that each HMO has quality of care results calculated for each of the following categories, at a minimum, as stipulated in the RFP:

- 1 Access to Service
- 2 Qualified Doctors
- 3 Staying Healthy
- 4 Getting Better
- 5 Living with Illness

1

[®] HEDIS is a registered trademark of the National Committee for Quality Assurance (NCQA).

2

[®] CAHPS is a registered trademark of the Agency for Healthcare Research and Quality (AHRQ).

HSAG will work with DIFS and the HMOs to gather, analyze, and report the data to meet the

client's needs, while adhering to the statutory requirements.

Gather Data

HSAG will work closely with DIFS to draft materials that will be distributed to the HMOs within 2 weeks of the Contract start date. These communication materials will inform the HMOs of HSAG's role in the HMO Consumer Guide development process, and also provide instructions for submitting HEDIS and CAHPS data. HSAG and DIFS will request that HMOs provide data within 30 calendar days. HSAG will request that HMOs provide HEDIS IDSS files, CAHPS National Committee for Quality Assurance (NCQA) Summary Reports, and NCQA member-level data files.

At the end of 30 days, if HMO data are not received by DIFS or HSAG, the HMOs will be notified and be requested to submit their data. HSAG understands that late submissions may not be incorporated into the analysis; therefore, HSAG will work closely with DIFS to determine a plan for how to handle such situations. In addition, as data are received by the HMOs, HSAG will review these data to assess completeness and accuracy. If any issues are identified, appropriate follow up will occur with the HMOs so that clean data are received.

All data will be transferred through a secure transfer site, such as HSAG's File Transfer Protocol (FTP) site. HSAG will ensure that appropriate DIFS and/or HMO staff have access to the secure site.

As noted, one potential delay may be obtaining requested data from HMOs by the established due date. HSAG plans to mitigate this potential delay by constantly keeping HMOs updated on the requested HEDIS and CAHPS data and sending reminders of the due date for submission of data. HSAG plans use e-mail and phone call reminders as a way to mitigate this potential problem and establish direct communication with HMOs if they have questions or issues regarding the requested data and/or data submission process.

Analyze Data

First, HSAG will analyze the data received and calculate results. HSAG's analysts will write programming code to align with the appropriate version of the HEDIS and CAHPS specifications manuals. Once HSAG finalizes its programming code and results are calculated, HSAG will ensure that the resulting rates seem reasonable. For instance, HSAG will compare calculated CAHPS rates to the corresponding NCQA Summary Report to ensure that there are no discrepancies. In addition, where appropriate, HSAG will compare the results to prior year's results for each HMO and flag large differences. Benchmarks will also be used where appropriate to determine if results seem reasonable. Any discrepancies will be reviewed by HSAG's expert staff, and communicated to DIFS and/or HMOs, where appropriate. Individual measure results will be submitted in Excel format to DIFS by September 10.

Next, HSAG will draft an analysis plan for DIFS' review and approval no later than September 30. It is anticipated that DIFS will review and approve the analysis plan within 7 days of receipt. The analysis plan will detail the methodology that will be used to derive category ratings for each HMO and also address other methodological issues, such as how to deal with missing or insufficient data. Please see the sample analysis plan in the Attachments section of this proposal, Sample Consumer Guide Analysis Plan.

Once the methodology is reviewed and approved by DIFS, HSAG will proceed with applying the methodology to the existing HEDIS and CAHPS results to derive star ratings for each performance measure category. HSAG is fully prepared to do the following:

- a. Ensure standardized measures are used across all HMOs.

- b. Derive summary scores for each HMO (based on individual measure scores).
- c. Calculate standard errors for each HMO's summary scores and also calculate the standard error for the statewide HMO summary score.
- d. Calculate difference scores for each performance category.
- e. Calculate 95 percent confidence intervals for the difference scores.
- f. Categorize HMO performance into three performance categories based on the results of the confidence intervals (i.e., above average, average, or below average).

Specific details regarding this methodology can be found on page 9 of this RFP response.

Report Data

Results will be submitted to DIFS in two waves. First, by September 10, HSAG will provide HEDIS and CAHPS results in an Excel file format to DIFS. HSAG will deliver an Excel file for each category that has individual HMO rates and Michigan HMO statewide aggregate rate.

Next, once an analysis plan has been approved by DIFS, HSAG will apply this methodology to the HEDIS and CAHPS rates to derive category rankings for each HMO. In addition, differences between HMO and aggregate rate or benchmarks, 95 percent confidence interval (CI), and an indication if the HMO rate is significantly higher, lower, or no different from the Michigan aggregate rate or comparable benchmark will also be reported. This indication will be based on T-tests and a significance level of 95 percent.

HSAG will use a three-level star rating scale to report the category rankings on a scale of three (★★★) to one (★). This provides consumers an easy-to-read format of quality performance across HMOs, and presents data in a manner that emphasizes meaningful differences between HMOs. The Consumer Guide will use stars to display results for each HMO because stars are a symbol that most readers are familiar with for denoting performance. HSAG will work with the DIFS to ensure that the scoring system meets its needs and is easily interpretable to consumers, while truly reflecting the quality of HMO quality.

Electronic and hard copies of the individual measure results and associated rankings will be provided to DIFS by November 15. Final versions will be provided to DIFS by November 30. If DIFS desires, HSAG can provide a comparative analysis document depicting HMO changes in star ratings from the previous year. This document will facilitate the utilization of comparative information for DIFS.

2. Measure and validate current individual measures related to the reporting categories

Explain how the data will be abstracted for purposes of meeting this requirement.

Bidder Response:

HSAG will work with the HMOs and DIFS to obtain the necessary data to calculate performance measure rates for the HMO Consumer Guide. As previously mentioned, HSAG will be requested a set of standardized files: HEDIS IDSS, CAHPS NCQA Summary Reports, and NCQA member-level data files. Given that data will be submitted in a standardized format across HMOs, HSAG will be able to easily abstract data and import it into SAS, a statistical programming tool. Once data are abstracted and imported, HSAG's analysts will validate the data.

Validate

HSAG's analysts will write programming code to align with the appropriate version of the HEDIS and CAHPS specifications. For each measure, there will be a primary analyst and a validation analyst.

Both analysts will independently write programming code and calculate individual measure results. Discrepancies between the analysts' output will be discussed and resolved.

Once HSAG has finalized its programming code and results are calculated, HSAG will ensure that the resulting rates seem reasonable. For instance, HSAG will compare calculated CAHPS rates to the corresponding NCQA Summary Report to ensure that there are no discrepancies. In addition, where appropriate, HSAG will compare the results to prior year's results for each HMO and flag large differences. Benchmarks will also be used where appropriate to determine if results seem reasonable. Any discrepancies will be reviewed by HSAG's expert staff, and communicated to DIFS and/or HMOs, where appropriate.

3. Handling of missing values
 - a. Determining insufficient data for composite ratings
 - b. Determining inclusion of measure rates in a category
 - c. Substitution for missing rates

Explain how data will be analyzed to ensure there are no missing values as identified in this requirement.

Bidder Response:

In developing scores and ratings for the reporting categories, HSAG will collaborate with DIFS to determine how to handle missing values for the following situations: insufficient data, determination of inclusion of measure rates in a category, and substitution for missing rates. Below is a description of HSAG's proposed methodology for handling each of these situations; however, HSAG will work with DIFS to finalize a methodology.

Handling Insufficient or Missing Data

In general, HEDIS and CAHPS data contain two classes of missing values. In the first case, HMOs chose to not submit data, even though it is possible for them to do so, or a measure's rate was determined to be materially biased in a HEDIS Compliance AuditTM; therefore, the missing data will be classified as Not Reported (NR).

In the second case, HMOs were unable to provide a sufficient amount of data (for example, too few members met the eligibility criteria for a measure); therefore, the missing data will be classified as Not Applicable (NA) in a HEDIS Compliance Audit.

For measures with an NA audit result, HSAG proposes to use the mean of non-missing observations across all HMOs. For measures with an NR audit result, HSAG proposes to use the minimum value of the non-missing observations across all HMOs. This minimizes the disadvantage for HMOs that are willing but unable to report data, and ensures that HMOs do not gain advantage from intentionally failing to report data.

Inclusion of Measure Rates in Given Category

Additionally, HSAG proposes to replace missing values where an HMO reports data for at least 50 percent of the indicators in a reporting category. If an HMO is missing more than 50 percent of

the measures that comprise a reporting category, HSAG would give the HMO a designation of "Insufficient Data" for that category.

4. Methodology to compare HMO performance

Provide a detailed response outlining the process to be used to compare the performance of each HMO.

Bidder Response:

HSAG will work with DIFS to finalize an analysis plan that details the methodology for calculating HMO performance. However, below provides one potential option for calculating such rates.

First, summary scores for the five reporting categories (Access to Service, Qualified Doctors, Staying Healthy, Getting Better, Living with Illness) will be calculated from HMO scores on selected HEDIS measures and CAHPS questions and composites. HMO ratings for individual and summary measures will be based on the difference between an HMO's score and the unweighted group mean. The statistical significance of each difference will be determined by computing a CI. A 95 percent CI will be calculated around each difference to identify HMOs that are significantly higher than or significantly lower than the mean. HMOs with differences significantly above or below zero at the 95 percent confidence level will receive the top (Above Average) and bottom (Below Average) designations, respectively. An HMO is significantly above zero if the lower limit of the CI is greater than zero; and is significantly below zero if the upper limit of the CI is below zero. HMOs that do not fall either above or below zero at the 95 percent confidence level will receive the middle designation (Average).

HSAG understands that the Consumer Guide uses stars to display results for each HMO because stars are a symbol that most readers are familiar with for denoting performance. HSAG will work with the DIFS to ensure that the scoring system meets its needs and is easily interpretable to consumers, while truly reflecting the quality of an HMO.

Additional detail regarding the statistical techniques that will be employed are described beginning on page 7 through page 9 of this response.

5. Statistical methodology

- a. Create standardized versions of all measures for each HMO so that all component measures that contribute to the summary scores for each reporting category are on the same scale
- b. Combine the standard measures into summary scores in each reporting category for each HMO
- c. Calculate standard errors for individual HMO summary scores and from the mean summary scores for all plans
- d. Calculate difference scores for each reporting category by subtracting the mean summary score for all HMO from individual HMO summary score values
- e. Use the standard errors to calculate 95 percent confidence intervals for the difference scores
- f. Categorize HMO into three categories on the basis of these confidence intervals i.e., above average (three stars), average (two stars), and below average (one star).

Provide a detailed response outlining the methodology to be used to perform each of the six requirements included in this section.

Bidder Response:

Create standardized versions of all measures for each HMO so that all component measures that contribute to the summary scores for each reporting category are on the same scale

In order to ensure that all component measures that contribute to the summary scores for each reporting category are on the same scale, HSAG will assign weights to each measure/sub-reporting category (e.g., Getting Needed Care, Getting Care Quickly, etc.) that comprise the reporting category (e.g., Access to Service).

Understanding that if measures are not standardized, a measure with higher variability could contribute disproportionately toward the category rating, HSAG will create standardized versions of all measures for each HMO, using the methodologies outlined below.

For the analysis of the HEDIS-only categories (Staying Healthy and Living With Illness), HSAG will standardize each measure's score by subtracting the group mean and dividing by the group standard deviation, to give each measure equal weight toward the category rating.

For categories that include CAHPS and/or HEDIS scores (Access to Service, Qualified Doctors, and Getting Better), HSAG will standardize each plan mean (composite or HEDIS) by subtracting the mean of the plan means and dividing by the standard deviation of the plan means, to give each measure equal weight toward the category rating.

Combine the standard measures into summary scores in each reporting category for each HMO

HSAG will compute five summary scores for each HMO, as well as the summary mean values for the HMOs as a group. Each score will be a percentage where higher values represent more favorable performance. Summary scores for the five reporting categories (Access to Service, Qualified Doctors, Staying Healthy, Getting Better, and Living With Illness) will be calculated from HMO scores on the selected HEDIS measures and CAHPS questions and composites.

To calculate the scores for individual CAHPS ratings questions, HSAG will convert each question response to a score (1, 2, 3) as described in *HEDIS Volume 3: Specifications for Survey Measures*. Following this, HSAG will compute the plan mean, and use the plan means to compute the group mean and the difference scores.

For CAHPS composites, HSAG will convert each individual response to a score (1, 2, 3), calculate each plan composite mean, and use the plan composite means to compute the group mean and the difference scores.

As previously described, for analysis of the HEDIS-only categories, HSAG will standardize each measure's score to give each measure equal weight toward the category rating. Following this, HSAG will sum the plan's standardized scores to get the plan summary measure score and use the scores to compute the group summary mean and the difference scores.

For categories that include CAHPS and HEDIS scores, the variance of the summary measure will be the sum of the variances of the components of the measure. For these categories, HSAG will score each CAHPS composite by converting each individual response to a score (1, 2, 3). HSAG will then compute the plan composite mean for each CAHPS composite and the plan mean for each HEDIS measure. Following this, HSAG will sum the standardized plan means to get the plan summary measure score. Using these summary scores, HSAG will compute the group mean

and the difference scores.

Calculate standard errors for individual HMO summary scores and from the mean summary scores for all plans

After calculating all summary scores, HSAG will estimate the standard errors (SE) for individual HMO summary scores and the mean overall summary. HSAG will use the following formula, where $var(k)$ represents the variance of plan k and n is the sample size:

$$SE = \frac{\sqrt{Var(k)}}{\sqrt{n}}$$

The standard error for CAHPS questions' means and composites and for summary measures will be computed by modifying the formula for $Var(k)$ to take into account the variances of HEDIS scores and CAHPS questions and composites in each summary measure. Variance for CAHPS measures will be calculated in accordance with the guidelines presented in *HEDIS Volume 3: Specifications for Survey Measures*.

Calculate difference scores for each reporting category by subtracting the mean summary score for all HMO from individual HMO summary score values

Plan ratings for individual and summary measures will be based on the difference between an HMO's score and the unweighted group mean. The statistical significance of each difference will be determined by computing a CI, as described below.

Use the standard errors to calculate 95 percent confidence intervals for the difference scores

For a given measure and plan k , let SE equal the standard error and let the difference $dk =$ plan k score – group mean. The formula for calculating the 95 percent CI is:

$$95\% \text{ CI} = dk \pm 1.96 \times SE$$

The statistical significance of each difference will be determined by computing a CI. A 95 percent CI will be calculated around each difference to identify HMOs that are significantly higher than or significantly lower than the mean. As mentioned previously, HMOs with differences significantly above or below zero at the 95 percent confidence level will receive the top (Above Average) and bottom (Below Average) designations, respectively. An HMO is significantly above zero if the lower limit of the CI is greater than zero; and is significantly below zero if the upper limit of the CI is below zero. HMOs that do not fall either above or below zero at the 95 percent confidence level will receive the middle designation (Average).

Categorize HMO into three categories on the basis of these confidence intervals i.e., above average (three stars), average (two stars), and below average (one star).

HMO performance will be categorized into three categories based on the CI scoring as described above. HSAG will use a three-level star rating scale to assign star ratings on a scale of three (★★★) to one (★). This provides consumers an easy-to-read format of quality performance across HMOs, and present data in a manner that emphasizes meaningful differences between HMOs. The Consumer Guide will use stars to display results for each HMO because stars are a symbol that most readers are familiar with for denoting performance. The Consumer Guide will report HMO performance as follows:

- ★ ★ **Above Average** The HMO's performance was above average compared to the other plans ★ ★ **Average** The HMO's performance was average compared to the other plans ★ **Below Average** The HMO's performance was below average compared to the other plans

1.022 Work and Deliverable

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

Phase I

Within two weeks of the Contract start date, the Contractor sends to each identified HMO to be surveyed a joint letter with DIFS notifying the HMO that DIFS has contracted with the Contractor and the HMO is to submit its audited current year's HEDIS and CAHPS data to the Contractor. HMOs are given 30 calendar days to submit the requested information to the Contractor.

Phase II

Within one week after the due date for HMOs to submit to the Contractor the audited HEDIS and CAHPS data the Contractor identifies those HMOs that have submitted the requested data by the established due date and follows up with those HMOs that have not submitted the requested data until all HMOs have provided the requested data. Process repeats until all HMOs have submitted the requested data. Identified HMOs submitting data to the Contractor after the established submission date is to be considered for acceptance on a case by case basis. The Contractor and DIFS will discuss the specifics of the late submission and jointly decide if the submitted data will be included in the analysis.

Phase III

Within one week of receipt of the audited data from each HMO the Contractor evaluates and analyzes the accuracy of the submitted data and follows up with HMOs as needed to obtain clean data.

Phase IV

Contractor conducts the analysis of the data for the individual measures and develops and produces the individual measures and category ratings of the HMOs as identified in the work plan. Allow three weeks.

Deliverable due dates Phase I-IV:

- The Contractor will provide an updated list of measures and summary of HEDIS and CAHPS changes by August 1.
- The Contractor will provide DIFS HEDIS and CAHPS results in Microsoft Excel file formatted data extracts by September 10.
- The Contractor will provide a HEDIS analysis plan by September 30. Note: In order for Contractor to complete the data analysis by the delivery date, DIFS needs to approve the analysis plan within seven working days of receipt of the analysis.

Phase V

By the 15th of November the Contractor provides DIFS with a draft hard copy and electronic copy (e-mail with attached file or disk) of the results of the individual measures and category rankings for the HMOs. By the 30th of November DIFS informs the Contractor of any needed edits/revisions. By the 30th of November the Contractor provides DIFS with its final hard copy and electronic copy of the individual measures and results of the category rankings for the HMOs.

Explain how each of the 5 phases will be accomplished; including the resources needed and hours to complete each phase.

Bidder Response to Task:

HSAG will work closely with DIFS to develop materials that will be distributed to each identified

HMO to be surveyed regarding HSAG's role in the development of the HMO Consumer Guide and information on submission of HEDIS and CAHPS data. Within 2 weeks of the Contract start date, HSAG will send each identified HMO a joint HSAG/DIFS letter informing each HMO that DIFS has contracted with HSAG to collect the HMOs' audited current year's HEDIS and CAHPS data and instructions for submission of requested performance measure data. Further, the letter will clearly specify the formats in which the HEDIS and CAHPS data is to be submitted to HSAG, as well as the submission due date. HMOs will be given 30 calendar days from the date of receiving the data request to submit the requested information to HSAG. During this phase, HSAG will also work with DIFS to develop an updated list of measures and provide a summary of HEDIS and CAHPS changes no later than August 1.

Resources Required: Project management and basic analytic review of HEDIS and CAHPS specification changes. Hours Allocated: 2.5

Phase II

Given HSAG's experience in assisting clients with developing Consumer Guides, HSAG has systems in place and experienced personnel to address any potential delays in the project timeline. HSAG develops and maintains a detailed timeline that constantly keeps all stakeholders updated, and addresses all major activities under the Scope of Work.

As noted, one potential delay may be obtaining requested data from HMOs by the established due date in order to comply with the timelines and deliverables. HSAG plans to mitigate this potential delay by constantly keeping HMOs updated pertaining to the requested HEDIS and CAHPS data and sending reminders of the due date for submission of data. HSAG plans use e-mail and phone call reminders as a way to mitigate this potential problem and establish direct communication with HMOs if they have questions or issues regarding the requested data and/or data submission process.

However, in the event that HMOs have not submitted the requested data by the established due date, within 1 week after the due date for submission of HEDIS and CAHPS data, HSAG is fully prepared to follow up and communicate directly with each HMO to determine the reason(s) for the delay and assistance that can be provided to ensure collection of complete and accurate data. HSAG will repeat this process until all HMOs have submitted the requested HEDIS and CAHPS data. Acceptance of HMOs data after the established submission date will be reviewed and considered on a case-by-case basis. HSAG will work closely with DIFS to discuss the specifics of the late submission and to make a joint decision as to whether or not the submitted data will be included in the analysis.

Resources Required: Project management to follow up with HMOs and track submissions. Hours Allocated: 10

Phase III

Within 1 week of receipt of the audited data from each HMO, HSAG will evaluate and analyze the accuracy of the submitted data to ensure completeness and validity. HSAG will run a series of tests to confirm the completeness. For instance, HSAG will look for missing or invalid values, missing files, and other anomalies. HSAG will also compare the CAHPS data to the NCQA Summary Reports to ensure that results match. HSAG will work with DIFS to communicate any identified issues with the HMOs and request clean data files.

Resources Required: Analysts required to evaluate data completeness and project management to follow up with HMOs to obtain cleaned data. Hours Allocated: 15

Phase IV

During this phase, HSAG will calculate results of the individual measures and category rankings

for the HMOs as identified in the work plan. As previously described, HSAG will analyze the data received and calculate results as outlined above and submit Excel file data extracts by September 10. HSAG's analysts will write programming code to align with the appropriate version of the HEDIS and CAHPS specifications. Once HSAG finalizes its programming code and results are calculated, HSAG will ensure that the resulting rates seem reasonable. For instance, HSAG will compare calculated CAHPS rates to the corresponding NCQA Summary Report to ensure that there are no discrepancies. In addition, where appropriate, HSAG will compare the results to prior year's results for each HMO and flag large differences. Benchmarks will also be used, where appropriate, to determine if results seem reasonable. Any discrepancies will be reviewed by HSAG's expert staff, and communicated to DIFS and/or HMOs. Individual measure results will be submitted in Excel format to DIFS.

Next, HSAG will draft an analysis plan for DIFS' review and approval no later than September 30. It is anticipated that DIFS will review and approve the analysis plan within 7 days of receipt.

Resources Required: Analysts and senior level staff required to conduct analyses and perform analytic validation of results. Hours Allocated: 60

Phase V

Once the methodology is reviewed and approved by DIFS, HSAG will proceed with applying the methodology to the existing HEDIS and CAHPS results to derive star ratings for each performance measure category. HSAG is fully prepared to do the following:

- a. Ensure standardized measures are used across all HMOs.
- b. Derive summary scores for each HMO (based on individual measure scores).
- c. Calculate standard errors for each HMO's summary scores and also calculate the standard error for the statewide HMO summary score.
- d. Calculate difference scores for each performance category.
- e. Calculate 95 percent CIs for the difference scores.
- f. Categorize HMO into the following performance categories based on the results of the CIs: above average, average, or below average.

Electronic and hard copies of the individual measure results and associated rankings will be provided to DIFS by November 15. Final versions will be provided to DIFS by November 30. If DIFS desires, HSAG can provide a comparative analysis document depicting HMO changes in star ratings from the previous year. This document will facilitate the utilization of comparative information for DIFS.

Resources Required: Analysts and senior level staff required to conduct analyses and perform analytic validation of results and project support required to prepare final deliverable. Hours Allocated: 12.5

1.030 Roles and Responsibilities

1.031 Contractor Staff, Roles, and Responsibilities –

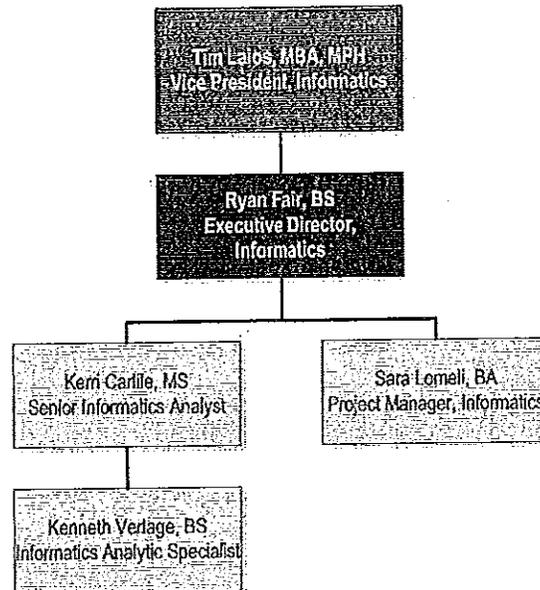
Identify where Contractor staff will be physically located during Contract performance. If an overall organization chart has been developed, then provide a reference to that chart as well. Also include any part-time personnel. Descriptions of roles should be functional and not just by title.

Bidder Response to Task:

The Contractor staff will be physically located in Phoenix, Arizona. All work will be conducted by HSAG employees in Arizona (no subcontractors will be used).



The following shows an organizational chart of those staff who will be involved in the development of the MI HMO Consumer Guide.

**Staff Roles and Responsibilities**

The following provides an overview of the staff's anticipated roles in this contract. Curriculum Vitae for these staff members can also be found in the Section 4.013 Staffing, beginning on page 22 of this proposal.

Tim Laios, MPH, MBA, Vice President, Informatics, will serve as the Project Director, providing general oversight of the entire project. He will ensure contractual requirements are met within the allocated budget. His experience includes over a decade of project management, quantitative and qualitative data collection and analysis, health care research, and survey methodology and design.

Ryan Fair, BS, Executive Director, Informatics, will provide general contract oversight and lead the development of the analysis plan. He will also provide direct supervision of the analytic and project staff involved in the development of the HMO Consumer Guide. Mr. Fair has previously managed consumer guides for numerous states, including Michigan. He is an expert in health care research methodology, quality measurement, management of analytic activities, and

statistical analysis and modeling.

Kerri Carlile, MA, Informatics Senior Analyst, will serve as the senior analyst for HSAG. She will be responsible for the development of the analysis plan, and will also be the lead analyst for the calculation of the HEDIS and CAHPS results, along with the key analyst responsible for deriving HMO ratings in each category. Her experience includes project management, data management, and study protocol design.

Kenneth Verlage, BS, Analytic Specialist, will serve in an analytic support role, assisting the senior analyst. His primary responsibility will be to assist in the development of the analysis plan and also write validation code to identify any potential discrepancies with rate calculations. His experience includes data analysis and manipulation in SAS.

Sara Lomeli, BA, Project Manager, will provide day-to-day project coordination and management of the project as well as serve as the primary client liaison. Ms. Lomeli is highly experienced in managing HSAG's CAHPS and HEDIS projects, and also served as the Project Manager for the development of the Hawaii Consumer Guide. The Hawaii Consumer Guide was developed to include both members' satisfaction with access and services, as well as quality measures that measured plan performance on a variety of healthcare domains important to members. As part of this process, HSAG also ensured that the language contained in the Consumer Guide was easily understood by Medicaid members.

1.040 Project Plan

1.041 Project Plan Management –

Provide a project management plan, identifying methods, tools and processes proposed to oversee the project, address issues/changes as they may arise, and keep the appropriate parties apprised of progress.

Bidder Response:

Successful implementation of the MI HMO Consumer Guide activities requires a broad range of expertise coupled with expert project management and organizational oversight. Therefore, HSAG proposes a project management plan that includes highly qualified leadership, clear assignment of responsibilities based on team member expertise, and frequent communication with DIFS and the HMOs, when needed. HSAG has a 30-year track record of providing insightful and high quality expertise, information, and analysis to improve health care quality—succeeding in every Quality Improvement Organization (QIO) Scope of Work (SoW) since 1979. As previously mentioned, Tim Laios will oversee the overall project administration and will have ultimate responsibility for all deliverables.

HSAG recognizes that effective communication with DIFS will be critical throughout the project; therefore, proposes a robust management and communication plan consisting of regularly scheduled project meetings, progress reports, and status updates. The proposed project management plan will ensure that appropriate methods, tools, and processes are in place to oversee the project. In addition, established policies and protocols are in place to address any challenges or issues that may arise. It will also ensure that effective communication takes place between all necessary parties.

Further, HSAG has systems in place and experienced personnel to address any potential delays in the project timeline. HSAG will develop and maintain a detailed timeline that constantly keeps

all stakeholders updated and addresses all major activities under the Scope of Work.

Project Oversight

As mentioned above, the entire contract will be managed by Tim Laios, Vice President, Informatics. As depicted in the organizational chart on page 13, he will provide oversight of all staff on this activity. The project and analytic staff will be closely supervised by the Executive Director, Informatics, Ryan Fair.

For this project, HSAG's proprietary project management database, iTRAK will be used. This novel database allows HSAG project staff to track events, communications, and deliverables. Further, HSAG will incorporate quality assurance activities into all aspects of the project to ensure that all products are of the highest quality. Each deliverable produced under this contract will be reviewed by senior staff from HSAG in order to ensure that the objectives of the deliverable are met, that it is devoid of any errors, and that it represents quality work meeting DIFS' expectations.



Project Meetings

HSAG believes that effective communication is critical to executing this contract. HSAG proposes to schedule regularly occurring meetings with DIFS to provide DIFS with project status updates. These meetings will also provide the opportunity for HSAG to discuss any challenges and potential solutions with DIFS. Meeting discussions will be documented in meeting minutes and provided to all invitees.

Progress Reports and Updates

HSAG will submit bi-weekly progress reports to DIFS, which will formally document progress on tasks in the prior two weeks, activities planned for upcoming weeks, relevant financial information, any problems that have been encountered and their resolution, and current progress as compared to the milestones discussed in the initial project meeting.

Communication Protocol

HSAG will work closely with DIFS to establish a communication protocol that allows for streamlined communication, while keeping DIFS and other parties adequately informed of project activities. HSAG will identify a primary day-to-day contact, Project Manager, that DIFS can contact directly. Upon contract initiation, DIFS and HSAG will discuss communication preferences, such as protocols for communicating with HMOs (e.g., all communications will come directly from DIFS, etc.).

1.042 Reports

The Contractor shall provide a written bi-weekly status report identifying the progress made for the status and completion of each phase (see 1.022) and status of the next scheduled phases to be addressed.

Provide a sample report to be used for each phase identified in Sec. 1.022.

Bidder Response:

As previously mentioned, HSAG will submit bi-weekly progress reports to DIFS, which will formally document progress on tasks in the prior two weeks, activities planned for upcoming weeks, relevant financial information, any problems that have been encountered and their resolution, and current progress as compared to the milestones discussed in the initial project meeting.

In addition, there are sample reports in the Attachments section of this response.

The Contractor will send each identified HMO a joint letter with DIFS regarding the HEDIS and CAHPS data request. The letter is a sample of the CAHPS data request HSAG develops each year in collaboration with the client to request necessary CAHPS data from the plans for inclusion in the CAHPS Health Plan Survey Report. (See Sample CAHPS Data Request Memo in the Attachments section.)

The Contractor will provide an updated list of measures and summary of HEDIS and CAHPS changes by August 1. The provided HEDIS summary change document was developed for a state client outlining the changes to HEDIS measures that HSAG would be calculating on behalf of the client. The summary change document provides a description of the changes as well as potential impact on reporting of the measures. (See Sample HEDIS Measures Summary Change Document in the Attachments section.)

• **The Contractor will provide DIFS HEDIS and CAHPS results in Microsoft Excel file formatted data extracts by September 10.** For previous Consumer Guide reports, HSAG has compiled the HEDIS and CAHPS data obtained from plans and provided this to clients in Excel format. As this

example shows, individual measure results are provided for each participating plan. In addition to the HEDIS and CAHPS results, for each individual measure, HSAG provides the measure weight, standardized score, measure mean, measure standard deviation, and plan category score. (See Sample Consumer Guide Summary in the Attachments section.)

The Contractor will provide a HEDIS analysis plan by September 30. The sample analysis plan was developed by HSAG in collaboration with the client. The Consumer Guide methodology document provides information on the data collection process, reporting categories, measures used in the analysis, as well as analytic plan for comparing plan performance. A similar type of methodology document/analytic plan would be developed for DIFS' review and approval. (See Sample Consumer Guide Analysis Plan in the Attachments section.)

Draft and final hard copy and electronic copy (e-mail with attached file or disk) of the results of the individual measures and category rankings for the HMOs. The Excel file of summary results provides an example of results that would be provided to DIFS. While the sample report shows results at the performance category-level, HSAG would develop a similar results document that would provide results for each of the individual measures and category ranking for the HMOs. Following submission of the draft results, HSAG will make any necessary edits or revisions and provide DIFS with a final hard copy and electronic copy, as stipulated in the RFP. (See Sample HEDIS and CAHPS Results in Excel in the Attachments section.)

1.050 Acceptance

1.051 Criteria

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

On or before the 30th of November the Contractor shall provide to DIFS its final written and electronic versions of the CHAPS and HEDIS individual measures and HMO ranking by category.

1.052 Final Acceptance

The agency has the right to determine if the deliverables are acceptable and the specified requirements are complete.

1.060 Proposal Pricing

1.061 Proposal Pricing

For authorized Services and Price List, see Attachment A.

Bidders are encouraged to offer quick payment terms (i.e. .05 % discount off invoice if paid within 30 days). This information can be noted on the Bidders price proposal (see Attachment A). This may be a factor considered in our award decision.

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

1.062 Price Term

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

1.063 Tax Excluded from Price –

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

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

1.064 Holdback – Deleted, Not Applicable

1.070 Additional Requirements

1.071 Additional Terms and Conditions specific to this RFP – Deleted, Not Applicable

Article 2, Terms and Conditions

2.000 Contract Structure and Term

2.001 Contract Term

The Contract is for a period of THREE (3) years beginning June 1, 2013 through May 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 2 additional 1 year periods.

2.003 Legal Effect

Contractor must show acceptance of the Contract by signing two (2) 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 (1) 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 (1) or more of the provisions of the Contract is declared invalid, the remaining provisions of the Contract remain in full force and effect.

2.010 Consents and Approvals

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

2.011 No Waiver of Default

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

2.012 Survival

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

2.020 Contract Administration

2.021 Issuing Office

The Contract is issued by the Department of Licensing and Regulatory Affairs (LARA), Purchasing and Office of Financial and Insurance Regulation (collectively, including all other relevant State of Michigan departments and agencies, the "State"). LARA-Purchasing is the sole point of contact in the State with regard to all procurement and contractual matters relating to the Contract. **LARA-Purchasing 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 LARA-Purchasing for the Contract is:

Shay Gaffey
Purchasing
Department of Licensing and Regulatory Affairs
Ottawa Bldg, 4th Floor
PO Box 30224
Lansing, MI 48933

gaffeys@michigan.gov
517-335-1971

2.022 Contract Compliance Inspector

After LARA-Purchasing receives the properly executed Contract, it is anticipated that the Director of DIFS, Budget and Financial Services Division, 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 DIFS Budget and Financial Services Division.** The CCI for the Contract is:

Karen S. Sage
Department of Insurance and Financial Services
611 W. Ottawa Street
P.O. Box 30220
Lansing, MI 48909-7720
Phone: (517) 241-6347
Fax: (517) 335-1439
E-mail: sagek@michigan.gov

2.023 Project Manager

The following individual will oversee the project:

John Gardner, Manager
Managed Care Plans
Insurance Evaluation Division
Department of Insurance and Financial Services
611 W. Ottawa Street
P.O. Box 30220
Lansing, MI 48909-7720
Phone: (517) 241-2349
Fax: (517) 241-4168
E-mail: gardnerj4@michigan.gov

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 DIFS-Budget & Financial Services.

(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 Media Releases

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

2.032 Contract Distribution

DIFS-Budget & Financial Services retains the sole right of Contract distribution to all State agencies and local units of government unless other arrangements are authorized by DIFS-Budget & Financial Services.

2.033 Permits

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

2.034 Website Incorporation

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

2.035 Future Bidding Preclusion

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

2.036 Freedom of Information

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

2.037 Disaster Recovery

Contractor and the State recognize that the State provides essential services in times of natural or man-made disasters. Therefore, except as so mandated by Federal disaster response

requirements, Contractor personnel dedicated to providing Services/Deliverables under the Contract must provide the State with priority service for repair and work around in the event of a natural or man-made disaster.

2.040 Financial Provisions

2.041 Fixed Prices for Services/Deliverables

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

2.042 Adjustments for Reductions in Scope of Services/Deliverables

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

2.043 Services/Deliverables Covered

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

2.044 Invoicing and Payment – In General

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

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

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

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

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

The State may make progress payments to the Contractor when requested as work progresses, but not more frequently than monthly, in amounts approved by the CCI, after negotiation.

Contractor must show verification of measurable progress at the time of requesting progress payments.

2.045 Pro-ration

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

2.046 Antitrust Assignment

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

2.047 Final Payment

The making of final payment by the State to Contractor does not constitute a waiver by either party of any rights or other claims as to the other party's continuing obligations under the Contract, nor will it constitute a waiver of any claims by one (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 – Deleted, Not Applicable

2.063 Re-assignment of Personnel at the State's Request – Deleted, Not Applicable

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 – Deleted, Not Applicable

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 DIFS-Budget & Financial Services 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 -Deleted/Not Applicable

2.081 Equipment – Deleted/Not Applicable

2.082 Facilities – Deleted/not Applicable

2.090 Security

2.091 Background Checks – Deleted, Not Applicable

2.092 Security Breach Notification

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

2.093 PCI Data Security Standard – Deleted, Not Applicable**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 Examination of Records

For seven (7) years after the Contractor provides any work under the Contract (the "Audit Period"), the State may examine and copy any of Contractor's books, records, documents and papers pertinent to establishing Contractor's compliance with the Contract and with applicable laws and rules. The State must notify the Contractor 20 days before examining the Contractor's books and records. The State does not have the right to review any information deemed confidential by the Contractor to the extent access would require the confidential information to become publicly available. This provision also applies to the books, records, accounts, documents and papers, in print or electronic form, of any parent, affiliated or subsidiary organization of Contractor, or any Subcontractor of Contractor performing services in connection with the Contract.

2.113 Retention of Records

Contractor must maintain at least until the end of the Audit Period, all pertinent financial and accounting records (including time sheets and payroll records, information pertaining to the Contract, and to the Services, equipment, and commodities provided under the Contract) pertaining to the Contract according to generally accepted accounting principles and other procedures specified in this Section. Financial and accounting records must be made available, upon request, to the State at any time during the Audit Period. If an audit, litigation, or other action involving Contractor's records is initiated before the end of the Audit Period, the records must be retained 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.

2.114 Audit Resolution

If necessary, the Contractor and the State will meet to review each audit report promptly after issuance. The Contractor must respond to each audit report in writing within 30 days from receipt of the report, unless a shorter response time is specified in the report. The Contractor and the State must develop, agree upon and monitor an action plan to promptly address and resolve any deficiencies, concerns, and/or recommendations in the audit report.

2.115 Errors

(a) If the audit demonstrates any errors in the documents provided to the State, then the amount in error must be reflected as a credit or debit on the next invoice and in subsequent invoices until the amount is paid or refunded in full. However, a credit or debit may not be carried for more than four (4) invoices. If a balance remains after four (4) invoices, then the remaining amount will be due as a payment or refund within 45 days of the last quarterly invoice that the balance appeared on or termination of the Contract, whichever is earlier.

(b) In addition to other available remedies, the difference between the payment received and the correct payment amount is greater than 10%, then the Contractor must pay all of the reasonable costs of the audit.

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 (2) 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 DIFS-Budget & Financial Services.

2.122 Warranty of Merchantability – Deleted, Not Applicable

2.123 Warranty of Fitness for a Particular Purpose – Deleted, Not Applicable

2.124 Warranty of Title – Deleted, Not Applicable

2.125 Equipment Warranty – Deleted, Not Applicable

2.126 Equipment to be New – Deleted, Not Applicable

2.127 Prohibited Products – Deleted, Not Applicable

2.128 Consequences For Breach

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

2.130 Insurance

2.131 Liability Insurance

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

The Contractor waives all rights against the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees and agents for recovery of damages to the extent these damages are covered by the insurance policies the Contractor is required to maintain under the Contract.

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

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

The insurers selected by Contractor must have an A.M. Best rating of A or better, or as otherwise approved in writing by the State, or if the ratings are no longer available, with a comparable rating from a recognized insurance rating agency. All policies of insurance required in the Contract must be issued by companies that have been approved to do business in the State. See www.michigan.gov/deleg.

Where specific limits are shown, they are the minimum acceptable limits. If Contractor's policy contains higher limits, the State must be entitled to coverage to the extent of the higher limits.

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

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

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

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

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

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

Any certificates of insurance received must also provide a list of states where the coverage is applicable.

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

4. Employers liability insurance with the following minimum limits:
- \$100,000 each accident
 - \$100,000 each employee by disease
 - \$500,000 aggregate disease

5. Employee Fidelity, including Computer Crimes, insurance naming the State as a loss payee, providing coverage for direct loss to the State and any legal liability of the State arising out of or related to fraudulent or dishonest acts committed by the employees of Contractor or its Subcontractors, acting alone or in collusion with others, in a minimum amount of \$1,000,000.00 with a maximum deductible of \$50,000.00.

6. Umbrella or Excess Liability Insurance in a minimum amount of ten million dollars (\$10,000,000.00), which must apply, at a minimum, to the insurance required in Subsection 1 (Commercial General Liability) above.

- 7. Professional Liability (Errors and Omissions) Insurance with the following minimum coverage: \$3,000,000.00 each occurrence and \$3,000,000.00 annual aggregate.
- 8. Fire and Personal Property Insurance covering against any loss or damage to the office space used by Contractor for any reason under the Contract, and the equipment, software and other contents of the office space, including without limitation, those contents used by Contractor to provide the Services to the State, up to its replacement value, where the office space and its contents are under the care, custody and control of Contractor. The policy must cover all risks of direct physical loss or damage, including without limitation, flood and earthquake coverage and coverage for computer hardware and software. The State must be endorsed on the policy as a loss payee as its interests appear.

2.132 Subcontractor Insurance Coverage

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

2.133 Certificates of Insurance and Other Requirements

Contractor must furnish to DIFS-Budget & Financial Services, certificate(s) of insurance verifying insurance coverage or providing satisfactory evidence of self-insurance as required in this Section (the "Certificates"). The Certificate must be on the standard "accord" form or equivalent. **THE CONTRACT OR PURCHASE ORDER NO. MUST BE SHOWN ON THE CERTIFICATE OF INSURANCE TO ASSURE CORRECT FILING.** All Certificate(s) are to be prepared and submitted by the Insurance Provider. All Certificate(s) must contain a provision indicating that coverages afforded under the policies **MUST NOT BE CANCELLED, MATERIALLY CHANGED, OR NOT RENEWED** without 30 days prior written notice, except for 10 days for non-payment of premium, having been given to the Director of Budget & Financial Services, DIFS. The notice must include the Contract or Purchase Order number affected. 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 and its agents, officers and employees are listed as additional insureds under each commercial general liability and commercial automobile liability policy. In the event the State approves the representation of the State by the insurer's attorney, the attorney may be required to be designated as a Special Assistant Attorney General by the Attorney General of the State of Michigan.

The Contractor must maintain all required insurance coverage throughout the term of the Contract and any extensions and, in the case of claims-made Commercial General Liability policies, must secure tail coverage for at least three (3) years following the expiration or termination for any reason of the Contract. The minimum limits of coverage specified above are not intended, and must not be construed, to limit any liability or indemnity of Contractor under the Contract to any indemnified party or other persons. Contractor is responsible for all deductibles with regard to the insurance. If the Contractor fails to pay any premium for required insurance as specified in the Contract, or if any insurer cancels or significantly reduces any required insurance as specified in the Contract without the State's written consent, then the State may, after the State has given the Contractor at least 30 days written notice, pay the premium or procure similar insurance coverage from another company or companies. The State may deduct any part of the cost from any payment due the Contractor, or the Contractor must pay that cost upon demand by the State.

2.140 Indemnification

2.141 General Indemnification

To the extent permitted by law, 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 90 days. These efforts must include, but are not limited to, those listed in **Sections 2.171, 2.172, 2.173, 2.174, and 2.175.**

2.172 Contractor Personnel Transition

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

2.173 Contractor Information Transition

The Contractor agrees to provide reasonable detailed specifications for all Services/Deliverables needed by the State, or specified third party, to properly provide the Services/Deliverables required under the Contract. The Contractor must provide the State with asset management data generated from the inception of the Contract through the date on which the Contractor is terminated in a comma-delineated format unless otherwise requested by the State. The Contractor must deliver to the State any remaining owed reports and documentation still in Contractor's possession subject to appropriate payment by the State.

2.174 Contractor Software Transition

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

2.175 Transition Payments

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

2.176 State Transition Responsibilities

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

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

2.180 Stop Work

2.181 Stop Work Orders

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

2.182 Cancellation or Expiration of Stop Work Order

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

2.183 Allowance of Contractor Costs

If the stop work order is not canceled and the work covered by the stop work order is terminated for reasons other than material breach, the termination must be deemed to be a termination for convenience under **Section 2.150**, and the State will pay reasonable costs resulting from the stop work order in arriving at the termination settlement. 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 Budget & Financial Services, DIFS, 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 Budget & Financial Services, DIFS, or designee, must issue a written opinion regarding the issue(s) in dispute within 30 calendar days. The opinion regarding the dispute must be considered the State's final action and the exhaustion of administrative remedies.

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

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

2.193 Injunctive Relief

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

2.194 Continued Performance

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

2.200 Federal and State Contract Requirements**2.201 Nondiscrimination**

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

2.202 Unfair Labor Practices

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

2.203 Workplace Safety and Discriminatory Harassment

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

2.204 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; to claims covered by other specific provisions of the Contract calling for liquidated damages; or to court costs or attorney's fees awarded by a court in addition to damages after litigation based on the Contract.

The Contractor's liability for damages to the State is limited to two times the value of the Contract or \$500,000 whichever is higher. The foregoing limitation of liability does not apply to claims for infringement of United States patent, copyright, trademarks or trade secrets; to claims for personal injury or damage to property caused by the gross negligence or willful misconduct of the Contractor; to claims covered by other specific provisions of the Contract calling for liquidated

damages; or to court costs or attorney's fees awarded by a court in addition to damages after litigation based on the Contract.

The State's liability for damages to the Contractor is limited to the value of the 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 DIFS-Budget & Financial Services.
- (2) Contractor must also notify DIFS Budget & Financial Services 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 DIFS Budget & Financial Services within 30 days whenever changes to company affiliations occur.

2.232 Call Center Disclosure – Deleted, Not Applicable

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) – Deleted, Not Applicable**2.243 Liquidated Damages**

The parties acknowledge that late or improper completion of the Work will cause loss and damage to the State, and that it would be impracticable and extremely difficult to fix the actual damage sustained by the State as a result. Therefore, Contractor and the State agree that if there is late or improper completion of the Work and the State does not elect to exercise its rights under **Section 2.152**, the State is entitled to collect liquidated damages in the amount of ~~\$5,000.00~~ and an additional ~~\$100.00~~ per day for each day Contractor fails to remedy the late or improper completion of the Work.

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 – Deleted, Not Applicable

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 – Deleted, Not Applicable**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

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

2.258 Final Acceptance

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

2.260 Ownership

2.261 Ownership of Work Product by State

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

2.262 Vesting of Rights

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

2.263 Rights in Data

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

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

2.264 Ownership of Materials

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

2.270 State Standards

2.271 Existing Technology Standards

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

2.272 Acceptable Use Policy

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

2.273 Systems Changes

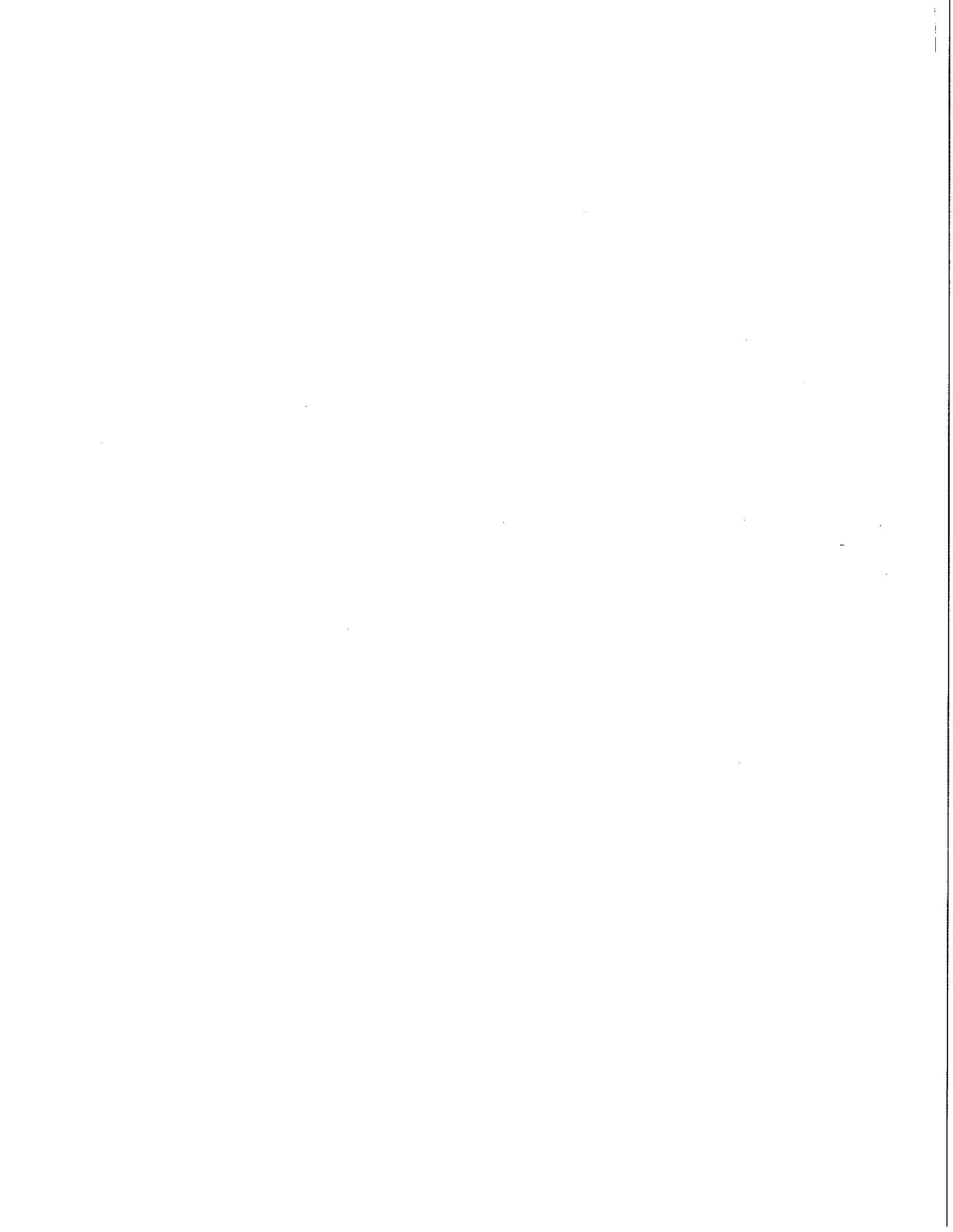
Contractor is not responsible for and not authorized to make changes to any State systems without written authorization from the Project Manager. Any changes Contractor makes to State systems with the State's approval must be done according to applicable State procedures, including security, access,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

2.280 Extended Purchasing**2.281 MIDEAL – Deleted, Not Applicable****2.282 State Employee Purchases – Deleted, Not Applicable****2.290 Environmental Provision - Deleted, Not Applicable****2.300 Other Provisions****2.311 Forced Labor, Convict Labor, Forced or Indentured Child Labor, or Indentured Servitude Made Materials**

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

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

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Attachment A. Price Proposal

Bidders must provide yearly pricing below:

Deliverable	Year One Cost	Year Two Cost	Year Three Cost
Phase I			
Within two weeks of the Contract start date, the Contractor sends to each identified HMO to be surveyed a joint letter with DIFS notifying the HMO that DIFS has contracted with the Contractor and the HMO is to submit its audited current year's HEDIS and CAHPS data to the Contractor. HMOs are given 30 calendar days to submit the requested information to the Contractor.	\$228.10	\$236.10	\$244.50
Phase II			
Within one week after the due date for HMOs to submit to the Contractor the audited HEDIS and CAHPS data the Contractor identifies those HMOs that have submitted the requested data by the established due date and follows up with those HMOs that have not submitted the requested data until all HMOs have provided the requested data. Process repeats until all HMOs have submitted the requested data. Identified HMOs submitting data to the Contractor after the established submission date is to be considered for acceptance on a case by case basis. The Contractor and DIFS will discuss the specifics of the late submission and jointly decide if the submitted data will be included in the analysis.	\$912.40	\$944.40	\$978.00
Phase III			
Within one week of receipt of the audited data from each HMO the Contractor evaluates and analyzes the accuracy of the submitted data and follows up with HMOs as needed to obtain clean data.	\$1,368.60	\$1,416.60	\$1,467.00
Phase IV			
Contractor conducts the analysis of the data for the individual measures and develops and produces the individual measures and category ratings of the HMOs as identified in the work plan. Allow three weeks.	\$5,474.40	\$5,666.40	\$5,868.00
Phase V			
By the 15th of November the Contractor provides DIFS with a draft hard copy and electronic copy (e-mail with attached file or disk) of the results of the individual measures and category rankings for the HMOs. By the 30th of November DIFS informs the Contractor of any needed edits/revisions. By the 30th of November the Contractor provides DIFS with its final hard copy and electronic copy of the individual measures and results of the category rankings for the HMOs.	\$1,140.50	\$1,180.50	\$1,222.50
Grand Totals	\$ 9,124.00	\$ 9,444.00	\$ 9,780.00

*The number of commercial HMOs during the term of the contract may vary.

Cash Discount: 0.5% discount off invoice if paid within 30 days.

