

Form No. DTMB-3522 (Rev. 04/2015)  
 AUTHORITY: Act 431 of 1984  
 COMPLETION: Required  
 PENALTY: Contract change will not be executed unless form is filed

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

**NOTICE OF CONTRACT NO. 071B6600019**  
 between  
**THE STATE OF MICHIGAN**  
 and

NAME & ADDRESS OF CONTRACTOR	PRIMARY CONTACT	EMAIL
The Regents of the University of Michigan  3014 Fleming  Ann Arbor, MI 48109	Ms. Amy Holihan	aholihan@umich.edu
	PHONE	VENDOR TAX ID # (LAST FOUR DIGITS ONLY)
	734-763-2171	6309

STATE CONTACTS	AGENCY	NAME	PHONE	EMAIL
PROGRAM MANAGER	DHHS	Deborah Buchanan	517-241-9576	BuchananD@michigan.gov
CONTRACT ADMINISTRATOR	DTMB	Will Camp	517-284-7022	campw@michigan.gov

CONTRACT SUMMARY			
<b>DESCRIPTION:</b> Statistician Services for the Department of Health and Human Services - Children's Services Administration – Division of Continuous Quality Improvement (DCQI).			
INITIAL TERM	EFFECTIVE DATE	INITIAL EXPIRATION DATE	AVAILABLE OPTIONS
3 Years	10/19/2015	10/19/2018	N/A
PAYMENT TERMS	F.O.B.	SHIPPED TO	
N/A	N/A	N/A	
ALTERNATE PAYMENT OPTIONS			EXTENDED PURCHASING
<input type="checkbox"/> P-card <input type="checkbox"/> Direct Voucher (DV) <input type="checkbox"/> Other			<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
<b>MINIMUM DELIVERY REQUIREMENTS:</b>			
N/A			
<b>MISCELLANEOUS INFORMATION:</b>			
THIS IS NOT AN ORDER: This Contract Agreement is awarded on the basis of our inquiry bearing the solicitation #007115B0004922. Orders for delivery will be issued directly by Departments through the issuance of a Purchase Order Form.			
<b>ESTIMATED CONTRACT VALUE AT TIME OF EXECUTION:</b>		\$234,972.00	

Notice of Contract #: 071B600019

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**For the Contractor:**

\_\_\_\_\_  
[Redacted],  
**Contract Administrator**  
[Redacted]

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

**For the State:**

\_\_\_\_\_  
**Tom Falik,**  
**Services Division Director**  
**State of Michigan**

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

# STATE OF MICHIGAN

Contract No. 071B  
DHHS - Statistician

## EXHIBIT A STATEMENT OF WORK CONTRACT ACTIVITIES

### Project Request

This is a 3-year contract for a Statistician or team thereof, to serve as the statistical expert for the Department of Health and Human Services Children's Services Administration (DHHS) – Division of Continuous Quality Improvement (DCQI). This position will be responsible for a variety of complex work assignments involving sample design, query creation, statistical evaluation, analysis and calculation of data. Hereafter all references to the "Statistician" will refer to a singular statistician or a team thereof.

### Requirements

#### 1.1 Scope

The Statistician must serve as the expert for reporting on child welfare DCQI data related items as specified in the Modified Settlement Agreement, Child and Family Services Review (CFSR), Child and Family State Plan, National Child Abuse and Neglect Data System (NCANDS), and Adoption and Foster Care Analysis and Reporting System (AFCARS).

Knowledge, Skills, and Abilities should include:

- a. Knowledge of the need, preparation and use of reports.
- b. Knowledge of the science of statistics, including statistical theory, techniques, and methods encompassing sampling, ratios and proportions, measure of dispersions and central tendency, reliability, validity, correlations, time series, trends, index numbers and forecasting.
- c. Knowledge of the significance of various statistical measures.
- d. Knowledge of methods of statistical applications.
- e. Knowledge of statistical needs.
- f. Ability to use statistical methods and procedures.
- g. Ability to reliably analyze and interpret statistical data.
- h. Ability to test the validity of research projects.
- i. Ability to present conclusions in written and graphic form.
- j. Ability to plan, direct, and coordinate program and administrative activities of a complex, interrelated and interdependent nature, whenever unknowns and numerous contingency factors are involved.
- k. Able to plan, coordinate and expedite work projects.
- l. Able to interpret complex rules and regulations.
- m. Ability to communicate effectively with others

THE REGENTS OF THE  
UNIVERSITY OF MICHIGAN



Peter J. Gerard  
Associate Director  
Grants and Contracts

## 1.2 Rates/Responsibilities & Tasks

The Statistician is responsible for the completion of highly complex work assignments involving:

- Sample design creation of queries,
- Statistical evaluation and verification of data integrity
- Analysis and calculations of data

The Statistician is responsible for the development of child welfare reports, spreadsheets and graphics for use in presentations or inclusion in documents. Also included are tasks which relate to the development of data reports necessary to support the successful implementation of continuous quality improvement within the Children's Services Administration.

The Statistician must perform the following duties:

1. Statistician is responsible for tasks related to the development of data reports necessary to support the successful implementation of continuous quality improvement within the Children's Services Administration. (40% of time)

Individual tasks include:

- a. Applying advanced statistical methods to evaluate the effectiveness of child welfare services, utilizing information obtained from DCQI reviews, data reports, CFSR, NCANS, AFCARS and other sources.
  - b. Applying a high level of knowledge in the principles of sampling design, statistical analysis and research, which will support an assessment of the overall functioning of the child welfare system (safety, permanency and well-being) and provides data for the tracking of compliance with Federal requirements.
  - c. Determining sampling methodology and data queries for DCQI reviews.
  - d. Developing equations for specific data reports.
  - e. Reviewing, interpreting, analyzing, and verifying integrity of the child welfare data.
  - f. Recommending alternative strategies for using existing data, developing new data sources, improving quality and reliability of data.
  - g. Assessing the operational and organization's significance of existing and proposed policies and program decisions.
  - h. Assisting in the development and implementation of strategies for systemic changes to child welfare policy and procedure.
2. The Statistician must consult and collaborate with internal and external stakeholders in the development and implementation of DCQI review protocols. The Statistician must review and assist the DCQI Director, DCQI Managers, CSA Director, CSA Manager, and others as determined appropriate by the DCQI Director, with development of data methodologies, data analysis and verification of data integrity. (40% of time)

Individual tasks include:

- a. Consulting and collaborate with division managers to develop quality assurance and improvement protocols.
- b. Providing division support in the design and implementation of sample plans.
- c. Interpreting and evaluates the results of research projects.
- d. Serving as a data consultant and liaison with other program offices and data management units within and external to DHHS.
- e. Assisting in the development of quality assurance and improvement protocols.
- f. Conducting special projects.
- g. Demonstrating the ability to utilize quantitative and qualitative data which will

support the development of change strategies within the Children's Services Administration to achieve improvements in program areas as identified based on continuous quality improvement reviews.

- h. Maintaining and update (if necessary) quality assurance and improvement protocols.
  - i. Establishing quality sample designs to meet requirements for reviews.
  - j. Utilizing departmental resources in obtaining accurate data and developing quality samples.
  - k. Interfacing with MiSACWIS, Info View, and other data systems used by DHHS.
  - l. Monitoring the accuracy of calculations and computations of quality assurance and improvement protocols and integrity.
  - m. Serving as project leader of special projects. This involves reviewing reports, memos and other documentation for accuracy of data being shared outside of DCQI.
3. The Statistician must prepare child welfare reports in a variety of formats with extensive knowledge of statistical analysis and different modes of presentations. (15% of time)

Individual tasks include:

- a. Prepares statistical tables, charts and graphs.
  - b. Create and provide analysis of statistical tables, charts and graphs.
  - c. Provide written reports and executive reports summarizing findings.
  - d. Conduct presentations regarding data and data findings.
  - e. Analyze results of data collected from DCQI teams utilizing quality assurance and improvement protocols.
  - f. Design and produce statistical and informational reports as needed (i.e. weekly, monthly, quarterly and yearly).
  - g. Prepare and submit reports as required for the Federal Settlement Agreement.
4. Prepare and submit reports as required for the Federal Settlement Agreement. The Statistician must perform the following duties as assigned. (5% of time)
- a. Prepare responses to requests from executive management, the public, legislature and other staff.
  - b. Provide Expert Testimony as needed in court, legislative hearings, etc.
  - c. Act as consultant to staff from internal and external organizational units regarding quality assurance and CQI.
  - d. Keep Division Director and Program Manager informed concerning program performance, special reviews, data trends, and program improvement implementation.
  - e. Plan and coordinate data-related training of staff.
5. Statistician will serve as the expert for reporting on child welfare DHHS Division of Continuous Quality Improvement (DCQI) data related items as specified in the Modified Settlement Agreement, Child and Family Services Review, Child and Family State Plan, etc. In this role, the Statistician is responsible for development of child welfare reports, spreadsheets, and graphics for use in presentations or inclusion in documents.
6. Statistician must be able to travel widely across the State of Michigan on an as needed basis, as required by the DHHS Program Manager.

#### PROJECT CONTROL AND REPORTS:

A bi-weekly progress report must be submitted to the DHHS Program Manager throughout the life of this project. This report may be submitted with the billing invoice. Each bi-weekly progress report must contain the following:

- 1. Accomplishments: Indicate what was worked on and what was completed during the current reporting period.

2. **Planned Tasking:** Describe activities to be accomplished during the next reporting period. **Issues:** Indicate major issues/risks/changes, real or perceived, and recommend resolutions.
3. **Issues:** Indicate major issues/risks/changes, real or perceived, and recommend resolutions.

### 1.3 Training

1. The Contractor must provide training on how to interpret data to DHHS and Private Agency Staff, as directed by the DHHS Program Manager.
2. The Child & Adolescent Data Lab CADL will provide training on interpretation of data. Whenever it is deemed most useful, the CADL will create videos using screen-casting software to make these trainings widely available on an *on-demand* basis. The trainings can be provided as traditional face-to-face educational experiences, webinars, and video recordings. The CADL owns and will make available all software and related technologies for conducting webinars and video recordings of trainings.

## 2. Acceptance

### 2.1 Acceptance, Inspection and Testing

The State will use the following criteria to determine acceptance of the Contract Activities: Purchase Order

The Contractor will carry out duties as a Statistician under the direction and control of the DHHS Program Manager and the DHHS Children's Services Administration.

The Contractor will provide Expert Testimony as a Statistician when deemed necessary by the DHHS Program Manager and the DHHS Children's Services Administration.

The Contractor will provide the bi-weekly progress report referenced in section 1.2.7-9.

#### EXPECTED CONTRACTOR WORK HOURS AND CONDITIONS:

Normal work hours are eight (8) hours a day, forty (40) hours a week. Additional hours may be necessary based on business needs. These hours may vary and will be paid at the same rate.

The State will not pay overtime.

## 3. Staffing

### 3.1 Contractor Representative

The Contractor must appoint representative, who may or may not be the Statistician, specifically assigned to State of Michigan accounts, that will respond to State inquiries regarding the Contract Activities, answering questions related to ordering and delivery, etc. (the "Contractor Representative").

The Contractor must notify the Contract Administrator at least 14 calendar days before removing or assigning a new Contractor Representative.

This Contractor representative will be:

Brian Perron, Associate Professor, School of Social Work  
1080 S. University Avenue  
Ann Arbor, MI 48109-1106 734-763-9272  
beperron@umich.edu

### 3.2 Reserved.

### 3.3 Reserved.

### 3.4 Work Hours

The Statistician must be available provide Contract Activities during the State's normal working hours Monday – Friday

Version (03/21/14)

8:00 a.m. to 5:00 p.m. EST, and possible night and weekend hours depending on the requirements of the project.

### 3.5 Key Personnel

1. The Contractor must appoint *the statistician* who will be directly responsible for the day-to-day operations of the Contract ("Key Personnel"). Key Personnel must be specifically assigned to the State account, be knowledgeable on the contractual requirements, and respond to State inquires within one business day.

The lead contact for the Statistician shall be:

Brian Perron, Associate Professor, School of Social Work  
1080 S. University Avenue  
Ann Arbor, MI 48109-1106 734-763-9272  
beperron@umich.edu

2. Contractor's Key Personnel must be on-site at the Lansing Grand Tower Building as mutually agreed upon in advance with the DHHS Program Manager. Whenever possible, Contractor will provide and make use of video-conferencing materials to help minimize travel costs.
3. **Education:** The Statistician must have at least four years of professional experience in the systematic collection, compilation and interpretation of numerical data.
4. **Experience:** The Statistician must have a Bachelor's degree with at least 12 semester (18 term) credits in statistics. Master's degree with experience managing large data base system or social work program evaluation preferred.

The State has the right to recommend and approve in writing the initial assignment, as well as any proposed reassignment or replacement, of any Key Personnel. Before assigning an individual to any Key Personnel position, Contractor will notify the State of the proposed assignment, introduce the individual to the State's Program Manager, and provide the State with a resume and any other information about the individual reasonably requested by the State. The State reserves the right to interview the individual before granting written approval. In the event the State finds a proposed individual unacceptable, the State will provide a written explanation including reasonable detail outlining the reasons for the rejection. The State may require a 30-calendar day training period for replacement personnel.

Contractor will not remove any Key Personnel from their assigned roles on this Contract without the prior written consent of the State. The Contractor's removal of Key Personnel without the prior written consent of the State is an unauthorized removal ("Unauthorized Removal"). An Unauthorized Removal does not include replacing Key Personnel for reasons beyond the reasonable control of Contractor, including illness, disability, leave of absence, personal emergency circumstances, resignation, or for cause termination of the Key Personnel's employment. Any Unauthorized Removal may be considered by the State to be a material breach of this Contract, in respect of which the State may elect to terminate this Contract for cause under Termination for Cause in the Standard Terms. It is further acknowledged that an Unauthorized Removal will interfere with the timely and proper completion of this Contract, to the loss and damage of the State, and that it would be impracticable and extremely difficult to fix the actual damage sustained by the State as a result of any Unauthorized Removal. Therefore, Contractor and the State agree that in the case of any Unauthorized Removal in respect of which the State does not elect to exercise its rights under Termination for Cause, Contractor will issue to the State the corresponding credits set forth below (each, an "Unauthorized Removal Credit"):

For the Unauthorized Removal of any Key Personnel designated in the applicable Statement of Work, the credit amount will be \$1,000.00 per individual if Contractor identifies a replacement approved by the State and assigns the replacement to shadow the Key Personnel who is leaving for a period of at least 30 calendar days before the Key Personnel's removal.

If Contractor fails to assign a replacement to shadow the removed Key Personnel for at least 30 calendar days, in addition to the \$1,000.00 credit specified above, Contractor will credit the State \$100.00 per calendar day for each day of the 30 calendar-day shadow period that the replacement Key Personnel does not shadow the removed Key Personnel, up to \$25,000.00 maximum per individual. The total Unauthorized Removal Credits that may be assessed per Unauthorized Removal and failure to provide 30 calendar days of shadowing will not exceed \$10,000.00 per individual.

Contractor acknowledges and agrees that each of the Unauthorized Removal Credits assessed above: (i) is a reasonable estimate of and compensation for the anticipated or actual harm to the State that may arise from the

Unauthorized Removal, which would be impossible or very difficult to accurately estimate; and (ii) may, at the State's option, be credited or set off against any fees or other charges payable to Contractor under this Contract. The Contractor must identify the Key Personnel, indicate where they will be physically located, describe the functions they will perform, and provide current chronological résumés.

### **3.7 Disclosure of Subcontractors**

If the Contractor intends to utilize a subcontractor for the Statistician position, the Contractor must disclose the following:

The legal business name; address; telephone number; a description of subcontractor's organization and the services it will provide; and information concerning subcontractor's ability to provide the Contract Activities.

The relationship of the subcontractor to the Contractor.

Whether the Contractor has a previous working experience with the subcontractor. If yes, provide the details of that previous relationship.

A complete description of the Contract Activities that will be performed or provided by the subcontractor.

Of the total bid, the price of the subcontractor's work.

### **3.8 Security**

Upon request, Contractor must perform background checks on the Statistician selected for this position, prior to this assignment. The scope is at the discretion of the State and documentation must be provided as requested. Contractor is responsible for all costs associated with the requested background checks. The State, in its sole discretion, may also perform background checks.

### **4. Reserved.**

**5. Ordering**

**5.1 Authorizing Document**

The appropriate authorizing document for the Contract will be a purchase order.

**6. Invoice and Payment**

**6.1 Invoice Requirements**

All invoices submitted to the State must include: (a) date; (b) purchase order; (c) description of the Contract Activities performed; (d) unit price; and (e) total price. Overtime, holiday pay, and travel expenses will not be paid. All invoices should reflect actual work done. Specific details of invoices and payments will be agreed upon between the DHHS Program Manager and the Contractor.

**6.2 Payment Methods**

The State will make payment for Contract Activities. The specific payment schedule for any Contract(s) entered into must be mutually agreed upon between the DHHS Program Manager and the Contractor. As a general policy, statements must be forwarded to the DHHS Program Manager by the 15th day of the following month.

# STATE OF MICHIGAN

Contract No.

DHHS - Statistician

**EXHIBIT B**

**RESERVED**

# STATE OF MICHIGAN

Contract No. 071B

DHHS – Statistician

## EXHIBIT C - PRICING

1. Prices quoted in this list will be not-to-exceed rates for the duration of the Contract. Failure to complete the pricing table may result in disqualification of your proposal.
2. Reserved.
3. By submitting its proposal, the Contractor certifies that the prices were arrived at independently, and without consultation, communication, or agreement with any other Contractor.
4. Travel. Contractor's out-of-pocket expenses are not separately reimbursable by the state unless, on a case-by-case basis for unusual expenses, the state has agreed in advance and in writing to reimburse the Contractor for the expense at the state's current travel reimbursement rates. See [www.michigan.gov/dtmb](http://www.michigan.gov/dtmb) for current rates.

	Name	Annual Estimated Hours	Not-to-exceed Billable Hourly Rate	Annual Total
1	Brian Perron	310.8	107.88	33,529
2	Joe Ryan	201.5	102.73	20,700
3	TBN – Research Associate	218.5	50.53	11,041
	20% Indirect Costs –calculated on modified total direct costs			13,054

<b>3 Year Grand Total:</b>	<b>\$234,972</b>
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5. Upon receipt of the both bi-weekly progress reports and acceptable completion of assigned duties outlined in Exhibit A each month, the State will pay the contractor \$6,527 per month.



# STATE OF MICHIGAN

## STANDARD CONTRACT TERMS

This STANDARD CONTRACT ("Contract") is agreed to between the State of Michigan (the "State") and Regents of the University of Michigan ("Contractor"), a state institution of higher education]. This Contract is effective on October 15, 2015 ("Effective Date"), and unless terminated, expires on October 14, 2018. Two, one-year options to renew????

The parties agree as follows:

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

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

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

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

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

<b>If to State:</b> William Camp 525 W. Allegan St, PO Box 30026 Lansing, MI, 48933 Campw@michigan.gov 517-284-7022	<b>If to Contractor:</b> Amy Holihan 3003 South State Street, Wolverine Tower 1 <sup>st</sup> Floor Ann Arbor, MI 48109-1274 aholihan@umich.edu 734-763-2171
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3. **Contract Administrator.** The Contract Administrator for each party is the only person authorized to modify any terms and conditions of this Contract (each a "Contract Administrator"):

<b>State:</b> William Camp 525 W. Allegan St, PO Box 30026	<b>Contractor:</b> Amy Holihan 3003 S. State Street, Wolverine Tower, 1 <sup>st</sup> Floor
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Regents of the University of Michigan

Lansing, MI, 48933 Campw@michigan.gov 517-284-7022	Ann Arbor, MI 48109-1274 ahollhan@umich.edu 734-763-2171
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4. **Program Manager.** The Program Manager for each party will monitor and coordinate the day-to-day activities of the Contract (each a "Program Manager"):

State: Michael Rosenberg 235 S. Grand Ave  Lansing, MI 48909 RosenbergM2@michigan.gov 517-373-3870	I Contractor: Brian Perron 1080 South University Ann Arbor, MI 48109-1106 beperron@umich.edu 734-763-9272
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5. **Performance Guarantee.** Contractor must at all times have financial resources sufficient, in the opinion of the State, to ensure performance of the Contract and must provide proof upon request. The State may require a performance bond (as specified in Exhibit A) if, in the opinion of the State, it will ensure performance of the Contract.
6. **Insurance Requirements.** [University of Michigan] is self-insured. The fully funded, non-cancelable plans have the following limits:

Insurance Type	Additional Requirements
<b>Commercial General Liability Insurance</b>	
\$2 million/occurrence \$3million/aggregate	
<b>Automobile Liability Insurance</b>	
\$1 million/occurrence	
<b>Workers' Compensation Insurance</b>	
Statutory Limits	
<b>Employers Liability Insurance</b>	
\$1 million each accident \$1 million each accident \$1 million disease each employee \$1 million disease policy limit	
<b>Professional Liability (Errors and Omissions) Insurance</b>	
\$1 million/occurrence \$3 million/annual aggregate	

If any of the required policies provide **claim-made** coverage, the Contractor must: (a) provide coverage with a retroactive date before the effective date of the contract or the beginning of Contract Activities; (b) maintain coverage and provide evidence of coverage for at least three (3) years after completion of the Contract Activities; and (c) if coverage is canceled or not renewed, and not replaced with another claims-made policy form with a retroactive date prior to the contract effective date, Contractor must purchase extended reporting coverage for a minimum of three (3) years after completion of work.

Contractor must: (a) provide insurance certificates to the Contract Administrator, containing the agreement or purchase order number, at Contract formation and within 20 calendar days of the expiration date of the applicable policies; (b) require that subcontractors maintain the required insurances contained in this Section; (c) notify the Contract Administrator within 5 business days if any insurance is cancelled; and (d) waive all rights against the State for damages covered by insurance. Failure to maintain the required insurance does not limit this waiver. This Section is not intended to and is not to be construed in any manner as waiving, restricting or limiting the liability of either party for any obligations under this Contract (including any provisions hereof requiring Contractor to indemnify, defend and hold harmless the State).

7. **Reserved.**

8. **Reserved.**

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

10. **Subcontracting.** Contractor may not delegate any of its obligations under the Contract without the prior written approval of the State. Contractor must notify the State at least 90 calendar days before the proposed delegation, and provide the State any information it requests to determine whether the delegation is in its best interest. If approved, Contractor must: (a) be the sole point of contact regarding all contractual matters, including payment and charges for all Contract Activities; (b) make all payments to the subcontractor; and (c) incorporate the terms and conditions contained in this Contract in any subcontract with a subcontractor. Contractor remains responsible for the completion of the Contract Activities, compliance with the terms of this Contract, and the acts and omissions of the subcontractor. The State, in its sole discretion, may require the replacement of any subcontractor.

11. **Staffing.** The State's Contract Administrator may require Contractor to remove or reassign personnel by providing a notice to Contractor.

12. **Background Checks.** Upon request, Contractor must perform background checks on all employees and subcontractors and its employees prior to their assignment. The scope is at the discretion of the State and documentation must be provided as requested. Contractor is responsible for all costs associated with the requested background checks. The State, in its sole discretion, may also perform background checks.

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

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

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

15. **Ordering.** Contractor is not authorized to begin performance until receipt of authorization as identified in Exhibit A.

16. **Acceptance.** Contract Activities are subject to inspection and testing by the State within 30 calendar days of the State's receipt of them ("**State Review Period**"), unless otherwise provided in Exhibit A. If the Contract Activities are not fully accepted by the State, the State will notify Contractor by the end of the State Review Period that either: (a) the Contract Activities are accepted, but noted deficiencies must be corrected; or (b) the Contract Activities are rejected. If the State finds material deficiencies, it may: (i) reject the Contract Activities without performing any further inspections; (ii) demand performance at no additional cost; or (iii) terminate this Contract in accordance with Section 23, Termination for Cause.

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

If Contractor is unable or refuses to correct the deficiency within the time response standards set forth in this Contract, the State may cancel the order in whole or in part. The State, or a third party identified by the State, may perform the Contract Activities and recover the difference between the cost to cure and the Contract price plus an additional 10% administrative fee.

17. **Reserved.**

18. **Reserved.**

19. **Reserved.**

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

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

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

Without prejudice to any other right or remedy it may have, the State reserves the right to set off at any time any amount then due and owing to it by Contractor against any amount payable by the State to Contractor under this Contract.

21. **Reserved.**

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

23. **Termination for Cause.** The State may terminate this Contract for cause, in whole or in part, if Contractor, as determined by the State: (a) endangers the value, integrity, or security of any location, data, or personnel; (b) becomes insolvent, petitions for bankruptcy court proceedings, or has an involuntary bankruptcy proceeding filed against it by any creditor; (c) engages in any conduct that may expose the State to liability; (d) breaches any of its material duties or obligations; or (e) fails to cure a breach within the time stated in a notice of breach. Any reference to specific breaches being material breaches within this Contract will not be construed to mean that other breaches are not material.

If the State terminates this Contract under this Section, the State will issue a termination notice specifying whether Contractor must: (a) cease performance immediately, or (b) continue to perform for a specified period. If it is later determined that Contractor was not in breach of the Contract, the termination will be deemed to have been a Termination for Convenience, effective as of the same date, and the rights and obligations of the parties will be limited to those provided in Section 24, Termination for Convenience.

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

24. **Termination for Convenience.** The State may immediately terminate this Contract in whole or in part without

will specify whether Contractor must: (a) cease performance of the Contract Activities immediately, or (b) continue to perform the Contract Activities in accordance with Section 25, Transition Responsibilities. If the State terminates this Contract for convenience, the State will pay all reasonable costs, as determined by the State, for State approved Transition Responsibilities.

25. **Transition Responsibilities.** Upon termination or expiration of this Contract for any reason, Contractor must, for a period of time specified by the State (not to exceed 90 calendar days), provide all reasonable transition assistance requested by the State, to allow for the expired or terminated portion of the Contract Activities to continue without interruption or adverse effect, and to facilitate the orderly transfer of such Contract Activities to the State or its designees. Such transition assistance may include, but is not limited to: (a) continuing to perform the Contract Activities at the established Contract rates; (b) taking all reasonable and necessary measures to transition performance of the work, including all applicable Contract Activities, training, equipment, software, leases, reports and other documentation, to the State or the State's designee; (c) taking all necessary and appropriate steps, or such other action as the State may direct, to preserve, maintain, protect, or return to the State all materials, data, property, and confidential information provided directly or indirectly to Contractor by any entity, agent, vendor, or employee of the State; (d) transferring title in and delivering to the State, at the State's discretion, all completed or partially completed deliverables prepared under this Contract as of the Contract termination date; and (e) preparing an accurate accounting from which the State and Contractor may reconcile all outstanding accounts (collectively, "Transition Responsibilities"). This Contract will automatically be extended through the end of the transition period.
26. **General Indemnification.** To the extent permitted by law, Contractor must defend, indemnify and hold the State, its departments, divisions, agencies, offices, commissions, officers, and employees harmless, without limitation, from and against any and all actions, claims, losses, liabilities, damages, costs, attorney fees, and expenses (including those required to establish the right to indemnification), arising out of or relating to: any acts or omissions of Contractor (or any of Contractor's employees, agents, subcontractors, or by anyone else for whose acts any of them may be liable).

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

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

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

27. **Reserved**

28. **Limitation of Liability.** The State is not liable for consequential, incidental, indirect, or special damages, regardless of the nature of the action.

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

30. **Reserved.**

31. **State Data.**

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

and exclusive property of the State and all right, title, and interest in the same is reserved by the State. This Section survives the termination of this Contract.

- b. **Contractor Use of State Data.** Contractor is provided a limited license to State Data for the sole and exclusive purpose of providing the Contract Activities, including a license to collect, process, store, generate, and display State Data only to the extent necessary in the provision of the Contract Activities. Contractor must: (a) keep and maintain State Data in strict confidence, using such degree of care as is appropriate and consistent with its obligations as further described in this Contract and applicable law to avoid unauthorized access, use, disclosure, or loss; (b) use and disclose State Data solely and exclusively for the purpose of providing the Contract Activities, such use and disclosure being in accordance with this Contract, any applicable Statement of Work, and applicable law; and (c) not use, sell, rent, transfer, distribute, or otherwise disclose or make available State Data for Contractor's own purposes or for the benefit of anyone other than the State without the State's prior written consent. This Section survives the termination of this Contract.
  - c. **Extraction of State Data.** Contractor must, within five (5) business days of the State's request, provide the State, without charge and without any conditions or contingencies whatsoever (including but not limited to the payment of any fees due to Contractor), an extract of the State Data in the format specified by the State.
  - d. **Backup and Recovery of State Data.** Unless otherwise specified in Exhibit A, Contractor is responsible for maintaining a backup of State Data and for an orderly and timely recovery of such data. Unless otherwise described in Exhibit A, Contractor must maintain a contemporaneous backup of State Data that can be recovered within two (2) hours at any point in time.
  - e. **Loss of Data.** In the event of any act, error or omission, negligence, misconduct, or breach that compromises or is suspected to compromise the security, confidentiality, or integrity of State Data or the physical, technical, administrative, or organizational safeguards put in place by Contractor that relate to the protection of the security, confidentiality, or integrity of State Data, Contractor must, as applicable: (a) notify the State as soon as practicable but no later than twenty-four (24) hours of becoming aware of such occurrence; (b) cooperate with the State in investigating the occurrence, including making available all relevant records, logs, files, data reporting, and other materials required to comply with applicable law or as otherwise required by the State; (c) in the case of PII or PHI, at the State's sole election, (i) notify the affected individuals who comprise the PII or PHI as soon as practicable but no later than is required to comply with applicable law, or, in the absence of any legally required notification period, within 5 calendar days of the occurrence; or (ii) reimburse the State for any costs in notifying the affected individuals; (d) in the case of PII, provide third-party credit and identity monitoring services to each of the affected individuals who comprise the PII for the period required to comply with applicable law, or, in the absence of any legally required monitoring services, for no less than twenty-four (24) months following the date of notification to such individuals; (e) perform or take any other actions required to comply with applicable law as a result of the occurrence; (f) without limiting Contractor's obligations of indemnification as further described in this Contract, indemnify, defend, and hold harmless the State for any and all claims, including reasonable attorneys' fees, costs, and expenses incidental thereto, which may be suffered by, accrued against, charged to, or recoverable from the State in connection with the occurrence; (g) be responsible for recreating lost State Data in the manner and on the schedule set by the State without charge to the State; and, (h) provide to the State a detailed plan within 10 calendar days of the occurrence describing the measures Contractor will undertake to prevent a future occurrence. Notification to affected individuals, as described above, must comply with applicable law, be written in plain language, and contain, at a minimum: name and contact information of Contractor's representative; a description of the nature of the loss; a list of the types of data involved; the known or approximate date of the loss; how such loss may affect the affected individual; what steps Contractor has taken to protect the affected individual; what steps the affected individual can take to protect himself or herself; contact information for major credit card reporting agencies; and, information regarding the credit and identity monitoring services to be provided by Contractor. This Section survives the termination of this Contract.
32. **Non-Disclosure of Confidential Information.** The parties acknowledge that each party may be exposed to or acquire communication or data of the other party that is confidential, privileged communication not intended to be disclosed to third parties. The provisions of this Section survive the termination of this Contract.
- a. **Meaning of Confidential Information.** For the purposes of this Contract, the term "**Confidential Information**" means all information and documentation of a party that: (a) has been marked "confidential" or with words of similar meaning, at the time of disclosure by such party; (b) if disclosed orally or not marked "confidential" or with words of similar meaning, was subsequently summarized in writing by the disclosing party and marked "confidential" or with words of similar meaning; and, (c) should reasonably be recognized as confidential information of the disclosing party. The term "Confidential Information" does not include any information or documentation that was: (a) subject to disclosure by court order or under the Michigan Freedom of Information Act (FOIA); (b) already in the possession of the receiving party without an obligation of confidentiality; (c) developed independently by the receiving party, as demonstrated by the receiving party, without violating the disclosing party's proprietary rights; (d) obtained from a source other than the disclosing party without an obligation of confidentiality; or, (e) publicly available when received, or thereafter became publicly available (other than through any unauthorized disclosure by, through, or on

behalf of, the receiving party). For purposes of this Contract, in all cases and for all matters, State Data is deemed to be Confidential Information.

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

### 33. Data Privacy and Information Security.

- a. Undertaking by Contractor. Without limiting Contractor's obligation of confidentiality as further described, Contractor is responsible for establishing and maintaining a data privacy and information security program, including physical, technical, administrative, and organizational safeguards, that is designed to: (a) ensure the security and confidentiality of the State Data; (b) protect against any anticipated threats or hazards to the security or integrity of the State Data; (c) protect against unauthorized disclosure, access to, or use of the State Data; (d) ensure the proper disposal of State Data; and (e) ensure that all employees, agents, and subcontractors of Contractor, if any, comply with all of the foregoing. In no case will the safeguards of Contractor's data privacy and information security program be less stringent than the safeguards used by the State, and Contractor must at all times comply with all applicable State IT policies and standards, which are available to Contractor upon request.
- b. Audit by Contractor. No less than annually, Contractor shall conduct an internal compliance audit of processes, procedures, practices and information systems per University of Michigan's SPG 505.01
- c. Right of Audit by the State. Without limiting any other audit rights of the State, the State has the right to review Contractor's data privacy and information security program prior to the commencement of Contract Activities and from time to time during the term of this Contract. During the providing of the Contract Activities, on an ongoing basis from time to time and without notice, the State, at its own expense, is entitled to perform, or to have performed, an on-site audit of Contractor's data privacy and information security program. In lieu of an on-site audit, upon request by the State, Contractor agrees to complete, within 45 calendar days of receipt, an audit questionnaire provided by the State regarding Contractor's data privacy and information security program.
- d. Audit Findings. Contractor must implement any required safeguards as identified by the State or by any audit of Contractor's data privacy and information security program.

- e. **State's Right to Termination for Deficiencies.** The State reserves the right, at its sole election, to immediately terminate this Contract or a Statement of Work without limitation and without liability if the State determines that Contractor fails or has failed to meet its obligations under this Section.

34. **Reserved.**

35. **Reserved.**

36. **Records Maintenance, Inspection, Examination, and Audit.** The State or its designee may audit Contractor to verify compliance with this Contract. Contractor must retain, and provide to the State or its designee and the auditor general upon request, all financial and accounting records related to the Contract through the term of the Contract and for 4 years after the latter of termination, expiration, or final payment under this Contract or any extension ("Audit Period"). If an audit, litigation, or other action involving the records is initiated before the end of the Audit Period, Contractor must retain the records until all issues are resolved.

Within 10 calendar days of providing notice, the State and its authorized representatives or designees have the right to enter and inspect Contractor's premises or any other places where Contract Activities are being performed, and examine, copy, and audit all records related to this Contract. Contractor must cooperate and provide reasonable assistance. If any financial errors are revealed, the amount in error must be reflected as a credit or debit on subsequent invoices until the amount is paid or refunded. Any remaining balance at the end of the Contract must be paid or refunded within 45 calendar days.

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

37. **Warranties and Representations.** Contractor represents to the best of our knowledge and abilities we represent: (a) Contractor is the owner or licensee of any Contract Activities that it licenses, sells, or develops and Contractor has the rights necessary to convey title, ownership rights, or licensed use; (b) all Contract Activities are delivered free from any security interest, lien, or encumbrance and will continue in that respect; (c) the Contract Activities will not infringe the patent, trademark, copyright, trade secret, or other proprietary rights of any third party; (d) Contractor must assign or otherwise transfer to the State or its designee any manufacturer's warranty for the Contract Activities; (e) the Contract Activities are merchantable and fit for the specific purposes identified in the Contract; (f) the Contract signatory has the authority to enter into this Contract; (g) all information furnished by Contractor in connection with the Contract fairly and accurately represents Contractor's business, properties, finances, and operations as of the dates covered by the information, and Contractor will inform the State of any material adverse changes; and (h) all information furnished and representations made in connection with the award of this Contract is true, accurate, and complete, and contains no false statements or omits any fact that would make the information misleading. A breach of this Section is considered a material breach of this Contract, which entitles the State to terminate this Contract under Section 23, Termination for Cause.
38. **Conflicts and Ethics.** Contractor will uphold high ethical standards and is prohibited from: (a) holding or acquiring an interest that would conflict with this Contract; (b) doing anything that creates an appearance of impropriety with respect to the award or performance of the Contract; (c) attempting to influence or appearing to influence any State employee by the direct or indirect offer of anything of value; or (d) paying or agreeing to pay any person, other than employees and consultants working for Contractor, any consideration contingent upon the award of the Contract. Contractor must immediately notify the State of any violation or potential violation of these standards. This Section applies to Contractor, any parent, affiliate, or subsidiary organization of Contractor, and any subcontractor that performs Contract Activities in connection with this Contract.
39. **Compliance with Laws.** Contractor must comply with all federal, state and local laws, rules and regulations.
40. **Reserved.**
41. **Nondiscrimination.** Under the Elliott-Larsen Civil Rights Act, 1976 PA 453, MCL 37.2101, *et seq.*, and the Persons with Disabilities Civil Rights Act, 1976 PA 220, MCL 37.1101, *et seq.*, Contractor and its subcontractors agree not to discriminate against an employee or applicant for employment with respect to hire, tenure, terms, conditions, or privileges of employment, or a matter directly or indirectly related to employment, because of race, color, religion, national origin, age, sex, height, weight, marital status, or mental or physical disability. Breach of this covenant is a material breach of this Contract.
42. **Unfair Labor Practice.** Under MCL 423.324, the State may void any Contract with a Contractor or subcontractor who appears on the Unfair Labor Practice register compiled under MCL 423.322.
43. **Governing Law.** This Contract is governed, construed, and enforced in accordance with Michigan law, excluding choice-of-law principles, and all claims relating to or arising out of this Contract are governed by Michigan law, excluding choice-of-law principles. Any dispute arising from this Contract must be resolved in Michigan Court of Claims. Contractor consents to venue in Ingham County, and waives any objections, such as lack of personal jurisdiction or *forum non conveniens*. Contractor must appoint agents in Michigan to receive service of process.
44. **Non-Exclusivity.** Nothing contained in this Contract is intended nor will be construed as creating any requirements contract with Contractor. This Contract does not restrict the State or its agencies from acquiring similar, equal, or like Contract Activities from other sources.

45. **Force Majeure.** Neither party will be in breach of this Contract because of any failure arising from any disaster or acts of god that are beyond their control and without their fault or negligence. Each party will use commercially reasonable efforts to resume performance. Contractor will not be relieved of a breach or delay caused by its subcontractors. If immediate performance is necessary to ensure public health and safety, the State may immediately contract with a third party.
46. **Dispute Resolution.** The parties will endeavor to resolve any Contract dispute in accordance with this provision. The dispute will be referred to the parties' respective Contract Administrators or Program Managers. Such referral must include a description of the issues and all supporting documentation. The parties must submit the dispute to a senior executive if unable to resolve the dispute within 15 business days. The parties will continue performing while a dispute is being resolved, unless the dispute precludes performance. A dispute involving payment does not preclude performance.
- Litigation to resolve the dispute will not be instituted until after the dispute has been elevated to the parties' senior executive and either concludes that resolution is unlikely, or fails to respond within 15 business days. The parties are not prohibited from instituting formal proceedings: (a) to avoid the expiration of statute of limitations period; (b) to preserve a superior position with respect to creditors; or (c) where a party makes a determination that a temporary restraining order or other injunctive relief is the only adequate remedy. This Section does not limit the State's right to terminate the Contract.
47. **Media Releases.** News releases (including promotional literature and commercial advertisements) pertaining to the Contract or project to which it relates must not be made without prior written State approval, and then only in accordance with the explicit written instructions of the State.
48. **Website Incorporation.** The State is not bound by any content on Contractor's website unless expressly incorporated directly into this Contract.
49. **Order of Precedence.** In the event of a conflict between the terms and conditions of the Contract, the exhibits, a purchase order, or an amendment, the order of precedence is: (a) the purchase order; (b) the amendment; (c) Exhibit A; (d) any other exhibits; and (e) the Contract.
50. **Severability.** If any part of this Contract is held invalid or unenforceable, by any court of competent jurisdiction, that part will be deemed deleted from this Contract and the severed part will be replaced by agreed upon language that achieves the same or similar objectives. The remaining Contract will continue in full force and effect.
51. **Waiver.** Failure to enforce any provision of this Contract will not constitute a waiver.
52. **Survival.** The provisions of this Contract that impose continuing obligations, including warranties and representations, termination, transition, insurance coverage, indemnification, and confidentiality, will survive the expiration or termination of this Contract.
53. **Entire Contract and Modification.** This Contract is the entire agreement and replaces all previous agreements between the parties for the Contract Activities. This Contract may not be amended except by signed agreement between the parties (a "Contract Change Notice").