

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

**CHANGE NOTICE NO. 4**  
 to  
**CONTRACT NO. 071B1300276**  
 between  
**THE STATE OF MICHIGAN**  
 and

NAME & ADDRESS OF CONTRACTOR	PRIMARY CONTACT	EMAIL
Xerox Audit & Compliance Solutions, LLC 101 Woodcrest Road, Mailstop 101 Cherry Hill, NJ 08003	Matt Smith	Matt.smith@xerox.com
	PHONE	VENDOR TAX ID # (LAST FOUR DIGITS ONLY)
	847-839-7737	0323

STATE CONTACTS	AGENCY	NAME	PHONE	EMAIL
PROGRAM MANAGER	DCH	Kevin Dunn	517-335-5096	dunnk3@michigan.gov
CONTRACT ADMINISTRATOR	DTMB	Brandon Samuel	517-284-7025	samuelb@michigan.gov

CONTRACT SUMMARY			
<b>DESCRIPTION:</b> Pharmacy Audit Services			
INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW
May 23, 2011	May 22, 2014	2, one year	May 22, 2015
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
MINIMUM DELIVERY REQUIREMENTS			
N/A			

DESCRIPTION OF CHANGE NOTICE				
EXTEND CONTRACT EXPIRATION DATE	EXERCISE CONTRACT OPTION YEAR(S)	EXTENSION BEYOND CONTRACT OPTION YEARS	LENGTH OF EXTENSION/OPTION	EXPIRATION DATE AFTER CHANGE
<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	<input type="checkbox"/>	<input type="checkbox"/>		
CURRENT VALUE	VALUE/COST OF CHANGE NOTICE	ESTIMATED REVISED AGGREGATE CONTRACT VALUE		
\$1,847,220.00	\$0.00	\$1,847,220.00		

**DESCRIPTION:**  
 Effective April 7, 2015, Atos SE (The Atos Group) is hereby added as a subcontractor on this contract to provide infrastructure and related services.

All other terms, conditions, specifications and pricing remain the same. Per contractor and agency agreement, and DTMB Procurement approval.

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

May 14, 2014

**CHANGE NOTICE NO. 3**  
 to  
**CONTRACT NO. 071B1300276**  
 between  
**THE STATE OF MICHIGAN**  
 and

NAME & ADDRESS OF CONTRACTOR:	PRIMARY CONTACT	EMAIL
Xerox Audit & Compliance Solutions, LLC 101 Woodcrest Road, Mailstop 101 Cherry Hill, NJ 08003	Sara Fitzsimmons	<a href="mailto:sara.fitzsimmons@xerox.com">sara.fitzsimmons@xerox.com</a>
	TELEPHONE	CONTRACTOR #, MAIL CODE
	(804) 310-5758	

STATE CONTACTS	AGENCY	NAME	PHONE	EMAIL
<b>CONTRACT COMPLIANCE INSPECTOR</b>	DCH	Kevin Dunn	517-335-5096	<a href="mailto:dunnk3@michigan.gov">dunnk3@michigan.gov</a>
<b>BUYER</b>	DTMB	Brandon Samuel	517-241-1218	samuelb@michigan.gov

CONTRACT SUMMARY:				
DESCRIPTION: <b>Pharmacy Audit Services</b>				
INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW	
May 23, 2011	May 22, 2014	2, one year	May 22, 2014	
PAYMENT TERMS	F.O.B	SHIPPED	SHIPPED FROM	
N/A	N/A	N/A	N/A	
ALTERNATE PAYMENT OPTIONS:			AVAILABLE TO MiDEAL PARTICIPANTS	
<input type="checkbox"/> P-card <input type="checkbox"/> Direct Voucher (DV) <input type="checkbox"/> Other			<input type="checkbox"/> Yes <input type="checkbox"/> No	
MINIMUM DELIVERY REQUIREMENTS:				
N/A				

DESCRIPTION OF CHANGE NOTICE:				
EXTEND CONTRACT EXPIRATION DATE	EXERCISE CONTRACT OPTION YEAR(S)	EXTENSION BEYOND CONTRACT OPTION YEARS	LENGTH OF OPTION/EXTENSION	EXPIRATION DATE AFTER CHANGE
<input type="checkbox"/> No <input checked="" type="checkbox"/> Yes	<input checked="" type="checkbox"/>	<input type="checkbox"/>	1 Year	May 22, 2015
VALUE/COST OF CHANGE NOTICE:		ESTIMATED REVISED AGGREGATE CONTRACT VALUE:		
\$289,720.00		\$1,847,220.00		

Per Vendor and Agency agreement, and approval of DTMB Procurement and State Administrative Board on March 11, 2014, this Contract is extended one year through May 22, 2015 by exercising the first of two available option years, and an additional \$289,720.00 has been added to this Contract. Please see attached document for the contract language revisions.

Effective Immediately:

**Section 1.022 Work and Deliverables, the following sections of H. Quality Assurance Plan and Statements of Auditing Standards (SAS) 70 Level II, are hereby replaced with the following language. This section was originally labeled “H” inadvertently and is hereby relabeled to “I.” The other subsections of this section remain unchanged.**

## **1.022 Work and Deliverables**

### **I. Quality Assurance Plan and Statements of Auditing Standards (SSAE16) SOC1**

Following are work and deliverables related to the Contractor’s quality assurance plan and SOC1 submissions.

#### **SSAE16**

*Requirement(s):*

74. The Contractor and any Subcontractors, at their expense, must have an annual independent audit that conforms to American Institute of Certified Public Accounting’s (AICPA) Statements of Auditing Standards (SSAE16). The (SSAE16) requirement is a review and actual test of the pharmacy auditing systems and their controls. The audit must include procedures and tests that the auditor(s) considers necessary under the circumstances to evaluate the design of the control procedures and to evaluate the operating effectiveness of those control procedures. The Department reserves the right to approve the entity that conducts the audit examination. The time period covered by the audit for fiscal year 2014 will be July 1, 2013 through May 31, 2014. The time period covered by the audit for fiscal year 2015 will be June 1, 2014 through December 31, 2014. Subsequent audits will be conducted on a calendar year basis. The Department, at its sole discretion, may waive or modify a Contractor’s or a Subcontractor’s annual independent audit requirement upon written request of the Contractor or Subcontractor.
75. The Contractor must provide the Department a copy of the Contractor’s and any Subcontractor’s annual SSAE16 audit report in a format that is approved by the Department within 30 days after the examination is complete or on or before the first business day of August in each year of the Contract, whichever occurs first, except in year one of the contract, the SSAE16 audit report will be provided to the State no later than January 1, 2012. The SSAE16 audit report content must be provided to the Department in its entirety as provided to the Contractor by the independent entity. No additions, deletions or alterations shall be made to this report prior to submission to the Department.
76. If a SSAE16 report in a format that is approved by the Department is not provided within 30 days after the examination is complete or on or before the first business day of August in each year of the Contract, whichever occurs first, the Department may designate an entity to conduct an audit as well as the time period to be covered by the examination, at the Contractor’s expense.

**Section 1.022 Work and Deliverables, I. Core Requirements is relabeled to “J. Core Requirements.” The subsections of this section remain unchanged.**

**Attachment F, Performance Guarantees/Service Level Agreements (SLAs), SLA #3 Reporting Accuracy and Timeliness is hereby replaced with the following language:**

**SLA #3**

***Reporting Accuracy and Timeliness***

**Guarantee**

The Contractor must produce accurate and timely reports including, but not limited to, standard reports, ad hoc reports, and invoicing for the Contractor's work and deliverables. The Contractor must deliver reports within the timelines that follow or as otherwise specified by the Department for select reports (e.g., Final Pharmacy Audit Report, Monthly Audit Progress Report, etc.).

- a. Weekly reports must be delivered to the Department on or before the second business day following the end of the reporting period;
- b. Monthly reports must be delivered to the Department on or before the tenth business day of the month following the end of the reporting period;
- c. Quarterly reports must be delivered to the Department on or before the tenth business day of the month following the end of the reporting period;
- d. Semi-annual and annual reports must be delivered to the Department no later than 60 calendar days following the end of the reporting period.

Within 10 business days of the notification of error, the Contractor must resubmit corrected reports that contained a material error to the Department and provide a corrective action plan outlining steps to prevent future occurrences.

- a. A material error is any error set forth in the report or database as determined by the Department related to recommended overpayment amounts and any procedural auditing defect that impacts the validation of the audit, validity of the audit findings, recoverability of an overpayment; or any other reported data inaccuracy.
- b. Material errors will not include disagreement on judgment calls, so long as the decisions were made in consultation with the Department.

**Frequency of Measure**

Quarterly on January 1, April 1, July 1, and October 1

**Penalty**

The penalty for failure to meet this SLA is \$1,000 per quarter during which five or more reports were identified by the Department as submitted untimely or with material errors.

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

**CHANGE NOTICE NO. 2**  
 to  
**CONTRACT NO. 071B1300276**  
 between  
**THE STATE OF MICHIGAN**  
 and

NAME & ADDRESS OF CONTRACTOR:	PRIMARY CONTACT	EMAIL
Xerox Audit & Compliance Solutions, LLC 45 Glover Avenue Norwalk, CT 06856-4505	Sara Fitzsimmons	<a href="mailto:sara.fitzsimmons@xerox.com">sara.fitzsimmons@xerox.com</a>
	TELEPHONE	CONTRACTOR #, MAIL CODE
	(804) 310-5758	

STATE CONTACTS	AGENCY	NAME	PHONE	EMAIL
CONTRACT COMPLIANCE INSPECTOR	DCH	Greg Rivet	517-241-4845	rivetg@michigan.gov
BUYER	DTMB	Brandon Samuel	517-241-1218	samuelb@michigan.gov

CONTRACT SUMMARY:			
DESCRIPTION: <b>Pharmacy Audit Services</b>			
INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW
May 23, 2011	May 22, 2014	2, one year	May 22, 2014
PAYMENT TERMS	F.O.B	SHIPPED	SHIPPED FROM
N/A	N/A	N/A	N/A
ALTERNATE PAYMENT OPTIONS:			AVAILABLE TO MiDEAL PARTICIPANTS
<input type="checkbox"/> P-card <input type="checkbox"/> Direct Voucher (DV) <input type="checkbox"/> Other			<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
MINIMUM DELIVERY REQUIREMENTS:			
N/A			

DESCRIPTION OF CHANGE NOTICE:				
EXTEND CONTRACT EXPIRATION DATE	EXERCISE CONTRACT OPTION YEAR(S)	EXTENSION BEYOND CONTRACT OPTION YEARS	LENGTH OF OPTION/EXTENSION	EXPIRATION DATE AFTER CHANGE
<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	<input type="checkbox"/>	<input type="checkbox"/>		May 22, 2014
VALUE/COST OF CHANGE NOTICE:		ESTIMATED REVISED AGGREGATE CONTRACT VALUE:		
\$0.00		\$1,557,500.00		

Effective March 14, 2013:

**Section 1.022 Work and Deliverables, C. Pharmacy On-Site and Desk Auditing, #24 is hereby replaced with the following language:**

24. The layout and items included in the Final Pharmacy Audit Report will be approved by the Department during the Design, Development, and Implementation Phase of the Contract. Unless otherwise specified by the Department, the Contractor's format for the Final Pharmacy Audit Report must include, but not be limited to, the following items:

- a. Detailed pharmacy information disclosing the identity and nature of the pharmacy;
- b. Names of the licensed staff of the pharmacy and the staff's license numbers;
- c. Names of management and their license numbers, if available;
- d. Detailed description of items audited;
- e. Targeted review techniques employed during auditing work;
- f. Summary of findings;
- g. Observed billing discrepancies;
- h. Citations of State and federal requirements including pertinent laws, rules, policies, guidelines, and notifications related to the observed billing discrepancies;
- i. Amount reasonably determined by the Contractor (overpayments) as a result of the pharmacy's audit to be potentially recoverable by the Department;
- j. Stand-alone Excel® claim-level report of all documented overpayments for recovery activities; and
- k. Stand-alone copies of documentation collected at the pharmacy.
- l. Verification of the pharmacy's license; identifying the status of each license during the period under review.
- m. Verification of whether the pharmacy's NPI has not been deactivated.

**Section 1.022 Work and Deliverables, C. Pharmacy On-Site and Desk Auditing #26 is hereby replaced with the following language:**

26. The Contractor's on-site auditing must include, but not be limited to, a review of the following information, documentation, and procedures of the pharmacy, or as otherwise specified by the Department:
- a. Entries from the patient signature log or delivery receipt log;
  - b. Will call bin procedures;
  - c. Software vendor identification;
  - d. Prescription orders to:
    - i. Detect possible forging or altering of prescriptions;
    - ii. Verify whether drug, strength, and dosage form were billed under the correct NDC; and
    - iii. Verify whether quantity, days supply, prescriber NPI, and *Dispense As Written* code were billed correctly.
  - e. Called-in prescription orders, confirm a sample (at least 20 or all if less in the audit sample) of paid claims with the prescriber;
  - f. Electronic prescribing orders to confirm:
    - i. Completeness of orders;
    - ii. Compliance with requirements for scheduled drugs; and
    - iii. Compliance with *Dispense As Written* documentation.
  - g. Prospective Drug Utilization Review (ProDUR) override documentation;
  - h. Usual and customary pricing;
  - i. Beneficiary payments;
  - j. Other insurer payments;
  - k. Stocked drugs compared with billed NDCs from a sample of paid claims;
  - l. Outdated drugs in stock;
  - m. Pharmacy employees on the Sanctioned Providers list;
  - n. Prescribers on the Sanctioned Providers list;
  - o. Drug samples in the pharmacy's inventory;
  - p. Patient returned drugs; and
  - q. Pharmacy and pharmacist licensure postings and other Board of Pharmacy required postings.
  - r. Verification of whether the pharmacy's NPI has not been deactivated.

**Section 1.022 Work and Deliverables, C. Pharmacy On-Site and Desk Auditing, #27 is hereby replaced with the following language:**

27. The procedures related to the Contractor's desk auditing will be approved by the Department during the Design, Development, and Implementation Phase of the Contract. The Contractor must perform the following activities, unless otherwise specified by the Department:
- a. Send a Department-approved Initial Request Letter to the pharmacy to be audited;
  - b. Verify the status of the pharmacy's license;
  - c. Verify if the pharmacy's NPI has not been deactivated.
  - d. Conduct the desk audit, comparing paid claims data with copies of prescriptions to:
    - i. Detect possible forging or altering of prescriptions;
    - ii. Verify whether drug, strength, dosage forms were billed under the correct NDC;
    - iii. Verify whether quantity, days supply, prescriber NPI, and *Dispense As Written* codes were billed correctly; and
    - iv. Verify called-in prescription orders with the prescriber.
  - e. Call the pharmacist-in-charge and provide a Telephone Exit Interview that includes, but is not limited to, the following:
    - i. A summary of billing discrepancy findings; and
    - ii. A reasonable opportunity for the pharmacist-in-charge to supply any additional documentation that the pharmacy would like the Contractor to consider in connection with the desk audit.
  - f. Send a follow-up letter to the pharmacist-in-charge documenting information provided in the Telephone Exit Interview.

Please also note that the buyer has been changed to Brandon Samuel. All other terms, conditions, pricing and specifications remain the same. Per vendor and agency agreement and the approval of DTMB Procurement.

June 14, 2012

STATE OF MICHIGAN  
 DEPARTMENT OF TECHNOLOGY, MANAGEMENT AND BUDGET  
 PROCUREMENT  
 P.O. BOX 30026, LANSING, MI 48909  
 OR  
 530 W. ALLEGAN, LANSING, MI 48913

**CHANGE NOTICE NO. 1**  
**TO**  
**CONTRACT NO. 071B1300276**  
 between  
**THE STATE OF MICHIGAN**  
 and

CURRENT NAME & ADDRESS OF CONTRACTOR:	PRIMARY CONTACT	EMAIL
Xerox Audit & Compliance Solutions, LLC 45 Glover Avenue Norwalk, CT 06856-4505	Frank Schiraldi	Frank.Schiraldi@Xerox.com
	TELEPHONE	NEW CONTRACTOR #, MAIL CODE
	(215) 551-3838 Ext. 101	N/A

PREVIOUS NAME & ADDRESS OF CONTRACTOR:	PRIMARY CONTACT	EMAIL
ACS Audit & Compliance 2828 N. Haskell Ave., 10 <sup>th</sup> Floor Dallas, TX 75204	Chuck Wacker	Chuck.wacker@acsinc.com
	TELEPHONE	PREVIOUS CONTRACTOR #, MAIL CODE
	(770) 829-1233	N/A

DESCRIPTION OF CHANGE NOTICE:
<p><b>Effective April 17, 2012, ACS Audit &amp; Compliance will CHANGE ITS NAME to Xerox Audit &amp; Compliance Solutions, LLC.</b></p> <p><b>All other terms, conditions, specifications, and pricing remain unchanged.</b></p>

STATE CONTACTS	AGENCY	NAME	PHONE	EMAIL
CONTRACT COMPLIANCE INSPECTOR:	DCH			
BUYER:	DTMB	Jim Wilson	(517) 241-1916	<a href="mailto:Wilsonj4@michigan.gov">Wilsonj4@michigan.gov</a>

CONTRACT SUMMARY:				
DESCRIPTION:				
Pharmacy Audit Services				
INITIAL TERM	EFFECTIVE DATE	INITIAL EXPIRATION DATE	AVAILABLE OPTIONS	
3 years	May 23, 2011	May 22, 2014	2, one year	
PAYMENT TERMS	F.O.B	SHIPPED	SHIPPED FROM	
N/A	N/A	N/A	N/A	
ALTERNATE PAYMENT OPTIONS:			AVAILABLE TO MiDEAL PARTICIPANTS	
<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

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**FOR THE CONTRACTOR:**

**Xerox Audit & Compliance Solutions, LLC**

Firm Name

Authorized Agent Signature

Authorized Agent (Print or Type)

Date

---

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**FOR THE STATE:**

Signature

**Jeff Brownlee, Chief Procurement Officer**

Name/Title

**DTMB Procurement**

Enter Name of Agency

Date

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

June 3, 2011

NOTICE  
OF  
CONTRACT NO. 071B1300276  
between  
THE STATE OF MICHIGAN  
and

NAME & ADDRESS OF CONTRACTOR <b>ACS Audit &amp; Compliance</b> <b>2828 N Haskell Ave., 10<sup>th</sup> Floor</b> <b>Dallas, TX 75204</b>  Email: <a href="mailto:chuck.wacker@acsinc.com">chuck.wacker@acsinc.com</a>	TELEPHONE (770) 829-1233 <b>Chuck Wacker</b>
	CONTRACTOR NUMBER/MAIL CODE
	BUYER/CA (517) 241-1916 <b>Jim Wilson</b>
Contract Compliance Inspector: <b>PHARMACY AUDIT SERVICES</b>	
CONTRACT PERIOD: <b>3 yrs. + 2 one-year options</b> From: <b>May 23, 2011</b> To: <b>May 22, 2014</b>	
TERMS <b>N/A</b>	SHIPMENT <b>N/A</b>
F.O.B. <b>N/A</b>	SHIPPED FROM <b>N/A</b>
ALTERNATE PAYMENT OPTIONS: <input type="checkbox"/> P-card <input type="checkbox"/> Direct Voucher (DV) <input type="checkbox"/> Other	
MINIMUM DELIVERY REQUIREMENTS <b>N/A</b>	
MISCELLANEOUS INFORMATION:	

**TOTAL ESTIMATED CONTRACT VALUE: \$1,557,500.00**

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

**CONTRACT NO. 071B1300276**  
**between**  
**THE STATE OF MICHIGAN**  
**and**

NAME & ADDRESS OF CONTRACTOR <b>ACS Audit &amp; Compliance</b> <b>2828 N Haskell Ave., 10<sup>th</sup> Floor</b> <b>Dallas, TX 75204</b>  Email: <a href="mailto:chuck.wacker@acsinc.com">chuck.wacker@acsinc.com</a>	TELEPHONE (770) 829-1233 <b>Chuck Wacker</b> CONTRACTOR NUMBER/MAIL CODE  BUYER/CA (517) 241-1916 <b>Jim Wilson</b>
Contract Compliance Inspector: <b>PHARMACY AUDIT SERVICES</b>	
CONTRACT PERIOD: <b>3 yrs. + 2 one-year options</b> From: <b>May 23, 2011</b> To: <b>May 22, 2014</b>	
TERMS <b>N/A</b>	SHIPMENT <b>N/A</b>
F.O.B. <b>N/A</b>	SHIPPED FROM <b>N/A</b>
ALTERNATE PAYMENT OPTIONS: <input type="checkbox"/> P-card <input type="checkbox"/> Direct Voucher (DV) <input type="checkbox"/> Other	
MINIMUM DELIVERY REQUIREMENTS <b>N/A</b>	
MISCELLANEOUS INFORMATION: <b>The terms and conditions of this Contract are those of ITB #07111300031, this Contract Agreement and the vendor's quote.</b>  <b>Estimated Contract Value: \$1,557,500.00</b>	

<b>FOR THE CONTRACTOR:</b>  _____ ACS Audit & Compliance Firm Name  _____ Authorized Agent Signature  _____ Authorized Agent (Print or Type)  _____ Date	<b>FOR THE STATE:</b>  _____ Signature Jim Wilson, Buyer Name/Title Services Division _____ Division  _____ Date
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**STATE OF MICHIGAN**  
**Department of Technology, Management and Budget**  
**Purchasing Operations**

Contract No. 071B1300276

**Pharmacy Auditing Services for the**  
**Michigan Department of Community Health**

Buyer Name: Jim Wilson  
Telephone Number: (517) 241-1916  
E-Mail Address: wilsonj4@michigan.gov



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- Attachment B Mandatory Minimum Requirements
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- Appendix A Sample Standard Reporting for the Department
- Appendix B Key Interface Files
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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.

“**Blanket Purchase Order**” is an alternate term for Contract and is used in the Plan Sponsors’ computer system.

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

“**CCI**” means Contract Compliance Inspector.

“**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.

“**FOIA**” means Freedom of Information Action, MCL 15.231 et seq.

“**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.

“**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.

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

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



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

**“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.

**“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.



### PROJECT-SPECIFIC DEFINITIONS

“**Abuse**” means provider practices that are inconsistent with sound fiscal, business, or medical practices, and result in an unnecessary cost to the Medicaid program, or in reimbursement for services that are not medically necessary or that fail to meet professionally recognized standards for health care. It also includes recipient practices that result in unnecessary cost to the Medicaid program (42 Code of Federal Regulations §455.2).

“**ABW**” means Adult Benefits Waiver, a Department program which provides healthcare benefits for Michigan’s childless adult residents (age 18 through 64) with an annual income at or below 35 percent of the Federal Poverty Level (FPL). Covered services and maximum co-payments for beneficiaries in this eligibility category are detailed in the Medicaid Provider Manual. Unless noted in Medicaid provider-specific chapters, service coverage and authorization requirements for the fee-for-service beneficiaries enrolled in the ABW program mirror those required for Medicaid. Only those providers enrolled to provide services through the Michigan Medicaid program may provide services for fee-for-service ABW Beneficiaries.

“**AWP**” means Average Wholesale Price.

“**Beneficiary**” refers to an individual who has healthcare coverage through Medicaid, Adult Benefits Waiver, or other Department programs.

“**CMS**” means the Centers for Medicare & Medicaid Services of the United States Department of Health and Human Services.

“**Coordination of Benefits**” or “**COB**” means which refers to the mechanism used to designate the order in which multiple carriers are responsible for benefit payments and, thus, prevents of duplicate payments.

“**County Health Plan**” or “**CHP**” means a county-administered health plan for the Adult Benefits Waiver (ABW). ABW beneficiaries enrolled in CHPs are subject to the requirements of the respective CHP. In those counties operating nonprofit CHPs, all covered services for ABW beneficiaries must be provided through the health plan. CHPs administering the ABW program are required to provide the services noted in the Coverage and Limitations Section of the Adult Benefits Waiver chapter of the Medicaid Provider Manual. CHP providers rendering services to ABW beneficiaries enrolled in a CHP are not required to enroll as providers in the Medicaid program, but they must comply with all Medicaid provider requirements as detailed in the Medicaid Provider Manual.

“**CSHCS**” means Children’s Special Health Care Services, created under Title V of the Social Security Act. Only those providers enrolled to provide services through the Michigan Medicaid Program may provide services for fee-for-service CSHCS beneficiaries.

“**DDI**” means Design, Development and Implementation phase.

“**DEA**” means Drug Enforcement Administration.

“**Department**” means the Michigan Department of Community Health or its successor responsible for administration of the pharmacy programs described in the RFP. When any work or deliverables listed in this document specify *notify the Department, approved by the Department, etc.*, the Contractor must contact the Project Manager or other designated-Department staff as agreed upon during the Design, Development, and Implementation (DDI) phase of the Contract.

“**Dispensing Fee**” refers to payment for filling a prescription and all related services performed by a pharmacist.

“**Dual Eligibles**” refers to persons who are entitled to Medicare and who are also eligible for Medicaid.

“**Error Matrix Logic**” means a list of billing discrepancies and the Contractor’s logic, customized to the Department’s programs, used to identify pharmacies having specific billing discrepancies and overpayments.

“**Federal Fiscal Year**” or “**FFY**” means the one-year period used by the federal government for accounting purposes that begins October 1 and ends September 30 of the following calendar year.

“**FFP**” means Federal Financial Participation.



“**First DataBank**” is a drug pricing and information service as described at [www.FirstDataBank.com](http://www.FirstDataBank.com).

“**FPL**” means Federal Poverty Level.

“**Fraud**” means that a person is in possession of facts under which he or she is aware or should be aware of the nature of his or her conduct and that his or her conduct is substantially certain to cause the payment of a Medicaid benefit. Knowing or knowingly includes acting in deliberate ignorance of the truth or falsity of facts or acting in reckless disregard of the truth or falsity of facts. Proof of specific intent to defraud is not required. (MCL 400.602(f))

“**Global Analysis**” means a comprehensive review of the Department’s claims data in an attempt to identify providers and beneficiaries who potentially possess aberrant billing or utilization patterns.

“**HCidea™**” refers to the National Council for Prescription Drug Programs (NCPDP) prescriber information relational database which includes DEA numbers, National Provider Identifiers (NPIs), state license numbers, and renewal dates.

“**HCPCS**” means Healthcare Common Procedure Coding System.

“**HIPAA**” refers to the Health Insurance Portability and Accountability Act of 1996 (Public Law 104-191) and its regulations at 42 CFR §§ 160 through 164, as amended. A federal law enacted in 1996 that allows the U.S. Department of Health and Human Services to establish and mandate the use of : a) national standards for electronic healthcare transactions; b) national identifiers for providers, health plans and employers, and c) security and privacy of health information. When referenced in this RFP it includes all related rules, regulations, orders, notifications, and procedures.

“**LTC**” means Long-Term Care. “**LTC Pharmacy**” refers to pharmacies specializing in the provision of drugs and services in institutional settings such as a nursing facility, medical care facility, or hospital long term care unit.

“**MAC**” means Maximum Allowable Cost which refers to the maximum cost allowed rate by the Michigan Department of Community Health (MDCH) for certain multiple-source brands, generics, cross-licensed drugs, and sometimes for sole-source drugs or classes.

“**MDCH**” means the Michigan Department of Community Health.

“**Medicaid Fraud Control Unit**” or “**MFCU**” is a unit within the Michigan Office of Attorney General with jurisdiction to investigate and prosecute Medicaid provider fraud and abuse and neglect in facilities receiving Medicaid dollars. The division also has jurisdiction to seek civil recovery of fraudulently obtained Medicaid dollars.

“**Medicaid Health Plan**” or “**MHP**” refers to a Medicaid managed care plan that provides medical assistance through the delivery of covered services to beneficiaries and that holds a Comprehensive Health Care Program Medicaid Contract with the State of Michigan.

“**Medicaid Provider Manual**” refers to the Michigan Department of Community Health Medicaid Provider Manual.

“**Medicaid**” refers to the healthcare coverage program, created in 1965 by Title XIX of the Social Security Act, which provides healthcare coverage for low-income people and long-term care coverage for low-income elderly. Coverage groups include: pregnant women and children; members of families with a dependent child; those who are disabled or blind, or those age 65 or older. Medicaid is regulated by the U.S. Department of Health and Human Services (DHHS) through the Centers for Medicare & Medicaid Services (CMS) and is jointly funded by the federal government and the states. The Michigan Department of Community Health is designated the single state agency responsible for administering this program in Michigan.

“**MMIS**” means Medicaid Management Information System which refers to a CMS approved system that supports the operation of the Medicaid program. The MMIS includes, but is not limited to, the following types of sub-systems or files: beneficiary eligibility, Medicaid provider, claims processing, pricing, Surveillance and Utilization Review Subsystem (SURS), Management and Administrative Reporting Subsystem (MARS).



“**MOMS**” means Maternity Outpatient Medical Services, a program that covers pregnant women who have family incomes up to 185 percent of the Federal Poverty Level or who are covered by the Medicaid Emergency Services Only program. The MOMS program covers outpatient pregnancy-related and inpatient delivery-related services. Only those providers enrolled to provide services through the Michigan Medicaid program may provide services for fee-for-service MOMS beneficiaries.

“**MPPL**” means Michigan Pharmaceutical Product List, which identifies covered pharmaceutical products, related prior authorization, and other utilization controls. The MPPL coverage may vary for each of the Department’s programs or be limited by age, clinical parameters, and gender.

“**NCPDP**” means National Council for Prescription Drug Programs which is an American National Standard Institute (ANSI)-accredited group that maintains a number of standard formats for use by the retail pharmacy industry; some of which have been adopted as HIPAA standards.

“**NDC**” means National Drug Code which refers to the eleven-digit code assigned to prescription and over-the-counter products by the labeler/manufacturer of the product under U.S. Food and Drug Administration (FDA) regulations.

“**NPI**” means National Provider Identifier which refers to a HIPAA-mandated standard identifier for all healthcare providers.

“**On-Site Half-Day Audits**” include four to six hours auditing in the pharmacy. An auditing hour is calculated as one regardless of the number of auditing staff on-site in a pharmacy.

“**PA**” means Prior Authorization as related to pharmacy services.

“**PBM**” means Pharmacy Benefits Manager or Pharmacy Benefits Management.

“**PDL**” means Preferred Drug List.

“**PERM**” means Payment Error Rate Measurement.

“**Plan First!**” is a Federal Section 1115 Waiver, approved in 2006, for a single-benefit Medicaid family planning program. Family planning benefits are available on a fee-for-service basis to uninsured women age 19 through 44 living in families with income up to 185 percent of the Federal Poverty Level. Only those providers enrolled to provide services through the Michigan Medicaid program may provide services for *PlanFirst!* beneficiaries.

“**Pharmacy Claims Processing Manual**” means the Pharmacy Claims Processing Manual for the Michigan Department of Community Health.

“**POS**” means point-of-sale which provides real-time on-line adjudication of pharmacy claims submitted to a pharmacy benefits manager. Point of-sale provides participating pharmacies real-time access to beneficiary eligibility, drug coverage and pricing information, guidelines and notifications for drug use, etc.

“**ProDUR**” means Prospective Drug Utilization Review.

“**Provider**” refers to a person, firm, corporation, association, agency, institution, or legal entity [e.g., pharmacy] which is providing, has formerly provided, or has been approved to provide health care to a beneficiary under any of the Department’s programs.

“**Sanctioned Provider**” means a provider, entity, or individual, who has been suspended, terminated or excluded from furnishing, ordering, or prescribing items or services to Medicaid beneficiaries.

“**SFY**” means State Fiscal Year which refers to the one-year period used by Michigan state government, for accounting purposes, that begins October 1 and ends September 30 of the following calendar year. Michigan’s fiscal year is the same as the federal fiscal year.

“**State**” means the State of Michigan.

“**TPL**” means Third Party Liability, also called Other Insurance, which refers to an insurance plan or carrier (e.g., individual, group, employer-related, self-insured or self-funded plan), commercial carrier (e.g., automobile insurance and workers’ compensation) or program (e.g., Medicare) that has liability for all or part of a beneficiary’s healthcare coverage.



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

**1.010 Project Identification**

**1.011 Project Request**

**A. Request**

This is a Contract for pharmacy auditing services for the following programs and possible pharmacy components of future programs administered by the Michigan Department of Community Health (the “Department”).

**B. Contract Information**

The Contract will be effective 5/12/11 through 5/11/14.

**C. Summary of Mandatory Minimum Requirements**

To be considered qualified for an award, the Contractor must meet the mandatory minimum requirements listed in Attachment B.

**D. Key Resources for Pharmacy Auditing Services**

Attachment C of this RFP identifies key laws and regulations, web addresses, policy manuals, and other notifications relevant to the scope of work. While Attachment C contains an extensive list of relevant resources, it is not meant to be comprehensive or all inclusive.

**1.012 Background**

**A. Introduction**

The Department is the administrator for Medicaid, ABW, CSHCS, MOMS and *Plan First!* health care programs– which cover nearly 1.7 million beneficiaries (Table 1). Each program has different eligibility requirements, benefit designs, and capitated managed care mandates affecting pharmacy coverage. For example, of the 1.6 million Medicaid beneficiaries, approximately 1.0 million receive most prescription drugs through capitated managed care plans except for a carve-out for psychotropics and select other drugs. Another nearly 196,800 beneficiaries dually eligible for Medicare and Medicaid receive most prescription drugs through Medicare Part D and not Medicaid. The next sections describe key pharmacy policies and procedures.

**Table 1: State Program Eligibility Counts – Report Week Ending October 1, 2008**

<b>Program Code and Description</b>	<b>Eligible's</b>
<b>MEDICAID PROGRAMS <sup>1, 2, 3, 4</sup></b>	<b>1,585,606</b>
A-Medicaid for Aged SSI Beneficiaries	16,288
B-Medicaid for Blind SSI Beneficiaries	1,204
C-Aid to Families with Dependent Children	187,767
E-Medicaid for Disabled SSI Beneficiaries	203,410
I-Refugee Assistance Program	425
J-Refugee Assistance (Medical Only)	388
L-MICH-Care Medicaid and Medicaid for Pregnant Women	526,282
M-Medicaid for the Aged	72,083
N-Medicaid for Caretaker Relatives and Families with Dependent Children	404,377
O-Medicaid for the Blind	1,198
P-Medicaid for the Disabled	114,120
Q-Medicaid for Persons Under 21	58,060
<b>CHILDREN'S SPECIAL HEALTH CARE SERVICES</b>	<b>29,750</b>
Children's Special Health Care Services with Medicaid (TITLE XIX/TITLE V)	18,007
Children's Special Health Care Services Only (TITLE V)	11,743
<b>ADULT BENEFITS WAIVER PROGRAM</b>	<b>57,871</b>
<b>TOTAL</b>	<b>1,655,220</b>



- <sup>1</sup> Includes 30,419 *Plan First!* enrollments and 5,033 MOMS enrollments
- <sup>2</sup> Includes 116,570 spenddown individuals of which 26,520 actually met eligibility requirements
- <sup>3</sup> Includes 196,755 beneficiaries enrolled in both Medicaid and Medicare, who receive most pharmacy coverage from Part D
- <sup>4</sup> Includes over 1.0 million beneficiaries enrolled in capitated Medicaid Health Plans, which administer much of their pharmacy coverage

## B. Medicaid Pharmacy

1. ***Fee-For-Service and Capitated Medicaid Health Plan Populations*** – Medicaid provides healthcare benefits for low-income children, adults, the elderly, and disabled individuals. It is jointly funded by the State and the federal government. Michigan Medicaid benefits are available under a traditional fee-for-service program administered by the Department and under a risk-based model provided by 14 capitated Medicaid Health Plans. Approximately 63 percent of all Medicaid beneficiaries receive their health care through the capitated Medicaid Health Plans. The Medicaid beneficiaries not enrolled in managed care receive fee-for-service coverage including beneficiaries receiving care in institutions or through home and community-based waiver programs (6 percent); beneficiaries with spenddown eligibility (5 percent); beneficiaries dually eligible for Medicare and Medicaid (6 percent); beneficiaries transitioning to a managed care plan (7 percent); beneficiaries located in an area of the State where mandatory managed care enrollment is not in place; beneficiaries who received an exception to managed care enrollment for medical reasons; or beneficiaries enrolled in special Medicaid programs (e.g., *Plan First!*). There are no current plans under this RFP/contract to audit the managed care capitated plans, or claims paid for by the capitated managed care plans.
2. ***Pharmacy under Capitated Medicaid Health Plans*** – A capitated Medicaid Health Plan has the flexibility to contract with its own Pharmacy Benefits Manager (PBM) and to establish its own pharmacy coverages, reimbursement levels, provider networks, prior authorization (PA) requirements, and utilization controls – except for pharmacy carve-outs for psychotropic drugs and other select drugs. There are two types of Medicaid managed care pharmacy carve-outs – 100 percent and 60 percent. First, select drugs are 100 percent carved-out of a health plan’s capitation rate and reimbursed directly to the pharmacies under the fee-for-service benefit by the Department’s PBM. Second, the Medicaid Health Plans act as the Department’s fiscal intermediaries by applying Medicaid fee-for-service PA and utilization controls and making pharmacy payments to providers for another group of carve-out drugs. The Medicaid Health Plans then provide carve-out payment files to the Department’s fee-for-service PBM which in turn pays the health plans 60 percent of the rates available under the Medicaid fee-for-service methodology.
3. ***Pharmacy under Fee-For-Service Medicaid*** – Following are other key aspects of the Medicaid pharmacy program. Further detail is available in the Michigan Department of Community Health Medicaid Provider Manual (“Medicaid Provider Manual”), Bulletins, the Pharmacy Claims Processing Manual for the Michigan Department of Community Health (“Pharmacy Claims Processing Manual”), and other resources listed in Attachment C.
  - g. A ***Preferred Drug List (PDL)*** highlights preferred and non-preferred products of drug classes reviewed by the Department’s Pharmacy and Therapeutics (P&T) Committee.
  - h. The ***Michigan Pharmaceutical Product List (MPPL)*** identifies covered pharmaceutical products and related PA and other utilization controls. The MPPL drug coverage listings may vary for each of the Department’s programs or be limited by age, clinical parameters, gender, etc.
  - i. ***Dual eligibles***, who are beneficiaries eligible for both Medicare and Medicaid, receive most of their prescription drugs through Medicare Part D. Medicaid, however, continues to cover some drug classes not covered by Medicare Part D. Examples are select benzodiazepines, over-the-counter drugs, barbiturates, vitamins and minerals, etc. as explained in the Medicaid Provider Manual and the MPPL.
  - j. ***Reimbursement*** is the lower of usual and customary charge or the Department’s payment limits for product cost and dispensing fee, minus the beneficiary co-payment. If a beneficiary has other insurance or Medicare coverage, related payments are subtracted from the Department’s payment.





- k. **Product cost payment limits** are based on the National Drug Code (NDC) the pharmacy identifies as the product dispensed. Reimbursement is currently the lower of Average Wholesale Price (AWP) minus a discount, the Maximum Allowable Cost (MAC) rate, or the provider’s charge. (See the Medicaid Provider Manual and Bulletins.)
- l. **Dispensing fee limits** are subject to appropriations authorized by the State’s legislature. (See the Medicaid Provider Manual and Bulletins.)
- m. **Beneficiary co-payments** are listed in the Medicaid Provider Manual and Bulletins.

**C. Adult Benefits Wavier (ABW)**

ABW coverage is limited to ambulatory benefits for childless adults, age 18 through 64, with incomes up to 35 percent of the Federal Poverty Level (FPL). ABW enrollment was approximately 41,800 adults as of February 2009. New enrollment applications are limited to periodic intervals throughout the year. The annual average enrollment for ABW is 62,000 beneficiaries. The majority of this enrollment receives care through one of 27 capitated County Health Plans. A County Health Plan has the flexibility to contract with its own PBM and establish its own pharmacy coverages, reimbursement levels, provider networks, PA, and utilization controls – except for an ABW pharmacy carve-out for psychotropic drugs and other select drugs. The carve-out drugs are reimbursed 100 percent under the fee-for-service program by the Department’s PBM directly to pharmacies. ABW fee-for-service drug coverages are listed on the MPPL.

**D. Other Pharmacy Programs – CSHCS, MOMS and Plan First!**

The Department’s coverage for these programs is limited to select drug classes listed on the MPPL. Beneficiaries enrolled in CSHCS, MOMS, and *Plan First!* have no pharmacy co-payments. Only those providers enrolled through the Michigan Medicaid program may provide services for these beneficiaries.

- 1. **CSHCS** pharmacy coverage is different from Medicaid – for example, certain drug classes unrelated to CSHCS qualifying diagnoses may not be covered. When a CSHCS beneficiary also is a Medicaid enrollee, reimbursement for Medicaid covered products is provided. All CSHCS beneficiaries (even those with Medicaid coverage) have no pharmacy co-payments.
- 2. **MOMS** provides outpatient pregnancy-related and inpatient delivery-related services to pregnant women with family incomes up to 185 percent of the FPL or who are covered by the Medicaid Emergency Services Only program.
- 3. **Plan First!** is a federal Section 1115 waiver program that offers a Medicaid family planning benefit to childbearing women age 19 through 44 with family incomes up to 185 percent of the FPL.

**E. Key Program Statistics**

Table 2 provides key statistics describing the Department’s pharmacy programs and PBM services during State fiscal year (SFY) 2008 (October 1, 2007 through September 30, 2008).

**Table 2: Key Statistics for the Department’s Pharmacy Programs in SFY 2008**

	<b>Volume Estimate</b>
1. Total Number of Processed Transactions (Paid and Denied/Rejected)	14,751,302
2. Total Number of Paid Claims	7,577,784
3. Total Amount Paid to Pharmacies	\$506,652,506
4. Percent of Processed Point-of-Sale (POS) and Batch Claims	99.9%
5. Number of Processed Paper Claims	2,300
6. Enrolled Pharmacies on October 1, 2008	2,784
7. New Pharmacies Enrolled	121
8. Pharmacies Disenrolled (without re-enrollment)	188
9. Prior Authorized Requests Processed (Approvals, Changes in Therapy, and Denials)	82,870
10. Percent PAs Processed by Technicians	80%
11. Percent PAs Processed by Pharmacists	19.8%



12. Percent PAs Processed through Web-Based PA	0.2%
13. Pharmacy Audits – Desk	250
14. Pharmacy Audits – Half-Day On-Site of 4 to 6 hours	25
15. Pharmacy Appeals	60
16. Pharmacy Appeals Resolved at Informal Stage	60

**F. Medicaid Integrity Program Section**

The Department’s Medicaid Integrity Program Section is responsible for investigating all referrals and complaints; performing post-payment reviews; and monitoring for adherence of program policy, state and federal rules, and regulations, and appropriate billing practices. Suspected fraud and abuse is referred by the Medicaid Integrity Program Section to the Medicaid Fraud Control Unit (MFCU) of the Office of Attorney General for further investigation. Pharmacy auditing has historically included on-site and desk reviews of paid claims.

**1.020 Scope of Work and Deliverables**

**1.021 In Scope**

**A. Department Goal**

The Department’s primary goal is to have an experienced and innovative Contractor offering flexible and scalable pharmacy auditing services and supporting systems customized to meet the Department’s needs, which will:

1. Maximize efficiency and cost effectiveness of Department programs by identifying overpayments that result from inappropriate billings by pharmacies and by identifying potentially fraudulent providers for the Department’s referral to MFCU; and
2. Proactively identify patterns and trends related to inappropriate billings that will help the Department avoid future overpayments and update its program policies and procedures.

**B. Summary of Tasks**

“In Scope” tasks associated with this procurement can be summarized broadly under the following categories. Services and deliverables are identified in Section 1.022 Work and Deliverables, under the following headings, and in other sections of Article 1.

***Headings found in Section 1.022 Work and Deliverables:***

- A. Mandatory Minimum Requirements
- B. Policies and Procedures for Auditing Services
- C. Pharmacy On-Site and Desk Auditing
- D. Processing Overpayment Adjustments and Monitoring Pharmacy Corrective Action Plans
- E. Representation Related to Provider Appeals
- F. Concurrent Audit Review
- G. Audit Progress Reporting and Other Supporting Services
- H. Provider Relations
- I. Quality Assurance Plan and Statements of Auditing Standards (SAS) 70 Level II
- J. Core Requirements

**1.022 Work and Deliverables**

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

**A. Mandatory Minimum Requirements**

**Requirement(s):**

1. The Contractor must have at least *two years* experience with projects of similar size and scope to the Department's that includes customization, implementation, operation, and performance of pharmacy on-site and desk audits and other pharmacy auditing services.

**B. Policies and Procedures for Auditing Services**

The following are work and deliverables related to general requirements; audit quotas; auditing plan and methodology manual; auditing look-back timeframe; pharmacy discrepancy list; selection criteria for auditing a pharmacy; and pharmacy auditing list.

**General****Requirement(s):**

2. The Contractor must provide pharmacy auditing services for the Department's current programs and any future programs. As designated by the Department, the Contractor must combine claims for these different programs into a single audit, while retaining the capacity to provide separate reporting for each program. The Department's current programs are:
  - a. Medicaid Fee-For-Service (including select Medicaid Health Plan managed care carve-outs);
  - b. ABW (including ABW County Health Plan managed care carve-outs);
  - c. CSHCS;
  - d. MOMS; and
  - e. *Plan First!*
3. The Contractor's pharmacy auditing functionality must have flexibility to uniquely identify Department programs; select pharmacies; select types of beneficiaries, e.g. long-term care (LTC) from ambulatory; select drug classes; types of managed care carve-outs; and other factors as designated by the Department.
4. The Contractor's pharmacy auditing services must include all types of claim submittals regardless of mode of submission, e.g., POS, batch, and paper, as submitted by the following types of enrolled pharmacies:
  - a. Michigan pharmacies;
  - b. Out of state borderland pharmacies located in a county that is contiguous to the Michigan border; and
  - c. Out of state/beyond borderland pharmacies.

**Audit Quotas****Requirement(s):**

5. The Contractor must complete its auditing in a pattern that leads to not less than the required number of audits per a continuous 12-month period (i.e., Audit Quota) listed on Attachment D, unless waived by the Department.
  - a. An audit is counted distinctly by the National Provider Identifier (NPI) of a pharmacy based upon the Department's approval of the Contractor's submitted Final Pharmacy Audit Report. (See Section 1.022 C23 and C24 following for requirements related to the Final Pharmacy Audit Report.)
  - b. The numbers listed in Attachment D are Department projections for the first year of the Contract and may not necessarily be indicative of expected Audit Quotas in subsequent Contract Years. Projected Audit Quotas are subject to change based upon cumulative auditing data. Any changes to the Audit Quotas shall be negotiated by the parties in good faith and considered a contract modification under Section 2.024 Change Requests.
  - c. The Department may reduce the numbers listed in Attachment D for a given Contract Year and have the Contractor perform auditing services pursuant to special State initiatives or the need for select



auditing services. For example, at the Department’s request, the Contractor must exchange two on-site half-day audits for one on-site full-day audit.

6. In addition to the Audit Quotas listed on Attachment D, the Contractor must conduct a 25-claim desk audit of any newly enrolled pharmacy (defined by its NPI added to the Department’s pharmacy provider extract). Such audits must be completed within six months of the pharmacy’s enrollment.

**Contractor Auditing Plan and Methodology Manual**

*Requirement(s):*

7. The Contractor must maintain and keep current a non-proprietary manual, approved by the Department, outlining the Contractor’s auditing policies and procedures. This manual must include, but not be limited to, methodologies, policies, procedures, specifications, flow charts, and timelines for work and deliverables related to:
  - a. Selection criteria for identifying pharmacies to be audited, e.g., Department-customization for data mining and the Department-approved Pharmacy Discrepancy List;
  - b. Standard auditing techniques employed by the Contractor;
  - c. On-site audits;
  - d. Desk audits;
  - e. Overpayment adjustments;
  - f. Concurrent audit review;
  - g. Representation during the appeal process;
  - h. Reports and specifications;
  - i. Contactor staffing and any Subcontractor staffing (e.g., organization charts, job descriptions and qualifications); and
  - j. Fraud and abuse compliance plan (See Section 1.070 D1-D6).
8. The Contractor must submit its Auditing Plan and Methodology Manual, for Department approval during the Design, Development, and Implementation Phase of the Contract. Thereafter, the Contractor must maintain and keep current an electronic version of the manual and must submit its current version for Department approval at least 30 calendar days before the start of each quarter, unless the Department waives this submission requirement, or upon changes as deemed necessary by the Contractor or the Department.

**Auditing Look-Back Timeframe**

The Department will provide interface files, including claims data related to the auditing look-back timeframe, as described under Section 1.042 Reports and Appendix B Key Interface Files of this document.

*Requirement(s):*

9. The Contractor must review paid claims data for a 12-month period for its services related to on-site or desk audits, or otherwise agreed upon between the Contractor and the Department.

**Pharmacy Discrepancy List**

The Department will provide its current Pharmacy Discrepancy List to the Contractor during the Design, Development, and Implementation Phase of the Contract. Attachment E includes sample billing discrepancies of interest to the Department.

*Requirement(s):*

10. The Contractor must develop, maintain, and keep current a list of billing discrepancies to be used in pharmacy auditing, which includes items that, based on the Contractor’s experience, result in inappropriate billings and overpayments. The Contractor’s proposed Pharmacy Discrepancy List must be customized for the Department’s programs and must include, but not be limited to, the following:
  - a. Discrepancy item descriptions;



- b. Citations from State and federal requirements including pertinent laws, rules, policies, guidelines, and notifications related to the billing discrepancy; and
  - c. Suggested recoupment actions for suspected violations, e.g., full recovery, pro-rated recovery, dispensing fee recovery only, warning with no recovery, etc.
11. The Contractor must submit its proposed Pharmacy Discrepancy List for Department approval during the Design, Development, and Implementation Phase of the Contract; and thereafter at least 30 calendar days before the start of each quarter, unless the Department waives the submission requirement, or upon changes as deemed necessary by the Contractor and the Department.

### ***Selection Criteria for Auditing a Pharmacy***

#### *Requirement(s):*

12. The Contractor must conduct a quarterly global analysis of paid pharmacy claims data for each of the Department's programs – unless individual pharmacies, programs, or types of claims are specifically excluded by the Department.
13. The Contractor must customize its data mining logic, modeling, and error matrix algorithms to identify pharmacies which are incorrectly billing items listed in the Department-approved Pharmacy Discrepancy List or are otherwise receiving overpayments. This customization must incorporate new and innovative techniques or approaches that, in the Contractor's experience, have been found to be or are expected to be successful in identifying pharmacies with billing discrepancies and overpayments.
14. The Department will assist the Contractor to identify and interpret Department-specific data fields needed for the Contractor's data mining logic, modeling, and error matrix algorithms. The Contractor must develop, maintain, and keep current Department-customized definitions for the data values applicable to its pharmacy auditing services.
15. The Contractor's Department-customized definitions for data mining, modeling, and error matrix specifications must be submitted for Department approval during the Design, Development, and Implementation Phase of the Contract; and thereafter at least 30 calendar days before the start of each following Contract Year, unless the Department waives the submission requirement, or as deemed necessary by the Contractor and the Department.

### ***Pharmacy Auditing List***

#### *Requirement(s):*

16. On or before the first day of a month preceding the beginning of a quarter (i.e., December 1, March 1, June 1, and September 1), the Contractor must submit, for the Department's approval, a list of pharmacies that the Contractor has tentatively identified to be audited (Pharmacy Auditing List).
17. The Contractor's rationale for identifying pharmacies to be audited must be based on one or more of the following:
  - a. Apparent aberrant utilization and billing patterns, as identified by the Contractor's data mining logic, modeling, and error matrix algorithms;
  - b. Risk indexing based on known fraudulent practices;
  - c. Findings from other auditing work, e.g. concurrent audit review;
  - d. Input from the State;
  - e. Referrals provided by the Department;
  - f. Fraud prevention and detection advisory opinions, alerts, bulletins, etc., distributed by the United States Department of Health and Human Services, Office of Inspector General; or
  - g. Other factors agreed upon by the Department and the Contractor.



18. The specifications for the Pharmacy Auditing List will be approved by the Department during the Design, Development, and Implementation Phase of the Contract. Unless otherwise agreed upon, at a minimum the Pharmacy Auditing List must include, but not be limited to, the following items:
- Pharmacy National Provider Identifier (NPI);
  - Pharmacy name;
  - Pharmacy address;
  - Annual number of paid claims;
  - Annual amount paid;
  - Suspected billing discrepancies;
  - Projected recoveries;
  - Projected auditing timeline and anticipated completion date;
  - Suggested action, e.g., desk, on-site, etc.;
  - Suggested targeted review technique for pharmacy auditing; and
  - Rationale for the suggested action and targeted review technique.
19. The Contractor must commence Department-approved auditing work within 10 business days of the Department's notification, unless otherwise specified by the Department.
- The Department will approve the pharmacies and type of auditing work to be undertaken by the Contractor based on the Pharmacy Auditing List and other factors.
  - If the Contractor encounters circumstances during its auditing work that would justify a different type of audit, longer auditing timeframe, or alternate target review technique than what was approved by the Department, the Contractor must notify the Department immediately by telephone or email suggesting alternatives and request the Department's review.

### **C. Pharmacy On-Site and Desk Auditing**

Following are work and deliverables related to on-site and desk audits performed by the Contractor.

#### **General**

##### *Requirement(s):*

20. The Contractor must conduct on-site and desk auditing of Department-approved pharmacies to identify billing discrepancies, overpayments, and other potential problems specified by the Department.
21. The Contractor's on-site and desk audits must be conducted by a registered pharmacist, or certified pharmacy technician.
22. The Contractor must develop, maintain, and keep current documentation on its policies, procedures, specifications, flow charts, and timelines related to on-site and desk auditing, as explained at Section 1.022 B7 and B8 under Contractor Auditing Plan and Methodology Manual.

#### **Final Pharmacy Audit Report for Performed On-Site and Desk Audits**

##### *Requirements:*

23. On or before December 15, March 15, June 15, and September 15, the Contractor must submit for Department approval a Final Pharmacy Audit Report, that has been attested to by a pharmacist employed by the Contractor, for each on-site and desk audit performed by the Contractor in the current quarter.
24. The layout and items included in the Final Pharmacy Audit Report will be approved by the Department during the Design, Development, and Implementation Phase of the Contract. Unless otherwise specified by the Department. The Contractor's format for the Final Pharmacy Audit Report must include, but not be limited to, the following items:
- Detailed pharmacy information disclosing the identity and nature of the pharmacy;
  - Names of the licensed staff of the pharmacy and the staff's license numbers;



- c. Names of management and their license numbers, if available;
- d. Detailed description of items audited;
- e. Targeted review techniques employed during auditing work;
- f. Summary of findings;
- g. Observed billing discrepancies;
- h. Citations of State and federal requirements including pertinent laws, rules, policies, guidelines, and notifications related to the observed billing discrepancies;
- i. Amount reasonably determined by the Contractor (overpayments) as a result of the pharmacy's audit to be potentially recoverable by the Department;
- j. Stand-alone Excel® claim-level report of all documented overpayments for recovery activities; and
- k. Stand-alone copies of documentation collected at the pharmacy.

**On-Site Auditing**

*Requirement(s):*

- 25. The procedures related to the Contractor's on-site auditing will be approved by the Department during the Design, Development, and Implementation Phase of the Contract. The Contractor must perform the following activities, unless otherwise specified by the Department, e.g. in cases of suspected fraud.
  - a. Call the pharmacist-in-charge to schedule the on-site audit in such a way to minimize inconvenience and disruption to pharmacy's operations during the auditing process;
  - b. Send a Department-approved Audit Notification Letter by certified mail with a return receipt request to the pharmacy being audited;
  - c. Call the pharmacist-in-charge to provide a reminder of the impending audit and to answer questions and provide other information pertinent to the audit;
  - d. Conduct the on-site audit; and
  - e. At the conclusion of the on-site audit at each pharmacy, provide an Exit Interview that includes, but is not limited to, the following:
    - i. A summary of billing discrepancy findings; and
    - ii. A reasonable opportunity for the pharmacist-in-charge to supply any additional documentation that the pharmacy would like for the Contractor to consider in connection with the on-site audit.
- 26. The Contractor's on-site auditing must include, but not be limited to, a review of the following information, documentation, and procedures of the pharmacy, or as otherwise specified by the Department:
  - a. Entries from the patient signature log or delivery receipt log;
  - b. Will call bin procedures;
  - c. Software vendor identification;
  - d. Prescription orders to:
    - i. Detect possible forging or altering of prescriptions;
    - ii. Verify whether drug, strength, and dosage form were billed under the correct NDC; and
    - iii. Verify whether quantity, days supply, prescriber NPI, and *Dispense As Written* code were billed correctly.
  - e. Called-in prescription orders, confirm a sample (at least 20 or all if less in the audit sample) of paid claims with the prescriber;
  - f. Electronic prescribing orders to confirm:
    - i. Completeness of orders;
    - ii. Compliance with requirements for scheduled drugs; and
    - iii. Compliance with *Dispense As Written* documentation.
  - g. Prospective Drug Utilization Review (ProDUR) override documentation;
  - h. Usual and customary pricing;



- i. Beneficiary payments;
- j. Other insurer payments;
- k. Stocked drugs compared with billed NDCs from a sample of paid claims;
- l. Outdated drugs in stock;
- m. Pharmacy employees on the Sanctioned Providers list;
- n. Prescribers on the Sanctioned Providers list;
- o. Drug samples in the pharmacy's inventory;
- p. Patient returned drugs; and
- q. Pharmacy and pharmacist licensure postings and other Board of Pharmacy required postings.

### **Desk Auditing**

The following requirement is applicable for Department-approved pharmacies identified by the Contractor for desk audits and for any newly enrolled pharmacy as explained in 1.022 B6 above under Audit Quotas.

#### *Requirement(s):*

27. The procedures related to the Contractor's desk auditing will be approved by the Department during the Design, Development, and Implementation Phase of the Contract. The Contractor must perform the following activities, unless otherwise specified by the Department.
- a. Send a Department-approved Initial Request Letter to the pharmacy to be audited;
  - b. Conduct the desk audit, comparing paid claims data with copies of prescriptions to:
    - i. Detect possible forging or altering of prescriptions;
    - ii. Verify whether drug, strength, dosage forms were billed under the correct NDC;
    - iii. Verify whether quantity, days supply, prescriber NPI, and *Dispense As Written* codes were billed correctly; and
    - iv. Verify called-in prescription orders with the prescriber.
  - c. Call the pharmacist-in-charge and provide a Telephone Exit Interview that includes, but is not limited to, the following:
    - i. A summary of billing discrepancy findings; and
    - ii. A reasonable opportunity for the pharmacist-in-charge to supply any additional documentation that the pharmacy would like the Contractor to consider in connection with the desk audit.
  - d. Send a follow-up letter to the pharmacist-in-charge documenting information provided in the Telephone Exit Interview.

### **D. Processing Overpayment Adjustments and Monitoring Pharmacy Corrective Action Plans**

The Department will send overpayment letters resulting from the Contractor's on-site and desk auditing to pharmacies and provide copies of such letters to the Contractor. The Department's letter will provide pharmacies with instructions related to their appeal rights and notify them that if a timely appeal is not submitted, overpayment claim adjustments and voids will be processed.

The overpayment adjustment process to be performed by the Contractor may *not* be applicable when the audited pharmacy has changed ownership; when the pharmacy is no longer an enrolled provider in the Department's programs; or in circumstances otherwise specified by the Department.

For certain audits, the Department may include a requirement in its overpayment letter that the pharmacy provide the Contractor a written Corrective Action Plan related to the billing discrepancies found by the Contractor during an audit. The following requirements related to pharmacy corrective action plans are applicable in these instances.





### **Processing Overpayment Adjustments**

#### *Requirement(s):*

28. The Contractor must perform “Department-approved” claim adjustments and voids using HIPAA compliant billing formats submitted to the Department’s PBM claims processing system. Examples of such adjustments and voids include, but are not limited to, the following:
  - a. Adjust or void claim payments exceeding pharmacy auditing standards; or
  - b. Adjust paid quantity amounts when the units of measure or decimal entries were incorrectly reported.
29. Billing formats, procedures, and timelines for the Contractor’s overpayment adjustments will be approved by the Department during the Design, Development, and Implementation Phase of the Contract.
30. The Contractor must coordinate with the Department’s PBM to ensure that all recoupment is tracked and processed correctly. The Contractor must maintain a detailed accounting of overpayments and recoveries by pharmacy, with the ability to report to the Department at any time the status of recoupment for individual claims or cumulative recoveries for a pharmacy or across all audited pharmacies.

### **Monitoring Corrective Action Plans Required of Pharmacies**

#### *Requirement(s):*

31. The Contractor must obtain a pharmacy’s written Corrective Action Plan to address errors found during an audit, as specified by the Department. The Contractor must present a pharmacy’s Corrective Action Plan for review and approval by the Department.
32. The Contractor must monitor compliance with a pharmacy’s Corrective Action Plan for 60 business days after the Corrective Action Plan has been approved by the Department. After 30 business days of monitoring a pharmacy’s compliance, the Contractor must report non-compliance to the Department immediately by telephone or email.

### **E. Representation Related to Provider Appeals**

#### *Requirement(s):*

33. The Contractor must comply with State and federal rules, regulations, policies and procedures and Contract requirements for provider appeals including, but not limited to, the following:
  - a. Provide at no extra cost to the Department, sufficient staff to respond to provider appeals and perform the activities listed in this section;
  - b. Coordinate, where appropriate, with the Department’s and other State departments’ personnel who are involved in the appeals process;
  - c. Prepare the appropriate reports and documents to support the Contractor’s actions resulting in the request for an appeal from a provider, including, but not limited to:
    - i. Detailed audit findings, including overpayment amounts;
    - ii. Rationale for the findings, including the policy violated, information omitted, or other reasons for a denied claim or audit finding; and
    - iii. Citations to specific section(s) of the Medicaid Provider Manual, Bulletins, administrative code, or other documentation stating the policies, regulations, or rules that the pharmacy violated, leading to the adverse determination.
  - d. Work with the Department to resolve all provider questions through an informal resolution process to reduce the number of formal appeals;
  - e. Support the Department in settlement discussions, in coordination with and at the direction of the Department;
  - f. Support the Department in the administrative hearing process for those appeals that cannot be resolved by informal processes;



- g. Provide appropriate, knowledgeable staff to attend and participate in scheduled meetings and hearings;
  - h. Provide appropriate witness(es) and necessary documentation to reasonably support audit findings at appeals hearings;
  - i. Track each appeal and its status in the hearing process;
  - j. Comply with all mandates and timelines stipulated by the Administrative Law Judge (ALJ); and
  - k. Develop policies and procedures for the appeals process as directed by the Department.
34. Failure to submit appeal rationale and other necessary information within the required timeframe shall result in the Contractor being liable for any costs that the Department incurs as a result of the Contractor's noncompliance. Acceptance of this deliverable assumes that Contractor will be given reasonable and adequate advance notice of the hearings and the opportunity for mutually agreeable scheduling input. Contractor will not be liable for adverse decisions resulting from appeals unless it has failed to reasonably provide information and assistance as required by the scope of work.
35. The Contractor must attend and defend the Contractor's decisions at all appeals, hearings, or teleconferences, whether informal or formal, or whether in person or by telephone, or as deemed necessary by the Department.
36. Failure to attend or defend the Contractor's decisions at all appeal hearings or conferences shall result in the Contractor being liable for any costs that the Department incurs as a result of the Contractor's noncompliance. Acceptance of this deliverable assumes that Contractor will be given reasonable and adequate advance notice of the hearings and the opportunity for mutually agreeable scheduling input. Contractor will not be liable for adverse decisions resulting from appeals unless it has failed to reasonably provide information and assistance as required by the scope of work.
37. The Contractor must assist the Department with the rationale and supporting documentation for any and all outstanding or backlogged appeals based on information provided by the Department.
38. The Contractor must meet with Department staff every two weeks, or more frequently if reasonably necessary, to discuss outstanding and backlogged appeals and work toward their resolution. Meetings will take place via teleconference and on-site as reasonably requested.
39. The Contractor, upon termination of this Contract, remains obligated, at no additional cost, to comply with all legal and continuing contractual obligations arising in relation to its duties and responsibilities under the Contract including, but not limited to, record retention, audit findings, and provider appeals. The Contractor shall have an ongoing duty to represent the Contractor's audit findings in the appeals process until all provider (1) overpayments are collected, (2) audits are closed, (3) appeals are resolved, and (4) appeal time periods have passed. This section shall survive termination of this Contract.

#### **F. Concurrent Audit Review**

##### *Requirement(s):*

40. The Contractor must analyze all paid claims data and notify pharmacies when a questionable claim is submitted, so that a billing discrepancy or potential overpayment may then be expeditiously adjusted by the pharmacy without submission of additional documentation.
41. The Contractor's concurrent review and notification to pharmacies must be provided at least weekly for the first six months of the Operations Phase of the Contract, after which time daily reviews will be required, as agreed to between the Contractor and the Department.
42. The Contractor's concurrent review process must include, but not be limited to, the following:
- a. Notification to pharmacies billing the identified claims as quickly as possible, e.g., by facsimile or telephone, with a goal of the next business day whenever possible or such other timeframe as mutually agreed upon by the Department;



- b. Notification to pharmacies describing the error, the reason the claim was determined to be in error, and suggestions to prevent the error in the future; and
- c. Recommendations to the Department of how to prevent reoccurring pharmacy payment discrepancies observed in the Contractor's concurrent review.

43. During the Design, Development, and Implementation Phase of the Contract, the Contractor must work with the Department to determine mutually agreed upon criteria, review periods, and timeframes to be used for concurrent audit reviews and to develop performance metrics to measure the success of the concurrent audit review process.

**G. Audit Progress Reporting and Other Supporting Services**

Following are work and deliverables related to monthly audit progress reporting and reporting related to potential fraud and abuse, potential violations of laws and rules governing the practice of pharmacy, issues related third party liabilities, and inconsistencies with the PBM's claims processing system.

*Requirement(s):*

- 44. The Contractor must prepare written monthly Audit Progress Reports. These reports will be discussed during monthly conference calls, or as otherwise specified by the Department, with the Department and the Contractor.
- 45. The Contractor must submit a proposed layout and the items to be included in its monthly Audit Progress Report, for Department approval, during the Design, Development, and Implementation Phase of the Contract. Examples of items for the Contractor's Audit Progress Report include, but are not limited to, the following:
  - a. Status of major activities and tasks related to the Contractor's work and deliverables;
  - b. Number of claims processed and financial accounting of audits;
  - c. Number of pharmacies reviewed by audit type, pharmacy payments, audit status, and estimated savings;
  - d. Fraud and abuse issues identified;
  - e. Overpayment amounts identified in the previous month, to date, and average amount per month;
  - f. Outstanding issues by the Contractor and the Department;
  - g. Number of cases before the Department awaiting approval;
  - h. Number of cases recommended for referral to MFCU;
  - i. Trends noted, provider specific and statewide;
  - j. Suggested PBM claims processing edits or edit modifications;
  - k. Corrective action plans from previously audited pharmacies;
  - l. Number of appeal notifications received;
  - m. Case status of appeals;
  - n. Miscellaneous problems encountered;
  - o. Target dates for the completion of remaining tasks; and
  - p. Any potential delays in reaching target dates and related justification.
- 46. The Contractor must maintain a general toll-free line with a dedicated extension number available from at least 8:00 a.m. to 5:00 p.m. Eastern Time, Monday through Friday, except designated State holidays, in order for Department staff to contact Contractor staff.
- 47. The Contractor must provide at no additional cost, consultant services to the Department and other State departments specified by the Department regarding the Contractor's pharmacy auditing services.
- 48. To maximize the efficiency and cost effectiveness of the Department's programs and help avoid future overpayments, the Contractor must recommend revisions including, but not limited to, the following:
  - a. The laws, rules, policies, guidelines, and notifications governing audit areas under the Contractor's work and deliverables; and



- b. The PBM’s claims processing system that would likely prevent or lessen future billing discrepancies and overpayments.

**Reporting Potential Fraud and Abuse**

*Requirement(s):*

- 49. The Contractor must immediately report to the Department, by telephone or email, potential fraudulent or abusive activities observed during an audit review along with a detailed accounting that includes, but is not limited to, names, dates, places, and suspected fraudulent or abusive activities.
- 50. The Contractor’s reporting of potential fraud and abuse must be submitted in writing to the Department within five business days of the initial reporting. One hundred (100) percent of the Contractor’s reporting of potential fraud and abuse must be acceptable referrals in that the reporting must meet the following minimum criteria for collection of information:
  - a. Subject provider (NPI, name, address, and provider type);
  - b. Source/origination of complaint;
  - c. Date reported to the Department;
  - d. Description of suspected misconduct, with specific details including (1) category of service, (2) factual explanation of the allegation, (3) specific statutes, rules, regulations, or policies violated; and (4) date(s) of misconduct;
  - e. All communications between the State (or the Contractor) and the provider concerning the conduct at issue;
  - f. Contact information for the Contractor staff person with practical and working knowledge of the relevant problem; and
  - g. Sample/exposed dollar amount [when available].
- 51. The Contractor must *not* mention references to its reporting of potential fraud and abuse in any communication with pharmacies or in its Final Audit Reports submitted to the Department due to potential State and Federal reviews.
- 52. The Contractor must work with the Department to respond to requests from MFCU and otherwise cooperate with all investigative efforts by the Department and other State and federal offices related to the Contractor’s reporting of potential fraud and abuse.

**Reporting Potential Board of Pharmacy Violations**

*Requirement(s):*

- 53. The Contractor must immediately report to the Department, by telephone or email, any potential violation of State and federal laws and rules governing the practice of pharmacy.
 

The Contractor’s reporting of potential violations of State and federal laws and rules governing the practice of pharmacy must be submitted in writing to the Department within five business days of the initial reporting and must provide a detailed account of the violations that includes, but is not limited to, names, dates, places, and suspected violations.
- 54. The Contractor must *not* mention references to its reporting of potential Board of Pharmacy violations in any communication with pharmacies or in its Final Audit Reports submitted to the Department.
- 55. The Contractor must work with the Department to respond to requests from the Michigan Board of Pharmacy and otherwise cooperate with all investigative efforts by the Department and other State and federal offices related to the Contractor’s reporting of Michigan Board of Pharmacy violations.



### **Reporting Issues Related to Third Party Liabilities (TPL)**

#### *Requirement(s):*

56. The Contractor must notify the Department of any observed case involving the potential existence of TPL not listed on the files from the Department.
57. If a TPL billing discrepancy is discovered in a pharmacy's billings during the Contractor's auditing, the Contractor must report such a discrepancy to the Department for review by TPL staff.

### **Reporting Inconsistencies in the PBM Claims Processing System**

#### *Requirement(s):*

58. The Contractor must immediately report to the Department, by telephone or email, any potential claims processing inconsistency related to the PBM's application of the Department's policies and procedures.
59. The Contractor's reporting of inconsistencies in the PBM claims processing system must be submitted in writing to the Department within five business days of the initial reporting and must provide a detailed account that includes, but is not limited to, references to:
  - a. Specific claims, e.g., pharmacy name, pharmacy NPI, prescription number, NDC, and date of service;
  - b. Citations from State and federal Medicaid requirements including pertinent law, rule, policy, guideline, and notification related to the billing discrepancy;
  - c. Recommendations for changes to the PBM's claims processing editing; and
  - d. Other related information.

## **H. Provider Relations**

Following are work and deliverables related to the help line for pharmacies, the pharmacy provider audit manual, and website for pharmacies.

### **Help Line for Pharmacies**

#### *Requirement(s):*

60. The Contractor must maintain and staff a general toll-free help line for pharmacies, including all required information systems, telecommunications, and personnel to respond to pharmacy questions and problems regarding the audit and provider appeal process. The Contractor's help line must be available from at least 8:00 a.m. to 5:00 p.m. Eastern Time, Monday through Friday, except designated State holidays.
61. The Contractor's help line for pharmacies must be scalable to meet the Department's future needs and must include, but not be limited to, the following:
  - a. A voice message system to receive calls after business hours and at peak call times;
  - b. Management tracking and reporting capabilities; and
  - c. A backup system available to operate in the event of line trouble or other problems.
62. The Contractor must provide the toll-free help line number, a staff member's name, and the staff member's extension number in all audit communication letters.
63. The Contractor must maintain a plan for immediate rollover of the toll-free help line to alternate locations in the event of the disruption of public utilities or other interruptions of the help lines.

### **Pharmacy Provider Audit Manual**

#### *Requirements:*

64. The Contractor must develop, maintain, and keep current electronic versions of a Pharmacy Provider Audit Manual which includes, but is not limited to, the following:



- a. General auditing steps, procedures, and timeframes; and
- b. The Department's provider appeals process.

65. The Contractor must submit its Pharmacy Provider Audit Manual for Department approval during the Design, Development, and Implementation Phase of the Contract. Thereafter, the Contractor must maintain and keep current an electronic version of the manual and must submit its current version for Department approval at least 30 calendar days before the start of each quarter, unless the Department waives the submission requirement, or upon changes as deemed necessary by the Contractor or the Department.

### **Contractor Website for Pharmacy Providers**

#### *Requirement(s):*

66. The Contractor must provide a pharmacy provider website, website support, updates, and maintenance customized to meet the needs of the Department. The Contractor must update its website maintained for the Department after the content of such updates has been approved by the Department. The Contractor's postings to its website must include, but not be limited to:

- a. Common and recurring errors;
- b. Special updates and alerts to assist pharmacies in avoiding common errors;
- c. Frequently asked questions by pharmacies and Contractor responses;
- d. Help line information and the 1-800 contact number; and
- e. The Pharmacy Provider Audit Manual; and
- f. Links to the Medicaid Provider Manual and other sites defined by the Department.

67. The layout and items included in the Contractor's website for pharmacy providers will be approved during the Design, Development, and Implementation Phase of the Contract.

68. The Contractor must guarantee any data exchange on its website between the Contractor and the Department or providers will be secure if web-based technology is used to receive and send confidential auditing information, as determined by the Department.

### **H. Quality Assurance Plan and Statements of Auditing Standards (SAS) 70 Level II**

Following are work and deliverables related to the Contractor's quality assurance plan and SAS 70 Level II submissions.

#### **Quality Assurance Plan**

##### *Requirement(s):*

69. The Contractor must develop and implement quality management and assurance measures using best practices consistent with industry standards, principles, and processes including, but not limited to:

- g. Recurring process reengineering evaluation;
- h. Continuous performance measurement and improvement through the use of technical reviews and internal audits;
- i. Ongoing Contractor staff training; and
- j. Contractor satisfaction surveys with the Department.

70. Subject to review by the Department, the Contractor must implement and document quality assurance processes and procedures to ensure the integrity of services and of the processing and storage of the Contractor's data including, but not limited to, the following:

- a. Validate and document internal systems by balancing input and output data;
- b. Execute batch jobs appropriately, and generate outputs appropriate for the executed cycle;



- c. Maintain reports of the quantities of system errors by “error type” over a given time period;
  - d. Maintain internal quality control procedures for functionality and data integrity; and
  - e. Comply with the requirements of the Payment Error Rate Measurement (PERM) program and the Medicaid Integrity Program (MIP) of the Centers for Medicare and Medicaid Services (CMS), and of other quality assurance and review programs as specified by CMS, the State, and the Department.
71. The Contractor must conduct “Contractor Satisfaction Surveys” with the Department at least semi-annually, or as specified by the Department. The Department, in its sole discretion, may modify these requirements. The Contractor’s surveys must include, but not be limited to:
- a. Performance inquiries consistent with the duties and responsibilities of the Contractor and any Subcontractor;
  - b. Performance expectations and measurement criteria for managing the ongoing long-term business relationship with the Contractor and for monitoring performance; and
  - c. Inquiries on technology, quality, responsiveness, delivery, cost, and continuous improvement.
72. The Contractor must conduct triage with the Department at least semi-annually, or as specified by the Department, to determine the severity level of deficiencies or defects identified through Contractor Satisfaction Surveys or the Contractor’s internal quality controls and to determine timelines for fixes or resolutions.
73. The Contractor must provide corrective action plans to the Department within five business days of the discovery of severe defects found through internal quality control reviews or Contractor Satisfaction Surveys and identify options for corrective actions. The Contractor must initiate corrective actions plans, at no additional cost to the Department, only after the written approval of the Department.

**SAS 70 Level II**  
*Requirement(s):*

74. The Contractor and any Subcontractors, at their expense, must have an annual independent audit that conforms to American Institute of Certified Public Accounting’s (AICPA) Statements of Auditing Standards (SAS) 70 Level II. The SAS-70 Level II requirement is a review and actual test of the pharmacy auditing systems and their controls. The audit must include procedures and tests that the auditor(s) considers necessary under the circumstances to evaluate the design of the control procedures and to evaluate the operating effectiveness of those control procedures. The Department reserves the right to approve the entity that conducts the audit examination as well as the time period to be covered by the examination. The Department, at its sole discretion, may waive or modify a Contractor’s or a Subcontractor’s annual independent audit requirement upon written request of the Contractor or Subcontractor.
75. The Contractor must provide the Department a copy of the Contractor’s and any Subcontractor’s annual SAS 70 Level II audit report in an agreed-upon format within 30 days after the examination is complete or on or before the first business day of August in each year of the Contract, whichever occurs first, except in year one of the contract, the SAS 70 Level II audit report will be provided to the State no later than January 1, 2012. .
76. If a SAS 70 Level II report in an agreed-upon format is not provided within 30 days after the examination is complete or on or before the first business day of August in each year of the Contract, whichever occurs first, the Department may designate an entity to conduct an audit as well as the time period to be covered by the examination, at the Contractor’s expense.
77. As requested by the Department, the Contractor must provide the Department reports of its and any Subcontractor’s progress toward implementing corrective action plans required to address deficiencies identified by such audits.



## **I. Core Requirements**

Following are work and deliverables related to HIPAA compliance; systems upgrades and modifications; Contractor liabilities for fiscal sanctions and loss of Medicaid Management Information System (MMIS) certification; confidentiality; right to audit; requests for information and for federal audits of the Contractor; disaster recovery; privacy and security; and identity theft prevention and reporting.

### ***HIPAA Compliance***

#### ***Requirement(s):***

78. The Contractor must comply with requirements listed in Section 1.070 Additional Requirements and Section 2.210 Governing Law, and in particular must note electronic transactions and code sets, which are received or processed, must fully comply with HIPAA requirements in effect on the date of the RFP's release and with any subsequent additions or amendments. To fulfill this scope of work, at no additional cost to the Department, the Contractor must:
- Submit an impact analysis to the Department within 30 days of the publishing of a proposed HIPAA rule;
  - Submit an implementation plan for acceptance by the Department within 30 days of the publishing of a final or modified HIPAA rule; and
  - Implement future HIPAA rules published during the Contract according to the timeframes in the HIPAA rule or as specified by the Department.

### ***Systems Upgrades and Modifications***

#### ***Requirement(s):***

79. Any upgrade or modification required within the Contractor's central site hardware, systems software, database, or online decision support systems during the Contract must be made at no additional cost to the Department. Upgrades and modifications that create additional services/deliverables will be subject to the Change Request process. The Contractor must provide the Department a minimum of five business days notice prior to any such updates and modifications. If the performance of pharmacy audit services will be impacted, the Department's prior approval is required. Such prior approval does not exempt the Contractor from any performance guarantees or Service Level Agreements (SLAs) listed in this document.

### ***Contractor Liabilities for Fiscal Sanctions and Loss of MMIS Certification***

#### ***Requirement(s):***

80. If any State or federal agency or court of law imposes fiscal sanctions against the Department as a result of the Contractor's or any Subcontractor's action or inaction; the Contractor will be liable and must compensate the Department for direct, actual damages that are attributable to ACS error or failure to perform as required in the State of Work or contract terms because of the imposition of the State or federal agency or court of law sanctions. Contractor will not be liable when error or failure to perform was attributable to action or inaction of the Department or the State, or when Contractor has reasonably relied on reliance on actions or representations made by the Department or the State. Further, the Department will perform its duty to mitigate damages. The Contractor's liability will include, but not be limited, to the following:
- The cost of the service, when the Department is required to make a payment to a pharmacy as a result of Contractor-provided misinformation contradicting the Department's policies and procedures;
  - All costs related to loss of Federal Financial Participation (FFP) including any losses due to lack of or loss of Medicaid Management Information System (MMIS) certification related to the Contractor's auditing services; and
  - All costs that the Department incurs as result of the Contractor's noncompliance for failure to submit appeal rationale and other necessary information within the required timeframe and failure to attend or defend the Contractor's decisions at all appeal hearings or conferences.



**Confidentiality***Requirement(s):*

81. The Contractor must agree and understand that all discussions with the Contractor and all information shared with the Contractor as a result of the Contractor's performance under the Contract must be confidential and that no reports, documentation, or material obtained and prepared as required by the Contract shall be released to the public without the prior written consent of the Department.

**Right to Audit**

The Contractor must comply with the requirements listed in Section 2.110 Records and Inspections and with the following:

*Requirement(s):*

82. The Contractor and any Subcontractors must cooperate with audits by Department staff, other State departments, the United States Department of Health and Human Services, State, or federal designees, or others authorized to perform audits relating to the work and deliverables rendered by the Contractor and any Subcontractors. The Contractor and any Subcontractor support for such auditing must include, but is not limited to, the following:

- a. Enable read and copy access to files, documentation, and personnel including inventory control files, beneficiary master files, reference data files, provider master files, adjudicated claims files, all software and operating manuals, and all documentation along with rules, regulations, memos, internal reports, training manuals, and detail design documentation;
- b. Enable access to computer resources including all application programs and libraries, all system programs and libraries, and the operating system along with job accounting and software;
- c. Provide ability to retrieve and print claims and supporting documentation related to pharmacy audits;
- d. Provide the personnel and resources necessary for automated or manual sampling of claims and reference file data, including the retrieval of historical data; and
- e. Notify audit staff within 24 hours of any changes made to computer programs and edit logic between processing runs related to audit activities.

**Requests for Information and Requests for Federal Audits of the Contractor***Requirement(s):*

83. The Contractor must notify the Department within 24 hours, by telephone or email (with confirmation of receipt from Department staff), when:

- a. Any federal agent presents on-site in a Contractor's facility or requests by mail, telephone, or email to discuss, view, or audit work and deliverables related to this Contract; or
- b. Any beneficiary, provider, or other individual or entity requests information on the Contractor's work and deliverables under this Contract.
- c. Unless the Contractor has been directed by a federal agent or other official not to notify the Department.

**Disaster Recovery Plan**

The Contractor must comply with requirements listed in Section 2.037 Disaster Recovery and the following:

*Requirement(s):*

84. The Contractor solely must maintain adequate backup to ensure continued automated and manual provision of required work and deliverables. The State reserves the right to inspect the Contractor's disaster recovery backup site(s) and procedures at any time with 24 hour notification to the Contractor.

- a. Alternative Operations Site – The Contractor must maintain or otherwise arrange for alternate site(s) for its system operations in the event a catastrophic or other disastrous event prevents continued operations at the Contractor's primary site(s).



- b. Backup Files and Secure Off-Site Storage – The Contractor must maintain off-site storage of backup transactions, records, and master files.
- c. Backup Help Line – The Contractor must maintain a plan for immediate rollover of the help line to alternate locations in the event of the disruption of public utilities or other interruptions of the help line service.

**Privacy and Security**

*Requirement(s):*

- 85. The Contractor’s work and deliverables must comply with all applicable State information technology policies and standards including the Michigan Department of Information Technology (MDIT) 1350 Enterprise Security Policy and 1410.17 Michigan State Government Network Security Policy, as applicable.
- 86. Subject to review by the Department as needed, the Contractor must develop a security plan that includes physical security, business continuity, and change management, and that identifies all controls for confidentiality, integrity, and availability.
- 87. Subject to review by the Department as needed, the Contractor must have written policies and procedures addressing the use of any protected health data (PHI) and information that falls under the Health Insurance Portability and Accountability Act (HIPAA) requirements. The policies and procedures must meet all applicable federal and State requirements including HIPAA requirements. These policies and procedures must include restricted access to the protected health data and information by the Contractor’s employees.
- 88. The Contractor must immediately notify the Department, by telephone or email, upon learning of any suspected or actual unauthorized use or disclosure of protected health data and information that falls under the HIPAA requirements. The Contractor must work with the Department to mitigate any breach and provide assurances to the Department on corrective actions to prevent future unauthorized uses or disclosures.
- 89. In accordance with HIPAA requirements, the Contractor is liable for any claim, loss, or damage relating to unauthorized use or disclosure of protected health data and information by the Contractor, as received from the Department or any other source
- 90. The Contractor must immediately notify the Department, by telephone or email, upon learning of any breach of system or data security. Subject to the approval of the Department, the Contractor must undertake such additional safeguards or changes as recommended by a subsequent independent security audit at the Contractor's expense.
- 91. Failure to comply with any of these contractual requirements may result in a breach of contract notification, per Section 2.151, or the termination of the Contract.

**Identity Theft Prevention/Reporting**

*Requirement(s):*

- 92. In the delivery and provision of information technology hardware, software, systems, and services through the Contract, the Contractor must prevent unauthorized access to the “Identity Information” of any individual. “Identity Information” includes, but is not limited to, an individual’s first name or initial and last name, in combination with any of the following:
  - a. Social Security Number;
  - b. Driver’s license number;
  - c. System access identification number and associated passwords;
  - d. Account information such as account number(s), credit/debit/mihealth card number(s), and/or passwords or security codes.



93. The Contractor must immediately notify the Department, by telephone or email, upon learning of any unauthorized breach, access, theft, or release of State data containing "Identity Information." For even a single known violation of the identity theft prevention and reporting requirements, the State may terminate for default its Contract(s) and may withhold payment(s) owed to the Contractor in an amount sufficient to pay the cost of notifying individuals of unauthorized access or security breaches.

### **1.030 Roles and Responsibilities**

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

##### **A. Key Personnel**

###### *Requirement(s):*

1. The Contractor must have sufficient staff to meet requirements listed in this document, including the following Department-designated "key personnel" complying with the requirements below.
  - a. **Project/Account Director** – 30 percent dedicated to the Contract; experienced in pharmacy auditing management; desired experience in Medicaid pharmacy provider audits
  - b. **Account Manager/Senior Audit Supervisor**– 100 percent dedicated to the Contract; experienced in pharmacy auditing management; desired experience in Medicaid pharmacy provider audits; required travel as specified by the Department.
  - c. **Auditors** – 100 percent dedicated to the Contract; licensed pharmacists; and certified pharmacy technician (s); experienced in pharmacy auditing; knowledgeable with applicable federal law and regulations related to pharmacy auditing, desired experience in Medicaid pharmacy provider audits and familiarity with Michigan law and rules; required travel for on-site auditing and as otherwise specified by the Department; the Account Manager/Senior Audit Supervisor may fill an auditor position.
  - d. **Implementation Manager** – 100 percent dedicated through the Design, Development, and Implementation (DDI) Phase; experienced in project management and implementation of auditing systems; the Project/Account Director may fill this position.
2. The Contractor must ensure its professional key personnel have and maintain current licensure or certification. The Contractor's key personnel are *not* required to have Michigan licensure or certification.
3. The Contractor's Account Manager/Senior Audit Supervisor and other Department-designated staff must attend Department meetings on-site in Lansing, Michigan at no additional cost, or via conference call as directed by the Department. The Contractor's key personnel are not required to reside in Michigan.
4. The Contractor must submit to and maintain with the Department an up-to-date organizational chart and a staffing plan for Work and Deliverables described in this document including, but not limited to: email addresses and business phone numbers for key personnel, and for any Subcontractors.
5. The Contractor must provide the Department written notification of anticipated vacancies of the Department's designated key personnel positions within two business days of receiving the individual's resignation notice, the Contractor's notice to terminate an individual, or the position otherwise becoming vacant. The Department's designated key personnel positions must not remain vacant or filled with an interim appointee longer than 60 calendar days unless approved by the Department.
6. The Contractor must identify where key personnel identified above, whether employed by Contractor or Subcontractor, will be physically located for the duration of the Contract.



**B. Staffing and Sanctioned Individual Notice**

*Requirement(s):*

7. The Contractor must verify and report to the Department, monthly whether any employee of the Contractor or any Subcontractor(s) supporting the Department’s work and deliverables has ever had a criminal conviction, or been designated as a sanctioned healthcare provider by the federal government or the State.
8. The Contractor must immediately notify Department, by telephone or email, when an employee of the Contractor or any Subcontractor has been sanctioned by the federal government or the State.

**1.040 Project Plan**

**1.041 Project Plan Management**

**A. Project Management Phases**

Table 3 presents the Department’s proposed timetable for the three project management phases.

**Table 3: Project Phases for the Contractor’s Project Management Plan**

<b>Phase</b>	<b>Timeframe</b>
1. Design, Development and Implementation (DDI)	Mutual Contract Execution, after Administrative Board approval, through Month 3
2. Operations – Services Rendered	Month 4 to the Contract termination date
3. Turnover	Six months prior to the Contract termination date (or any extension thereof)

*Requirement(s):*

1. The Contractor must submit its Project Management Plan, for Department approval, within 15 calendar days of Contract award. The Contractor’s submitted Plan will describe Contractor’s approach to accomplishing the required work and deliverables. Please include a preliminary project plan for the Design, Development, and Implementation Phase of the Contract listing tasks and deliverables, key milestones, timelines, and staffing, acknowledge your firm’s acceptance of this deliverable, and describe your firm’s plan for meeting this requirement.
2. The Contract award is not the Department’s acceptance or approval of the Contractor’s submitted Plan or approach.

**B. Design, Development, and Implementation (DDI) Phase**

*Requirement(s):*

3. The Contractor must perform the following tasks during the DDI phase in preparation for the Operations phase.
  - a. **Planning Activities** including, but not limited to, the following:
    - i. Review documentation on current system operations and requirements as well as user documentation, and clarify deficiencies as necessary;
    - ii. Establish a project control and reporting system, and establish protocols for problem reporting, a standards manual, and controls for file transfers;
    - iii. Develop a detailed implementation schedule defining all key milestones, deliverables, activity-level schedules, and staffing levels; and



- iv. Provide design modification recommendations to the Department, understanding that the Department is under no obligation to accept or implement any recommended modifications.
- b. **Testing Activities** including, but not limited to, the following:
  - i. Develop procedures and supporting documentation for testing;
  - ii. Establish a testing schedule;
  - iii. Perform testing with input files from the Department;
  - iv. Analyze and record test results;
  - v. Develop and test data conversion programs; and
  - vi. Work with the Department and other State Contractors, as necessary, to establish appropriate interfaces and systems integration.
- c. **Implementation Activities** in preparation for Operations including, but not limited to, the following:
  - i. Finalize the implementation schedule, and obtain approval from the Department;
  - ii. Obtain final and in-process files, transactions, and other data from the Department, and perform final conversions;
  - iii. Participate in the Department's operational readiness assessment;
  - iv. Begin provider audit selection and other transactions; and
  - v. Advise the Department of commencement of full system operations, and request approval for the start of operations.

### **C. Operations Phase**

#### *Requirement(s):*

4. The Contractor must implement and provide all required work and deliverables during the Operations Phase of the Contract.
5. Activities include, but are not limited to: selecting pharmacies for audits; performing on-site and desk audits; processing overpayment adjustments; representation at provider appeals; and other items from the Section 1.020 Scope of Work and Deliverables.

### **D. Turnover Phase**

#### *Requirements:*

6. At least six months before the termination of the Contract or any extension of the Contract, Contractor must develop and implement a Department-approved Turnover Plan. The Turnover Plan must be comprehensive detailing the proposed schedule, activities, and resource requirements associated with turnover tasks.
7. The Contract work and deliverables including all working documents are the property of the Department and the Contractor must turn over all completed Contract work and deliverables including all working documents, in accordance with the Department-approved Turnover Plan.
8. Activities include, but are not limited to: maintenance of system files, software, and hardware; correction of system problems and deficiencies; and system modifications as necessary to accommodate the Department's needs without additional cost to the Department.

### **1.042 Reports**

Following are work and deliverables related to the Contractor's reporting package, interface files, auditing database, ad hoc reporting, performance report card, and accuracy of the auditing database system and other reporting.



## **A. Reporting Package**

### *Requirement(s):*

1. The Contractor must submit its proposed reporting package, for Department approval, during the Design, Development, and Implementation Phase of the Contract.
2. The Contractor must provide reporting functionality comparable or more comprehensive than the reports described in Appendix A, or otherwise approved by the Department. The Contractor's reporting functionality must:
  - a. Provide flexibility to accommodate new reports or modifications to existing reports at the request of the Department, at no additional cost to the Department;
  - b. Provide a secure web-based report repository where all reports are stored in an organized manner and easily accessed online by Department staff (at least 3 concurrent users) to view, print, copy, and download;
  - c. Deliver reports in a format acceptable to the Department (e.g., Microsoft Excel®) to be available both electronically and in hard copy, as specified and approved by the Department;
  - d. Provide updated monthly, quarterly, and annual data including running totals by calendar year and State fiscal year, or as otherwise specified and approved by the Department; and
  - e. Produce reports for the Department's current and future programs and other Department-specified coverage groups or claim types (e.g., programs, managed care carve-out status, e-prescriptions/compounds/home infusion, and eligibility data elements such as beneficiary age grouping, benefit plan, dual eligible status, etc.).

## **B. Interface Files**

### *Requirement(s):*

3. The Contractor must receive and transmit the interface files listed in Appendix B. While this appendix contains an extensive list of interface files, it is not meant to be comprehensive or all inclusive of all needed files to perform the Department's work, deliverables, and other requirements.
4. The Contractor must maintain documentation of any changes made to the interface processing rules or processing timelines.
5. The Contractor must receive (download) and transmit (upload) files via a dedicated and secure File Transfer Protocol (FTP) site and develop and deliver Department-approved load and error reports for each interface file.
  - a. File download from the Department to the Contractor must be 100 percent accurate and timely by the day and time designated by the Department; and
  - b. File upload from the Contractor to the Department must be 100 percent accurate and timely by the day and time designated by the Department.
6. The Contractor must prepare a Root Cause Analysis Report each time an interface problem is identified and resolved. This analysis must be well-researched, clearly explained, and provide a valid description of the Contractor file interface problem and must include corrective measures taken to prevent future occurrences. The Contractor must forward the Root Cause Analysis Report to the Department within 10 business days of resolution of a file interface problem.
7. The Contractor must use weekly updated data from First DataBank, at no additional cost to the Department. If needed data is unavailable from First DataBank, the Contractor must recommend and utilize a replacement source, as approved by the Department, at no additional cost.

## **C. Auditing Database System and Ad Hoc Reporting**

Following are work and deliverables related to the auditing database system and ad hoc reporting.



### ***Auditing Database System for Pharmacy Audit Documentation***

#### *Requirement(s):*

8. The Contractor must provide an auditing database system, in a format acceptable to the Department to:
  - a. Track timeliness and ensure accuracy of all business processes used for auditing determinations;
  - b. Maintain a detailed accounting of identified overpayments by a pharmacy and track recoveries with the ability to report the status of recoupment for an individual claim, cumulative recoveries for a pharmacy, or across all pharmacies.
9. Although the Contractor will maintain the database and processing system at their facility, the Department's specific auditing data stored in the Contractor's database shall be the property of the Department. This includes all audits and supporting documentation.
10. The Contractor must make revisions to the data elements in its auditing database system or to the format of required reports generated by the system, as requested by the Department, without additional charge to the Department. The Contractor's auditing database system must be capable of allowing for future growth in claims volume and must include, but is not limited to, the following functionality:
  - a. Store data based on data updates received from the Department, other required interface files, and the Contractor's auditing work and deliverables;
  - b. Comply with HIPAA requirements; and
  - c. Generate ad hoc reports.
11. The Contractor must present its proposed auditing database and reporting system, for Department approval, during the Design, Development, and Implementation Phase of the Contract.

### ***Ad Hoc Reporting***

#### *Requirement(s):*

12. The Contractor must complete Department requests for ad hoc reports within 10 business days of a request unless an alternative response time is negotiated with the Department at the time the request is made. Some ad hoc requests might require a faster turn-around and the Department will specify such requirements at the time of the request.

### **D. Performance Report Card**

#### *Requirement(s):*

13. Within 15 days of the end of each month during the Operations phase, the Contractor must produce and deliver a report card on its actual performance. Select Contract performance standard requirements identified in this document will be part of the report card in any given month. (See Appendix C for a sample.)
14. Standards will be added or deleted for future report cards, at the Department's discretion, with 30 days notice to the Contractor. The Department, or its designee(s), reserve the right to audit records and data related to the Contractor's performance at any time during the Contract.
15. The Contractor must provide a corrective action plan for any performance standard deficiencies within five business days of delivering the report card to the Department. The Department, at its sole discretion, may accept the Contractor's corrective action plan or modify it. The Contractor must implement the corrective action plan accepted by the Department within 30 days or as otherwise specified by the Department.



## **E. Accuracy and Timeliness of the Contractor's Reporting**

### *Requirement(s):*

16. The Contractor must produce accurate reports (including, but not limited to, standard reports, ad hoc reports, and invoicing for the Contractor's work and deliverables) within the timeframes specified by the Department.
17. The Contractor must deliver reports within the timelines that follow or as otherwise specified by the Department for select reports (e.g., Final Pharmacy Audit Report, Monthly Audit Progress Report, etc.).
  - a. Weekly reports must be delivered to the Department on or before the second business day following the end of the reporting period;
  - b. Monthly reports must be delivered to the Department on or before the tenth business day of the month following the end of the reporting period;
  - c. Quarterly reports must be delivered to the Department on or before the tenth business day of the month following the end of the reporting period;
  - d. Semi-annual and annual reports must be delivered to the Department no later than 60 days following the end of the reporting period.
18. Within 10 business days of the notification of error, the Contractor must resubmit corrected reports to the Department that contained a material error and provide a corrective action plan outlining steps to prevent future occurrences.
  - a. A material error is any error set forth in the report or database as determined by the Department related to recommended overpayment amounts and any procedural auditing defect that impacts the validation of the audit, validity of the audit findings, recoverability of an overpayment; or any other reported data inaccuracy.
  - b. Material errors will not include disagreement on judgment calls, so long as the decisions were made in consultation with the Department.

## **1.050 Acceptance**

### **1.051 Criteria**

The following criteria will be used by the Department to determine Acceptance of the Services or Deliverables provided under this Statement of Work:

## **A. Project Manager Responsibilities Related to Acceptance of Work and Deliverables**

1. The Department's Project Manager will be responsible for verifying that the work:
  - a. Was performed in the time period referenced;
  - b. Met the work or deliverable criteria; and
  - c. Was performed according to Contract specifications.

## **B. Approval Process of Work and Deliverables**

1. The Department's approval process of work and deliverables requires formal written approval, according to the following procedures:
  - a. Formal approval by the Department requires the Department to confirm in writing that the work and deliverables meet its specifications and requirements. The approval process will be facilitated by ongoing consultation between the parties, inspection of interim and intermediate work and deliverables and collaboration on key decisions.





- b. The Department will approve in writing work and deliverables after confirming that it conforms to and performs according to its specifications without material deficiency. The Department may, but is not required to, conditionally approve in writing work and deliverables that contain material deficiencies if the Department elects to permit the Contractor to rectify them post-approval. In any case, the Contractor will be responsible for working diligently to correct within a reasonable time at the Contractor's expense all deficiencies in the work and deliverables that remain outstanding at the time of the Department approval.
  - c. If, after three opportunities (the original and two repeat efforts), the Contractor is unable to correct all deficiencies preventing Operations Phase Go Live Approval. the Department may: (i) request that the Contractor cure the deficiency and give the Contractor additional time to cure the deficiency at the sole expense of the Contractor; (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 percent of the cost to cure the deficiency to cover the Department's general expenses provided the Department 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 the Contractor provided the Contractor is unable to cure the breach. Notwithstanding the foregoing, the Department cannot use, as a basis for exercising its termination rights under this Section, deficiencies discovered in a repeat Department Review Period that could reasonably have been discovered during a prior Department Review Period.
  - d. The Department, 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 sufficient quantity or of sufficient severity that renders continuing the process unproductive or unworkable. In such an event, the Department may stop using the Service or return the applicable Deliverable to the Contractor for correction and re-delivery before resuming the testing or approval process.
2. Upon work and deliverable approval, the Department's Project Manager will forward the approved invoice for additional review and payment according to the Department approval path.

## **1.052 Final Acceptance – Deleted/Not Applicable**

### **1.060 Proposal Pricing**

#### **1.061 Proposal Pricing**

For authorized Services and Price List, see Attachment A.

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

The Bidder must submit a Price Proposal as well as supporting documentation where requested. The Price Proposal is contained in an Excel® file called Attachment A – *Price Proposal Sheet*. The Price Proposal must be completed per the instructions in this section of the RFP and returned by the Bidder in both Microsoft Excel® electronic and hard copy formats. Only unshaded white cells are to be completed by the Bidder. The workbook will be audited when the Bidder's Price Proposal is opened to ensure auto-sums and links are intact.

#### **A. Price Proposal Schedule A – Total Evaluated Price**

Schedule A summarizes the Total Contract Price for all Contractor activities during the Contract, including DDI activities and the base years of the Contract operations (that is, excluding renewal option years).



## **B. Price Proposal Schedule B - Design, Development, and Implementation (DDI) Price**

Price Proposal Schedule B includes the details for all DDI activities including planning, testing, and implementation (including, but not limited to: all expenses related to auditing, travel, copying, data access, and reporting) that result in the Total DDI Fixed Price included in the Total Evaluated Price.

1. **DDI Pricing** – Entries under this category specify the Contractors's pricing for all DDI activities including planning, testing, and implementation that result in bringing all Work and Deliverables to full operational readiness, for obtaining Department acceptance, and for meeting federal certification requirements (if applicable).
2. **DDI Payments** – During the DDI phase, pro-rated payments will be made to the Contractor at completion and Department acceptance of critical planning activities, testing activities, and implementation activities, per Attachment A; subject to all remedies afforded to the State under law and the Contract.

## **C. Price Proposal Schedule C - Operations Price**

Schedule C will be used to specify the Total Operations Fixed Price for performance of all operational tasks and maintenance (including, but not limited to: all expenses related to auditing, travel, copying, data access, and reporting) during the base years of the Operation Phase of the Contract. Other pertinent instructions and specifications follow.

**Operations Payments** – During the Operations phase, a monthly payment (unless otherwise specified by the Department) will be made to the Contractor as prorated from the fixed price proposed for each Contract Year in the Pricing Proposal, subject to all remedies afforded to the State under law and the Contract.

- a. The Department will provide invoicing instructions during the DDI phase of the Contract.
- b. The Contractor's September administrative invoice to the Department must be submitted by October 5 of each year of the Contract.
- c. The Contractor's invoices submitted to the Department must be 100 percent accurate.

## **D. Price Proposal Schedule D – Hourly Rates of Staffing Supporting the Project**

Schedule D will be used to specify hourly rates for staffing supporting the Contract.

## **E. Price Proposal Schedule E – Contingency Pricing.**

Schedule E will be used to set forth optional contingency pricing.

### **1.062 Price Term – Firm Fixed Price**

Prices quoted are firm for the entire length of the Contract. Pricing requirements during renewal options are as follows:

1. The Contractor must demonstrate a *material change* in variable costs. No adjustment for fixed cost increases will be made by the Department.
2. In the event the Contractor demonstrates such material changes, the Department will make a financial adjustment for operations during the renewal period based on the Contractor's material increase in variable costs, as defined by the Department. Any adjustment in the prices quoted payable to the Contractor for operations must be dependent on the verification and certification.
3. The Contractor must provide the Department with Contract Year variable costs documentation, as requested by the Department. If the Contractor fails to provide such documentation, the Department may estimate or use any previous calculation of the Contractor's variable costs to determine a material change or decrease.

### **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**

The State has the right to hold back, as a retainage, an amount equal to five percent (5%) of all amounts invoiced by Contractor for Services/Deliverables. The amounts held back must be released to Contractor after the State has granted Final Acceptance.

### **1.070 Additional Requirements**

#### **1.071 Additional Terms and Conditions specific to this RFP**

##### **A. Performance Guarantees/Service Level Agreement (SLA)**

*Requirement(s):*

The Contractor must ensure that the SLAs are measureable using the Contractor's standard information systems and databases. The Department reserves the right to independently verify the Contractor's assessment of its performance, either by State employee or by third party review. Disagreements regarding SLAs will be subject to Dispute Resolution, per Section 2.190. The SLAs in Attachment F are related to on-going Services, and will apply throughout the duration of the Contract, including any optional renewal periods (if exercised).

##### **B. Compliance with State and Federal Laws, Rules, Regulations, Policies, and Notifications**

*Requirement(s):*

1. The Contractor must comply with the requirements listed in Section 2.210 Governing Law and must provide necessary system design, modification, and implementation needed to comply with changes in laws, regulations, and notifications of State and federal government at no additional cost to the Department. The Contractor in particular must note the following:
  - a. *False Claims* – Any services or deliverables paid in association with this Contract will be from State and federal funds and any false claims, statements, or documents, or concealment of a material fact, may be prosecuted under applicable State or federal laws and regulations.
  - b. *Fraud and Abuse* – The Contractor must comply with all applicable provisions of Section 1902(a)(68)(A) of the Social Security Act as amended by Section 6032 of the Deficit Reduction Act of 2005, and the Medicaid False Claims Act, and any subsequent amendments.
  - c. *HIPAA* – The Contractor must comply in all material respects with all State and federal mandated regulations, rules, orders, or notifications with application to privacy and security, electronic transactions and code sets, including without limitation, regulations promulgated under Title II Subtitle F of the Health Insurance Portability and Accountability Act (Public Law 104-191) (HIPAA).
  - d. *Privacy of Individually Identifiable Health Information* – The Contractor must comply with all State and federal legislation, regulations, rules, orders, or notifications to which the Contractor is subject now or in the future including, without limitation, the Standards for Privacy of Individually Identifiable Health Information or similar legislation (collectively, "Laws") to ensure the Contractor is at all times in conformance with all Laws.
  - e. *MMIS Certification* – The Contractor must comply with all requirements for MMIS certification issued by CMS that govern the Contractor's service, performance, work, or deliverables. (See the Medicaid Enterprise Certification Toolkit available at [www.cms.hhs.gov/MMIS](http://www.cms.hhs.gov/MMIS)).



2. The Contractor must ensure its personnel assigned to the Contract are trained on current and future Medicaid laws, rules, policies, guidelines, notifications of the State and federal government and on current and future State and federal laws, rules, policies, guidelines, notifications that govern the practice of pharmacy so that its personnel will consistently apply laws, rules, policies, guidelines, notifications when performing pharmacy auditing services for the Department's programs.

### **C. Contractor Audit Trails of Historical Records and Record Retention**

Following are work and deliverables related to audit trails of historical records and record retention.

#### *Requirement(s):*

1. The Contractor must provide audit trails to document, identify, and track chronological records and transactions throughout the Contractor's systems including, but not limited to, additions, deletions, and changes to "historical records."
2. At no additional cost to the Department, Contractor must retain and make available for inspection or reproduction all "historical records" related to the Contractor's work and deliverables in compliance with: Section 2.110 Records and Inspections; Section 2.112 Examination of Records; Section 2.113 Retention of Records; and the following requirements. Examples of "historical records" include, but are not limited to, the following:
  - a. Claims data;
  - b. Provider enrollment data;
  - c. Beneficiary enrollment records;
  - d. Other interface files;
  - e. Current and historical reference files including, but not limited to, reimbursement logic and beneficiary co-payments;
  - f. Scanned images and electronic attachments;
  - g. Financial transactions;
  - h. Letters and notices sent to providers;
  - i. Communication logs;
  - j. Audit work papers;
  - k. Pharmacy Billing Discrepancy Lists;
  - l. Department-customized definitions for the Contractor's data mining, modeling, and error matrix algorithms;
  - m. Pharmacy Provider Audit Manual;
  - n. Contractor Auditing Plan and Methodology Manual;
  - o. Auditing database system; and
  - p. Other related data and reference files specified by the Department.
3. The Contractor must deliver historical records or provide State and federal agencies and their authorized representative(s) access to historical records for review, analysis, inspection, audit, and reproduction during the Contract and as further specified in Section 2.112.
4. All historical records will be the property of the Department and must be returned, at no additional cost, upon request. At the end of the required retention of records period, the Contractor must either transfer the records to the Department or its designee or dispose of the records as instructed by the Department or designee.
5. The Contractor must maintain historical records "online" for a minimum of 36 months from the date of service in the electronic format specified by the Department.
6. The Contractor must restore "off-line" archived historical records to "online" status for viewing, copying, and printing of the restored records within one business day of the Department's request or as otherwise specified by the Department.



#### **D. Fraud and Abuse Compliance Plan**

*Requirement(s):*

1. The Contractor must have a written fraud and abuse compliance plan and must designate an officer or director in its organization who has the responsibility and authority for carrying out the provisions of the fraud and abuse compliance plan.
2. The Contractor's specific internal controls and polices and procedures must be described in a comprehensive written fraud and abuse compliance plan and be maintained on file with the Contractor for review and approval by the Department and as an annual submission as part of the Contract.
3. The fraud and abuse compliance plan must define how the Contractor will adequately identify and report suspected fraud and abuse by Medicaid enrolled providers, by subcontractors, and by the Contractor.
4. The fraud and abuse compliance plan must be submitted annually and must discuss the monitoring tools and controls necessary to protect against theft, embezzlement, fraudulent marketing practices, or other types of fraud and program abuse and describe the type and frequency of training that will be provided to detect fraud. All fraudulent activities or other program abuses shall be subject to the laws and regulations of the State of Michigan and/or federal laws and regulations.
5. The Department will provide notice of approval, denial, or modification to the Contractor within 30 calendar days of annual submission. The Contractor must make any requested updates or modifications available for review after modifications are completed as requested by the Department within 30 calendar days of a request.
6. At a minimum the written fraud and abuse compliance plan must:
  - a. Ensure that all officers, directors, managers and employees know and understand the provisions of the Contractor's fraud and abuse compliance plan;
  - b. Contain procedures designed to prevent and detect potential or suspected abuse and fraud in the administration and delivery of services under this contract;
  - c. Include a description of the specific controls in place for prevention and detection of potential or suspected abuse and fraud;
  - d. Contain provisions for the confidential reporting by pharmacy and subcontractors of plan violations to the designated person;
  - e. Contain provisions for the investigation and follow-up of any compliance plan reports;
  - f. Ensure that the identities of individuals reporting violations of the plan are protected;
  - g. Contain specific and detailed internal procedures for officers, directors, managers and employees for detecting, reporting, and investigating fraud and abuse compliance plan violations;
  - h. Require any confirmed or suspected provider fraud and abuse under state or federal law be reported to the Department and that enrollee fraud and abuse be reported to the Department; and
  - i. Ensure no individual who reports plan violations or suspected fraud and abuse is retaliated against.

#### **E. Business Associate Agreements**

*Requirements:*

The Contractor must execute any necessary Business Associate Agreement and flow down this requirement to any and all related independent contractors, subcontractors, and vendor partners. See Appendix D for the Template for the HIPAA Business Associate Addendum.



**F. Invoicing for the Contractor’s Work and Deliverables**

Requirement(s):

1. The Contractor must design, structure, and provide appropriate invoicing detail, as necessary and requested by the Department, to comply with CMS reporting and invoicing requirements related to the Contractor’s work and deliverables under the Contract.
2. The Contractor’s monthly invoicing during the Operations Phase of the Contract must include supporting documentation evidencing that work for which payment is sought has been satisfactorily completed. The invoice detail and its supporting documentation will be finalized between the Contractor and the Department during the Design, Development, and Implementation Phase of the Contract. An example of supporting documentation related to the Contractor’s monthly invoice includes, but is not limited to; the data listed on the following table.

**Documentation Example for the Contractor’s Monthly Invoice**

Audit Type	# of Pharmacies Audits Completed	Audit Components							
		Staffing	# of Staff Involved in Completed Audits A	Hourly Rate	Auditing Hours B	Total Staffing Costs C AxB=C	Expenses related to Traveling to & from Pharmacies D	Other Out-Of-Pocket Expenses E	Total Costs F C+D+E=F
On-Site		Management:							
		Project Support Staff:							
		Auditor Pharmacist:							
		Auditor Pharmacy Tech:							
		Auditor Other:							
		Other Staff:							
Desk		Management:							
		Project Support Staff:							
		Auditor Pharmacist:							
		Auditor Pharmacy Tech:							
		Auditor Other:							
		Other Staff:							



## **Article 2, Terms and Conditions**

### **2.000 Contract Structure and Term**

#### **2.001 Contract Term**

The Contract is for a period of three years beginning 5/12/11 through 5/11/14. 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 one additional six month period.

#### **2.003 Legal Effect**

The Contractor must show acceptance of the Contract by signing two copies of the Contract and returning them to the Contract Administrator. The Contractor must not proceed with the performance of the work to be done under the Contract, including the purchase of necessary materials, until both parties have signed the Contract to show acceptance of its terms, and the Contractor receives a Contract release/purchase order that authorizes and defines specific performance requirements.

Except as otherwise agreed in writing by the parties, the State assumes no liability for costs incurred by Contractor or payment under the Contract, until Contractor is notified in writing that the Contract (or Change Order) has been approved by the State Administrative Board (if required), approved and signed by all the parties, and a Purchase Order against the Contract has been issued.

#### **2.004 Attachments & Exhibits**

All Attachments and Exhibits affixed to any and all Statement(s) of Work, or appended to or referencing the Contract, are incorporated in their entirety and form part of the Contract.

#### **2.005 Ordering**

The State will issue a written Purchase Order, Blanket Purchase Order, Direct Voucher, or Procurement Card Order, which must be approved by the Contract Administrator or the Contract Administrator's designee, to order any Services/Deliverables under the Contract. All orders are subject to the terms and conditions of the Contract. No additional terms and conditions contained on either a Purchase Order or Blanket Purchase Order apply unless they are also specifically contained in that Purchase Order's or Blanket Purchase Order's accompanying Statement of Work. Exact quantities to be purchased are unknown; however, the Contractor must furnish all such materials and services as may be ordered during the Contract period. Quantities specified, if any, are estimates based on prior purchases, and the State is not obligated to purchase in these or any other quantities.

#### **2.006 Order of Precedence**

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

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



### **2.007 Headings**

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

### **2.008 Form, Function & Utility**

If the Contract is for use of more than one State agency and if the Deliverable/Service does not meet the form, function, and utility required by that State agency, that agency may, subject to State purchasing policies, procure the Deliverable/Service from another source.

### **2.009 Reformation and Severability**

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

### **2.010 Consents and Approvals**

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

### **2.011 No Waiver of Default**

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

### **2.012 Survival**

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

## **2.020 Contract Administration**

### **2.021 Issuing Office**

The Contract is issued by the Department of Technology, Management and Budget, Purchasing Operations and Michigan Department of Community Health (collectively, including all other relevant State of Michigan departments and agencies, the "State"). Purchasing Operations is the sole point of contact in the State with regard to all procurement and contractual matters relating to the Contract. Purchasing Operations **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 Purchasing Operations for the Contract is:

Jim Wilson  
Purchasing Operations  
Department of Technology, Management and Budget  
Mason Bldg, 2nd Floor  
PO Box 30026  
Lansing, MI 48909  
Email: wilsonj4@michigan.gov  
Phone: (517) 241-1916

### **2.022 Contract Compliance Inspector**

After DTMB-Purchasing Operations receives the properly executed Contract, it is anticipated that the Director of Purchasing Operations, in consultation with Michigan Department of Community Health, will direct the person named below, or any other person so designated, to monitor and coordinate the activities for the Contract on a day-to-day basis during its term. However, monitoring of the Contract implies **no authority to**





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

Penny Saites  
Michigan Department of Community Health  
320 South Walnut Street  
Lansing, Michigan 48913  
Email: SaitesP@michigan.gov  
Phone: 517-335-5096  
Fax: 517-241-4845

### **2.023 Project Manager**

The following individual will be responsible for monitoring and managing the daily operations under the contract:

James Kenyon, R.Ph.  
Medical Services Administration  
Michigan Department of Community Health  
400 South Pine Street  
Lansing, Michigan 48933  
Email: KenyonJ1@michigan.gov  
Phone: (517) 335-5261  
Fax: (517) 241-9087

### **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 Department of Technology, Management and Budget, Purchasing Operations.
- (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 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**

Purchasing Operations retains the sole right of Contract distribution to all State agencies and local units of government unless other arrangements are authorized by Purchasing Operations.

### **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 Public Act 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 Public Act 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 State's Project Manager and the Contractor after the proposed Contract Agreement has been signed and accepted by both the Contractor and the Director of Purchasing Operations, Department of Management & Budget. This activity will occur only upon the specific written direction from Purchasing Operation.

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 mutually agreed upon timeframe.

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 State's Project Manager, after negotiation. Contractor must show verification of measurable progress at the time of requesting progress payments.

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

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

#### **2.046 Antitrust Assignment**

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

#### **2.047 Final Payment**

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



### **2.048 Electronic Payment Requirement**

Electronic transfer of funds is required for payments on State contracts. The Contractor must register with the State electronically at <http://www.cpexpress.state.mi.us>. As stated in 1984 Public Act 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 or more trades or businesses under common control” the term “organization” means sole proprietorship, a partnership (as defined in § 701(a)(2) of the Internal Revenue Code), a trust, an estate, a corporation, or a limited liability company.

## **2.060 Contract Management**

### **2.061 Contractor Personnel Qualifications**

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

### **2.062 Contractor Key Personnel**

- (a) The Contractor must provide the State’s Project Manager with the names of the Key Personnel.
- (b) Key Personnel must be dedicated as defined in the Statement of Work to the Project for its duration in the applicable Statement of Work with respect to other individuals designated as Key Personnel for that Statement of Work.
- (c) The State reserves the right to recommend and approve in writing the initial assignment, as well as any proposed reassignment or replacement, of any Key Personnel. Before assigning an individual to any Key Personnel position, Contractor must notify the State of the proposed assignment, must introduce the individual to the appropriate State representatives, and must provide the State with a resume and any other information about the individual reasonably requested by the State. The State reserves the right to interview the individual before granting written approval. In the event the State finds a proposed individual unacceptable, the State must provide a written explanation including reasonable detail outlining the reasons for the rejection.
- (d) Contractor must not remove any Key Personnel from their assigned roles on the Contract without the prior written consent of the State. The Contractor’s removal of Key Personnel without the prior written consent of the State is an unauthorized removal (“Unauthorized Removal”). Unauthorized Removals does not include replacing Key Personnel for reasons beyond the reasonable control of Contractor, including illness, disability, leave of absence, personal emergency circumstances, resignation or for cause termination of the Key



Personnel's employment. Unauthorized Removals does not include replacing Key Personnel because of promotions or other job movements allowed by Contractor personnel policies or Collective Bargaining Agreement(s) as long as the State receives prior written notice before shadowing occurs and Contractor provides 30 days of shadowing unless parties agree to a different time period. The Contractor with the State must review any Key Personnel replacements and appropriate transition planning must be established. Any Unauthorized Removal may be considered by the State to be a material breach of the Contract, in respect of which the State may elect to exercise its termination and cancellation rights.

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

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

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

### **2.064 Contractor Personnel Location**

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

### **2.065 Contractor Identification**

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

### **2.066 Cooperation with Third Parties**

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

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

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



## **2.068 Contract Management Responsibilities**

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

### **2.070 Subcontracting by Contractor**

#### **2.071 Contractor Full Responsibility**

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

#### **2.072 State Consent to Delegation**

Contractor must not delegate any duties under the Contract to a Subcontractor unless the Department of Technology, Management and Budget, Purchasing Operations has given written consent to such delegation. The State reserves the right of prior written approval of all Subcontractors and to require the 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 1.070, 2.031, 2.060, 2.100, 2.110, 2.120, 2.130, 2.200** in all of its agreements with any Subcontractors.



## **2.075 Competitive Selection**

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

### **2.080 State Responsibilities**

#### **2.081 Equipment**

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

#### **2.082 Facilities**

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

### **2.090 Security**

#### **2.091 Background Checks**

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

All Contractor personnel must comply with the State's security and acceptable use policies for State IT equipment and resources. See <http://www.michigan.gov/dit>. Furthermore, Contractor personnel must agree to the State's security and acceptable use policies before the Contractor personnel will be accepted as a resource to perform work for the State. The Contractor must present these documents to the prospective employee before the Contractor presents the individual to the State as a proposed resource. Contractor staff must comply with all Physical Security procedures in place within the facilities where they are working.

#### **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 24 hours of becoming aware of the use or disclosure or the shorter time period as is reasonable under the circumstances.

#### **2.093 PCI Data Security Requirements – 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.

### **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 must at all reasonable times and with 10 days prior written request, have the right to enter Contractor's premises, or any other places, where the Services are being performed, and must have access, upon reasonable request, to interim drafts of Deliverables or work-in-progress. Upon 10 Days prior written notice and at all reasonable times, the State's representatives must be allowed to inspect, monitor, or otherwise evaluate the work being performed and to the extent that the access will not reasonably interfere or jeopardize the safety or operation of the systems or facilities. Contractor must provide all reasonable facilities and assistance for the State's representatives.

### **2.112 Examination of Records**

- (a) For seven 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 seven days before examining the Contractor's books and records.
- (b) 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.
- (c) 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**

- (a) The 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 Deliverables 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.
- (b) The Contractor must retain all records related to the Contractor's Services and Deliverables unit the end of the Audit Period. Records include but are not limited to those specified in Section 1.071C.
- (c) If an investigation, audit, litigation, or other action involving Contractor's records is anticipated or pending, the historical records must be retained for one year after all issues arising out of the investigation, audit, litigation, or other action are resolved or until the end of the Audit Period, whichever is later.
- (d) If the Contract ends before the end of a federal fiscal year, the Audit Period is based on the seven years following the end of the federal fiscal year in which the Contract is terminated.
- (e) The Audit Period may be extended by the Department for good cause with written notice to the Contractor.

### **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 invoices. If a balance remains after four 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 Contractor's requirements and other standards of performance.
- (c) It is the lawful owner or licensee of any Deliverable licensed or sold to the State by Contractor or developed by Contractor under the Contract, and Contractor has all of the rights necessary to convey to the State the ownership rights or licensed use, as applicable, of any and all Deliverables. None of the Deliverables provided by Contractor to the State under the Contract, nor their use by the State, will infringe the patent, copyright, trade secret, or other proprietary rights of any third party.
- (d) If, under the Contract, Contractor procures any equipment, software or other Deliverable for the State (including equipment, software and other Deliverables manufactured, re-marketed or otherwise sold by Contractor under Contractor's name), then in addition to Contractor's other responsibilities with respect to the items in the Contract, Contractor must assign or otherwise transfer to the State or its designees, or afford the State the benefits of, any manufacturer's warranty for the Deliverable.
- (e) The Contract signatory has the power and authority, including any necessary corporate authorizations, necessary to enter into the Contract, on behalf of Contractor.
- (f) It is qualified and registered to transact business in all locations where required.
- (g) Neither the Contractor nor any affiliates, nor any employee of either, has, must have, or must acquire, any contractual, financial, business, or other interest, direct or indirect, that would conflict in any manner or degree with Contractor's performance of its duties and responsibilities to the State under the Contract or otherwise create an appearance of impropriety with respect to the award or performance of this Agreement. Contractor must notify the State about the nature of the conflict or appearance of impropriety within two days of learning about it.
- (h) If any of the certifications, representations, or disclosures made in the Contractor's original bid response change after the Contract start date, the Contractor must report those changes immediately to the Department of Technology, Management and Budget, Purchasing Operations.

**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 anyone directly or indirectly employed by Contractor, 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](http://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:  
 \$4,000,000 General Aggregate Limit including Products/Completed Operations  
 \$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 INSURED 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. 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 DTMB-Purchasing Operations, 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 Purchasing Operations, Department of Technology, Management and Budget. 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 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, 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, unless Contractor provides a renewal or replacement certificate of insurance. 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 – Deleted/Not Applicable**

#### **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 data, 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 180 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, including documentation collected from pharmacies, auditor notes and correspondence used in determining the audit outcome, that is still in Contractor's possession.

### **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 Purchasing Operations, DTMB, or designee, for the purpose of attempting to resolve the dispute without the need for formal legal proceedings, as follows:
- (i) The representatives of Contractor and the State must meet as often as the parties reasonably deem necessary to gather and furnish to each other all information with respect to the matter in issue which the parties believe to be appropriate and germane in connection with its resolution. The representatives must discuss the problem and negotiate in good faith in an effort to resolve the dispute without the necessity of any formal proceeding.
  - (ii) During the course of negotiations, all reasonable requests made by one party to another for non-privileged information reasonably related to the Contract must be honored in order that each of the parties may be fully advised of the other's position.
  - (iii) The specific format for the discussions will be left to the discretion of the designated State and Contractor representatives, but may include the preparation of agreed upon statements of fact or written statements of position.
  - (iv) Following the completion of this process within 60 calendar days, the Director of Purchasing Operations, DTMB, or designee, must issue a written opinion regarding the issue(s) in dispute within 30 calendar days. The opinion regarding the dispute must be considered the State's final action and the exhaustion of administrative remedies.
- (b) This Section must not be construed to prevent either party from instituting, and a party is authorized to institute, formal proceedings earlier to avoid the expiration of any applicable limitations period, to preserve a superior position with respect to other creditors, or under **Section 2.193**.
- (c) The State will not mediate disputes between the Contractor and any other entity, except state agencies, concerning responsibility for performance of work under the Contract.

#### **2.193 Injunctive Relief**

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 Public Act 453, MCL 37.2101, et seq., and the Persons with Disabilities Civil Rights Act, 1976 Public Act 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 Public Act 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 Public Act 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 – Deleted/Not Applicable**

### **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**

(a) Contractor must comply with all applicable state, federal and local laws and ordinances in providing the Services/Deliverables.

(b) Contractor must comply with all State and federal Medicaid requirements including, but not limited to, current and future rules, policies, guidelines, and notifications in providing the Services and 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.

## **2.230 Disclosure Responsibilities**

### **2.231 Disclosure of Litigation**

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

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

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

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

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

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

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

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



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

### **2.232 Call Center Disclosure**

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

### **2.233 Bankruptcy**

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

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

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

## **2.240 Performance**

### **2.241 Time of Performance**

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

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

- (a) SLAs will be completed with the following operational considerations:
  - (i) SLAs will not be calculated for individual Incidents where any event of Excusable Failure has been determined; Incident means any interruption in Services.
  - (ii) SLAs will not be calculated for individual Incidents where loss of service is planned and where the State has received prior notification or coordination.



(iii) SLAs will not apply if the applicable Incident could have been prevented through planning proposed by Contractor and not implemented at the request of the State. To invoke this consideration, complete documentation relevant to the denied planning proposal must be presented to substantiate the proposal.

(iv) Time period measurements will be based on the time Incidents are received by the Contractor and the time that the State receives notification of resolution based on 24x7x365 time period, except that the time period measurement will be suspended based on the following:

1. Time period(s) will not apply where Contractor does not have access to a physical State Location and where access to the State Location is necessary for problem identification and resolution.
2. Time period(s) will not apply where Contractor needs to obtain timely and accurate information or appropriate feedback and is unable to obtain timely and accurate information or appropriate feedback from the State.

(b) Chronic Failure for any Service(s) is defined as three unscheduled outage(s) or interruption(s) on any individual Service for the same reason or cause or if the same reason or cause was reasonably discoverable in the first instance over a rolling 30 day period. Chronic Failure will result in the State's option to terminate the effected individual Service(s) and procure them from a different vendor for the chronic location(s) with Contractor to pay the difference in charges for up to three additional months. The termination of the Service must not affect any tiered pricing levels.

(c) Root Cause Analysis must be performed on any business critical outage(s) or outage(s) on Services when requested by the Contract Administrator. Contractor must provide its analysis within two weeks of outage(s) and provide a recommendation for resolution.

(d) All decimals must be rounded to two decimal places, with five and greater rounding up and four and less rounding down, unless otherwise specified.

### **2.243 Liquidated Damages – Deleted / Not Applicable**

#### **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 – Deleted/Not Applicable**

### **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/dit>.

##### **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/ditservice>. 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 – Deleted/Not Applicable**

#### **2.290 Environmental Provision**

##### **2.291 Environmental Provision**

Hazardous Materials:

For the purposes of this Section, "Hazardous Materials" is a generic term used to describe asbestos, ACBMs, PCBs, petroleum products, construction materials including paint thinners, solvents, gasoline, oil, and any other material the manufacture, use, treatment, storage, transportation, or disposal of which is regulated by the federal, State, or local laws governing the protection of the public health, natural resources, or the environment. This includes, but is not limited to, materials such as batteries and circuit packs, and other materials that are regulated as (1) "Hazardous Materials" under the Hazardous Materials Transportation Act, (2) "chemical hazards" under the Occupational Safety and Health Administration standards, (3) "chemical substances or mixtures" under the Toxic Substances Control Act, (4) "pesticides" under the Federal Insecticide Fungicide and Rodenticide Act, and (5) "hazardous wastes" as defined or listed under the Resource Conservation and Recovery Act.

(a) The Contractor must use, handle, store, dispose of, process, transport and transfer any material considered a Hazardous Material according to all federal, State, and local laws. The State must provide a safe and suitable environment for performance of Contractor's Work. Before the commencement of Work, the State must advise the Contractor of the presence at the work site of any Hazardous Material to the extent that the State is aware of the Hazardous Material. If the Contractor encounters material reasonably believed to be a Hazardous Material and which may present a substantial danger, the Contractor must immediately stop all affected Work, notify the State in writing about the conditions encountered, and take appropriate health and safety precautions.



(b) Upon receipt of a written notice, the State will investigate the conditions. If (a) the material is a Hazardous Material that may present a substantial danger, and (b) the Hazardous Material was not brought to the site by the Contractor, or does not result in whole or in part from any violation by the Contractor of any laws covering the use, handling, storage, disposal of, processing, transport and transfer of Hazardous Materials, the State must order a suspension of Work in writing. The State must proceed to have the Hazardous Material removed or rendered harmless. In the alternative, the State must terminate the affected Work for the State's convenience.

(c) Once the Hazardous Material has been removed or rendered harmless by the State, the Contractor must resume Work as directed in writing by the State. Any determination by the Michigan Department of Community Health or the Michigan Department of Environmental Quality that the Hazardous Material has either been removed or rendered harmless is binding upon the State and Contractor for the purposes of resuming the Work. If any incident with Hazardous Material results in delay not reasonable anticipatable under the circumstances and which is attributable to the State, the applicable SLAs for the affected Work will not be counted in **Section 2.242** for a time as mutually agreed by the parties.

(d) If the Hazardous Material was brought to the site by the Contractor, or results in whole or in part from any violation by the Contractor of any laws covering the use, handling, storage, disposal of, processing, transport and transfer of Hazardous Material, or from any other act or omission within the control of the Contractor, the Contractor must bear its proportionate share of the delay and costs involved in cleaning up the site and removing and rendering harmless the Hazardous Material according to Applicable Laws to the condition approved by applicable regulatory agency(ies).

Michigan has a Consumer Products Rule pertaining to labeling of certain products containing volatile organic compounds. For specific details visit [http://www.michigan.gov/deq/0,1607,7-135-3310\\_4108-173523--,00.html](http://www.michigan.gov/deq/0,1607,7-135-3310_4108-173523--,00.html)

#### Refrigeration and Air Conditioning:

The Contractor must comply with the applicable requirements of Sections 608 and 609 of the Clean Air Act (42 U.S.C. 7671g and 7671h) as each or both apply to the Contract.

#### Environmental Performance:

Waste Reduction Program: Contractor must establish a program to promote cost-effective waste reduction in all operations and facilities covered by the Contract. The Contractor's programs must comply with applicable Federal, State, and local requirements, specifically including Section 6002 of the Resource Conservation and Recovery Act (42 U.S.C. 6962, et seq.).

### **2.300 Other Provisions**

#### **2.311 Forced Labor, Convict Labor, Forced or Indentured Child Labor, or Indentured Servitude Made Materials**

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

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



**Attachment A, Price Proposal**

BIDDERS MUST COMPLETE THE SEPARATE EXCEL® FILE NAMED "***PRICE PROPOSAL SHEET***"  
(PLEASE SEE THE ATTACHED)



**Attachment B, Mandatory Minimum Requirements**

**Pharmacy Auditing Services  
for Medicaid and Other Michigan Department of Community Health Programs**

*The Bidder must submit this page with its proposal, signed at the bottom of the page by their authorized representative. Failure to respond affirmatively will result in immediate disqualification of the Bidder's proposal.*

As a legally authorized representative of \_\_\_\_\_(insert company name)\_\_\_\_\_, I hereby certify that the following statement is true:

The Contractor must have at least two years experience with projects of similar size and scope to the Department's that includes customization, implementation, operation, and performance of pharmacy on-site and desk audits and other pharmacy auditing services.

I make the above certifications and assurances as a required element of the proposal to which it is attached, understanding that the truthfulness of the facts affirmed here and the continuing compliance with these requirements and all requirements of the Request for Proposal (RFP) are conditions precedent to the award.

\_\_\_\_\_  
Company Name of Bidder

\_\_\_\_\_  
Signature of Bidder's Authorized Representative

\_\_\_\_\_  
Title of Bidder Authorized Representative



### **Attachment C, Key Resources for Pharmacy Auditing Services**

While this appendix contains an extensive list of relevant bidder resources, it is not meant to be comprehensive or all inclusive of the needed resources for work, deliverables, and other requirements described in this RFP.

1. Pharmacy Claims Processing Manual for the Michigan Department of Community Health, available at [www.michigan.gov/medicaidproviders](http://www.michigan.gov/medicaidproviders) and click on Billing and Reimbursement, Provider Specific Information, and then Pharmacy
2. Michigan Pharmaceutical Product List (MPPL), available at [www.michigan.gov/medicaidproviders](http://www.michigan.gov/medicaidproviders) and click on Billing and Reimbursement, Provider Specific Information, and then Pharmacy
3. Michigan Preferred Drug List (PDL), available at [www.michigan.gov/medicaidproviders](http://www.michigan.gov/medicaidproviders) and click on Billing and Reimbursement, Provider Specific Information, and then Pharmacy
4. Michigan Department of Community Health Medicaid Provider Manual and Bulletins, available at [www.michigan.gov/medicaidproviders](http://www.michigan.gov/medicaidproviders), and click on Policy and Forms
5. Pharmacy Benefits Program, available at [www.michigan.gov/medicaidproviders](http://www.michigan.gov/medicaidproviders) and click on Billing & Reimbursement, Provider Specific Information, and then Pharmacy
6. Medicaid Health Plans and County Health Plans/Adult Benefit Waiver, available at [http://www.michigan.gov/mdch/0,1607,7-132-2945\\_42542\\_42544\\_42644-150910--,00.html](http://www.michigan.gov/mdch/0,1607,7-132-2945_42542_42544_42644-150910--,00.html)
7. Sample of the Out-of-State/Beyond Borderland Pharmacy Provider Letter (L-MSA-1626), available at [http://www.michigan.fhsc.com/downloads/OutStateProviders\\_LMSA1626-20080328.pdf](http://www.michigan.fhsc.com/downloads/OutStateProviders_LMSA1626-20080328.pdf)
8. 2008 Public Act 246, Appropriations; zero budget; department of community health; provide for fiscal year 2008-2009, available at [www.legislature.mi.gov](http://www.legislature.mi.gov)
9. 2004 Public Act 248, Health; pharmaceuticals; exemption of certain prescription drugs from the department of community health Medicaid prior authorization process, available at [www.legislature.mi.gov](http://www.legislature.mi.gov)
10. 2004 Public Act 250, Health; pharmaceuticals; pharmaceutical best practices initiative; provide for in the public health code, available at [www.legislature.mi.gov](http://www.legislature.mi.gov)
11. 1939 Public Act 280, as amended, the Social Welfare Act, available at [www.legislature.mi.gov](http://www.legislature.mi.gov)
12. Social Security Act Title XIX, references to laws directly affecting Medicaid program, available at [www.ssa.gov/OP\\_Home/ssact/title19/1900.htm](http://www.ssa.gov/OP_Home/ssact/title19/1900.htm)
13. Medicaid Regulations, 42 Code Of Federal Regulations, Chapter IV--Centers For Medicare & Medicaid Services, Department Of Health And Human Services, Subchapter C--Medical Assistance Programs, available at [ecfr.gpoaccess.gov](http://ecfr.gpoaccess.gov)
14. Federal Upper Limits, as published by the Centers for Medicare and Medicaid Services, available at [http://www.cms.hhs.gov/Reimbursement/05\\_FederalUpperLimits.asp#TopOfPage](http://www.cms.hhs.gov/Reimbursement/05_FederalUpperLimits.asp#TopOfPage)
15. Approved Drug Products with Therapeutic Equivalence Evaluations (the Orange Book), available at <http://www.fda.gov/cder/ob>
16. Quarterly Medicaid Statement of Expenditures for the Medical Assistance Program (CMS-64), available at [http://www.cms.hhs.gov/MedicaidBudgetExpendSystem/01\\_Overview.asp](http://www.cms.hhs.gov/MedicaidBudgetExpendSystem/01_Overview.asp)
17. Medicaid Management Information Systems, Medicaid Enterprise Certification, available at <http://www.cms.hhs.gov/MMIS>
18. Health Insurance Portability and Accountability Act of 1996 (HIPAA, Title II), available at <http://www.cms.hhs.gov/HIPAAGenInfo>
19. National Plan and Provider Enumeration System (NPPES), available at <https://nppes.cms.hhs.gov/NPPES>



20. National Council for Prescription Drug Programs (NCPDP), available at [www.ncdp.org](http://www.ncdp.org)
21. NCPDP HCId<sup>TM</sup> – National Provider Identifier Lookup, available at <http://www.hcidea.org>
22. The MDCH Sanctioned Provider List available at [www.michigan.gov/medicaidproviders/](http://www.michigan.gov/medicaidproviders/) and click on Policy and Forms, and then Michigan Medicaid Approved Policy Bulletins. NOTE: A master sanction, provider list is published biannually in April and October. In the interim, there are monthly update bulletins. Monthly bulletins are only published for newly sanctioned or newly reinstated providers.
23. The Federal Excluded Parties List Service available at [www.epls.gov/](http://www.epls.gov/).
24. Department of Health and Human Services, Office of Inspector General list of Excluded Individuals/Entities, online searchable database available at: [www.oig.hhs.gov/fraud/exclusions/listofexcluded.html](http://www.oig.hhs.gov/fraud/exclusions/listofexcluded.html)
25. Drug Enforcement Administration (DEA), available at [www.dea.gov](http://www.dea.gov), and DEA Diversion Control Program, available at [www.dea.gov/diversion/](http://www.dea.gov/diversion/)
26. Federal False Claims Act, 31 U.S.C. 3729-3733 and other provisions at Section 1902(a)(68) of the Social Security Act related to employee education about false claims recovery
27. Fraud Enforcement and Recovery Act of 2009, Public 111-21 of 2009, available at [http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111\\_cong\\_bills&docid=f:s386enr.txt.pdf](http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111_cong_bills&docid=f:s386enr.txt.pdf)
28. Fraud Prevention and Detection, includes advisory opinions, alerts, bulletins, etc., posted by the United States Department of Health and Human Services, Office of Inspector General, available at <http://www.oig.hhs.gov/fraud.asp>
29. Medicaid Program Integrity, posted by the United States Department of Health of Human Services, CMS, available at <http://www.cms.hhs.gov/MedicaidIntegrityProgram/>
30. State Program Integrity Support and Assistance, includes Medicaid guidance on fraud prevention, state program integrity reviews, State Program Integrity Assessment Program reports by state, etc. posted by the United States Department of Health of Human Services, CMS, available at <http://www.cms.hhs.gov/FraudAbuseforProfs>
31. Medicaid Integrity Institute, available at <http://www.usdoj.gov/usao/eousa/ole/mii>
32. Medicaid False Claim Act, 1977 Public Act 72, as amended, MCL 400.601et seq., available at [www.legislature.mi.gov](http://www.legislature.mi.gov)
33. 1984 Public Act 232, Health Care False Claims Act, as amended, MCL 752.1001 et seq., available at [www.legislature.mi.gov](http://www.legislature.mi.gov)
34. MDCH – Stop Fraud and Abuse, available at [www.michigan.gov/mdch](http://www.michigan.gov/mdch)
35. Health Care Fraud Division of the Office of the Attorney General, available at [http://www.michigan.gov/ag/0,1607,7-164-17334\\_18152---,00.html](http://www.michigan.gov/ag/0,1607,7-164-17334_18152---,00.html)
36. Michigan Board of Pharmacy, available at [http://www.michigan.gov/mdch/0,1607,7-132-27417\\_27529\\_27548---,00.html](http://www.michigan.gov/mdch/0,1607,7-132-27417_27529_27548---,00.html)
37. 1978 Public Act 368, Michigan Public Health Code, includes provisions related to pharmacy practice and drug control, as amended, MCL 330.310, et seq., available at [www.legislature.mi.gov](http://www.legislature.mi.gov)
38. Administrative Rules of the Michigan Board of Pharmacy, Current Rules, available at [http://www.state.mi.us/orr/emi/admincode.asp?AdminCode=Department&Dpt=CH&Level\\_1=Bureau+of+Health+Professions](http://www.state.mi.us/orr/emi/admincode.asp?AdminCode=Department&Dpt=CH&Level_1=Bureau+of+Health+Professions)



**Attachment D, Audit Quotas**

1. **Audit Quota** – The Contractor must complete its auditing in a pattern that leads to not less than 25 completed on-site half-day audits and 250 completed desk audits per a continuous 12-month period (i.e., Audit Quota). Tables D-1 and D-2 list required quarterly running totals for completed audits throughout a year.
  - a. On-site half-day audits include four to six hours auditing in the pharmacy. An auditing hour is calculated as one regardless of the number of auditing staff on-site in a pharmacy.
  - b. Desk audits do *not* include the 25-claim desk review required of newly enrolled pharmacies.
  - c. An audit is deemed completed when the Department has approved the Contractor’s submitted Final Pharmacy Audit Report.
2. **Department Waivers of Audit Quotas** – As stipulated in the Section 1.022 B5, the Department may reduce the numbers listed for Audit Quotas for a given Contract Year and have the Contractor perform auditing services pursuant to special State initiatives or the need for select auditing services.

**Table D-1 – Audit Quota for Completed “On-Site Half-Day Audits” by Quarter**

Quarter	Quarterly Completed Audits	Running Quarterly Totals
a. First Quarter	6	6
b. Second Quarter	6	12
c. Third Quarter	6	18
d. Fourth Quarter	7	25

**Table D-2 – Audit Quota for Completed “Desk Audits” by Quarter**

Quarter	Quarterly Completed Audits	Running Quarterly Totals
a. First Quarter	62	62
b. Second Quarter	62	124
c. Third Quarter	63	187
d. Fourth Quarter	63	250





### **Attachment E, Sample Billing Discrepancies**

This attachment contains sample billing discrepancies of interest to the Department. This list is not meant to be comprehensive or inclusive of all possible pharmacy billing discrepancies. Bidders are encouraged to present other billing discrepancies and innovative approaches to identify pharmacy overpayments for the Department's approval. The Contractor's Pharmacy Discrepancy List will be finalized and approved by the Department during the Design, Development, and Implementation Phase of the Contract.

1. Submitting false claims data or altering claims data, including the NDC, date of service, prescription number, quantity, days supply, or any other claim requirement, to inappropriately obtain payment
2. Billing compounded products to gain coverage of noncovered items or billing inappropriate compounded quantities to receive increased reimbursement
3. Splitting prescriptions to increase the number of fees paid by billing the same drug entity for the same beneficiary in a pattern that would lead to more than 13 dispensing fees in year
4. Billing quantity or days supply not consistent with the quantity and directions written by prescriber
5. Not crediting the Department for drugs, not consumed by the beneficiary, that are returned from a nursing facility – except for drugs that are controlled, adulterated, compromised, or unusable
6. Billing for hospice prescription services related to the beneficiary's terminal illness except for selected HIV drugs
7. Submitting an NDC that does not represent the product, strength, dosage form, and package size actually dispensed
8. Billing the Department and not submitting other insurance liabilities on the claim, including Medicare Parts A and B, or billing other insurances incorrectly to receive increased reimbursement
9. Billing drugs covered by Medicare Part D for dual eligible beneficiaries [The Department does not coordinate benefits with Medicare Part D, including Part D co-payments.]
10. Accepting original written prescriptions not executed on tamper resistant prescription pads
11. Not creating and maintaining a "hard copy" form of original prescriptions generated from phone, fax, or electronic transmissions [Notations on a pharmacy's database are not considered a "hard copy" form of the prescription.]
12. Billing drugs dispensed based on a missing or an incomplete prescription order
13. Billing a claim with an inaccurate prescriber identifier
14. Billing and not reversing payment for prescriptions dispensed but not picked up by the beneficiary or his representative.
15. Billing and not reversing payment for partial drug quantities owed to a beneficiary but not picked up by the beneficiary or his representative
16. Billing ingredient costs higher than actual acquisition cost for drugs procured under the 340B Drug Pricing Program
17. Not maintaining or having accessible the signature log indicating a beneficiary's pick-up of a prescription and acceptance or denial of counseling by pharmacist
18. Billing more than the pharmacy's usual and customary charge
19. Billing medications for beneficiaries during inpatient hospitalization stays, excluding the admission and discharge dates
20. Duplicate payment to a pharmacy (under a NDC) and to the prescribing physician (under a Healthcare Common Procedure Coding System or HCPCS code) for the same beneficiary and the same drug



**Attachment F, Performance Guarantees/Service Level Agreements (SLAs)**

**A. General**

Contractor failure to meet the listed SLAs will result in the penalties set forth.

1. The Contractor must ensure that the SLAs set forth below are measurable using the Contractor's management information systems. The Department reserves the right to independently verify the Contractor's assessment of its performance, either by State employee or by third party review. Disagreements regarding SLAs will be subject to Dispute Resolution (Section 2.190).
2. The Department reserves the right to find that the Contractor had reasonable cause for failure to meet any SLA. In such cases, the Department will not hold the Contractor liable for the penalties. The Department's election not to invoke remedies in any instance of SLA deficiency must not be deemed to be a waiver of the Department's right to invoke remedies in any other instance.

**B. Penalties for Failure to Meet SLAs**

1. During the first full quarter of auditing in the Operations Phase, the Department will waive penalties for failure to meet any SLA.
2. Enforcement of penalties does not preclude the Department from pursuing additional legal action afforded under the Contract and deemed necessary by the Department to ensure compliance.

<b>SLA #1</b>
<b><i>Referrals for Potential Fraud and Abuse</i></b>
<b>Guarantee</b>
<p>All (100 percent) of the Contractor's reporting of potential fraud and abuse must be <i>acceptable</i> referrals by meeting the following minimum criteria for collection of information.</p> <p>The minimum criteria is providing the Department the following information :</p> <ol style="list-style-type: none"> <li>a. Subject pharmacy (NPI, name, address, and provider type);</li> <li>b. Source/origination of complaint;</li> <li>c. Date reported to the Department;</li> <li>d. Description of suspected misconduct with specific details including: (1) category of service, (2) factual explanation of the allegation, (3) specific statutes, rules, regulations, or policies violated; and (4) date(s) of conduct;</li> <li>e. All communications between the State (or the Contractor) and the pharmacy concerning the conduct at issue;</li> <li>f. Contact information for the Contractor staff person with practical knowledge of workings of the relevant problem; and</li> <li>g. Sample/exposed dollar amount [when available].</li> </ol> <p>The percentage of <i>acceptable</i> referrals equals the number of referrals provided to the Department which meet the minimum criteria of information divided by the total number of referrals provided to the Department.</p>
<b>Frequency of Measure</b>
Monthly
<b>Penalty</b>
The penalty for failure to meet this SLA is \$1,000 for each month during which the minimum reporting criteria for potential fraud and abuse is not met.



**SLA #2**

**Audit Quotas**

**Guarantee**

The Contractor must complete its auditing in a pattern that leads to a minimum of 25 completed on-site audits and 250 completed desk audits per a continuous 12-month period.

- An audit is deemed *completed* when the Department has approved the Contractor’s submitted Final Pharmacy Audit Report.
- *In a pattern* means audits are completed to meet (or exceed) the counts for the quarterly on-site and desk audit quotas listed on Tables D-1 and D-2.

**Frequency of Measure**

Quarterly on January 1, April 1, July 1, and October 1

**Penalty**

The penalty for failure to meet this SLA is five percent of the Contractor’s total monthly payment for every audit, under the audit quota, that was not completed in any one quarter.

Such a penalty will be returned at the end of the continuous 12-month period if the number of completed on-site and desk audits meets or exceeds the “running quarterly totals” listed on Tables D-1 and D-2.

**Example – Penalty Application Throughout a Year**

Quarter	Running Quarterly Audit Quota Totals			Contractor Completed Audits			SLA Penalty
	On-Site	Desk	Total	On-Site	Desk	Total	
1 <sup>st</sup>	6	62	68	4	62	66	2 audits short times 5% times Contractor’s Monthly Payment
2 <sup>nd</sup>	12	124	136	12	123	135	1 audit short times 5% times Contractor’s Monthly Payment
3 <sup>rd</sup>	18	187	205	16	185	201	4 audits short times 5% times Contractor’s Monthly Payment
4 <sup>th</sup>	25	250	275	25	250	275	No SLA penalty applied for this quarter; and  Return previous penalties since the yearly quota was met



<b>SLA #3</b>
<b>Reporting Accuracy and Timeliness</b>
<b>Guarantee</b>
<p>The Contractor must produce accurate and timely reports including, but not limited to, standard reports, ad hoc reports, and invoicing for the Contractor’s work and deliverables. The Contractor must deliver reports within the timelines that follow or as otherwise specified by the Department for select reports (e.g., Final Pharmacy Audit Report, Monthly Audit Progress Report, etc.).</p> <ul style="list-style-type: none"> <li>a. Weekly reports must be delivered to the Department on or before the second business day following the end of the reporting period;</li> <li>b. Monthly reports must be delivered to the Department on or before the tenth day of the month following the end of the reporting period;</li> <li>c. Quarterly reports must be delivered to the Department on or before the tenth day of the month following the end of the reporting period;</li> <li>d. Semi-annual and annual reports must be delivered to the Department no later than 60 days following the end of the reporting period.</li> </ul> <p>Within 10 business days of the notification of error, the Contractor must resubmit corrected reports that contained a material error to the Department and provide a corrective action plan outlining steps to prevent future occurrences.</p> <ul style="list-style-type: none"> <li>a. A material error is any error set forth in the report or database as determined by the Department related to recommended overpayment amounts and any procedural auditing defect that impacts the validation of the audit, validity of the audit findings, recoverability of an overpayment; or any other reported data inaccuracy.</li> <li>b. Material errors will not include disagreement on judgment calls, so long as the decisions were made in consultation with the Department.</li> </ul>
<b>Frequency of Measure</b>
Quarterly on January 1, April 1, July 1, and October 1
<b>Penalty</b>
The penalty for failure to meet this SLA is \$1,000 per quarter during which five or more reports were identified by the Department as submitted untimely or with material errors.



**Appendix A – Sample Standard Reporting for the Department**

While this appendix contains an extensive list of reporting requirements of interest to the Department, it is not meant to be comprehensive or inclusive of all needed files to perform the work, deliverables, and other requirements described in Article 1 Statement of Work of this document. The layout, media, and suite of reports will be finalized and approved by the Department during the Design, Development, and Implementation Phase of the Contract.

Report Description	Frequency
<b>1. Pharmacy Discrepancy List</b> Billing discrepancy items, applicable citations from federal and state laws and Department policies, suggested audit action, and suggested recoupment actions	Quarterly
<b>2. Proposed Pharmacy Auditing List</b> Pharmacy name, NPI, address, annual number of paid prescriptions, annual amount paid, suspected billing discrepancies, projected recoveries, suggested audit action, suggested targeted review, and rationale	Quarterly
<b>3. Final Pharmacy Audit Report</b> Summary of all audits performed in a quarter. Detailed information disclosing the identify and nature of the pharmacy and audit findings, as listed in Section 1.022 C23-24, including supplemental Excel worksheets providing claim information such as prescription number, date of service, billed quantity, days supply, drug name, strength, form, NDC, package size, amount paid, along with discrepancy code and name, adjusted quantity, and adjusted amount paid, etc.	Quarterly
<b>4. Billing Discrepancy Report from Paid Claims Data</b> A frequency distribution of billing discrepancy items with unduplicated counts of pharmacies excepting each discrepancy along with related counts of claims, total TPL amounts, and total amount paid.	Monthly
<b>5. Billing Discrepancy Report for Audited Pharmacies</b> A frequency distribution of billing discrepancy items with unduplicated counts of audited pharmacy excepting each discrepancy along with related counts of claims and total TPL amounts and total amount paid for audited claims. Same reporting data is also desired aggregated by software vendor of the audited pharmacies	Quarterly
<b>6. Pharmacy Auditing Schedule</b> Pharmacy identifiers along with type of audit and begin and complete dates of audits	Monthly
<b>7. Audit Work Plan Status</b> Status report for all open audits, the date of the next steps in the audit process, and the overpayment amounts	Monthly
<b>8. Statistics for On-Site and Desk Audits</b> Pharmacy name, NPI, address, type of audit, Contractor hours spent on-site in the pharmacy, staffing types (e.g., management, auditor pharmacist, auditor pharmacy technician, etc.) involved in the audit along with the hours spent auditing, travel expenses to and from the pharmacy in performance of audits, and other out-of-pocket expense	Quarterly
<b>9. Appeals Report</b> Summary of appeals raised by pharmacies and status by type of appeal	Monthly
<b>10. Concurrent Review Audit</b> Summary of concurrent review audits including number of pharmacies called or emailed, claims flagged, and estimated savings	Monthly
<b>11. Tracking Overpayment Adjustments</b> Summary of overpayment adjustments by pharmacy and claim level and status of the PBM's action within the claims processing system	Quarterly As Required
<b>12. Tracking Pharmacy Corrective Action Plans</b> Summary of corrective action plans by pharmacy and tracking whether such actions are evident in subsequent billings by a pharmacy	Monthly
<b>13. Audit Progress Reporting</b> Report(s) summarizing the Contractor's auditing activities during the previous month and outstanding issues for discussion during conference calls monthly, or as specified by the Department, between the Department and the Contractor.	Monthly



Report Description	Frequency
<b>14. New Provider Report</b> Summary of newly enrolled providers tracking the Contractor's desk auditing services	Monthly
<b>15. Reporting Potential Third Party Liabilities</b> Pharmacy name, NPI, address, and detailed account of third party liability problems	Monthly
<b>16. Performance Report Card</b> Documentation of the Contractor's level of performance with Contract requirements	Monthly
<b>17. American Institute of Certified Public Accountings Statements of Auditing Standards (SAS) 70 Level 2</b>	Yearly
<b>18. Annual Pharmacy Auditing Report</b> Summary report of auditing highlights and innovations, including pharmacies reviewed by audit type, related pharmacy payments, overpayment recoveries, appeals open, appeals resolved, etc. formatted to present to upper Department management or the legislature.	Yearly
<b>19. Reporting Potential Fraud and Abuse</b> Provider name, NPI, address, provider type; source/origination of complaint; date reported to the Department; description of suspected misconduct; date(s) of conduct; all communications between the State (or Contractor) and the provider concerning the conduct at issue; contact information for the Contractor staff person; and sample/exposed dollar amount [when available] Includes immediate reporting, followed by written reporting within five days, and tracking the number of reported potential fraud and abuse occurrences	As Required  with Monthly Tracking of the Status of the Reported Occurrences
<b>20. Reporting Potential Board of Pharmacy Violations</b> Provider name, NPI, address, and detailed account of violations Includes immediate reporting, followed by written reporting, and tracking the number of reported Board of Pharmacy violations	As Required  with Monthly Tracking of the Status of the Reported Occurrences
<b>21. Reporting of Inconsistencies in the PBM Claims Processing System</b> Pharmacy name, NPI, prescription number, NDC, date of service, State and/or federal requirements at issue (list citations from State and federal rules, regulations, policies, etc.), recommendations for changes to the PBM's claims processing editing, and other related information Includes immediate reporting, followed by written reporting, and tracking the status of reported inconsistencies in the PBM claims processing system	As Required  with Monthly Tracking of the Status of the Reported Occurrences
<b>22. Unauthorized Use or Disclosure of PHI, Security Breaches, and Identity Theft Reporting</b> Summary of telephone or email reported unauthorized use of disclosure of PHI; security breaches; and identify theft	As Required with Monthly Tracking of the Status of the Reported Occurrences



**Appendix B – Key Interface Files**

While this appendix contains an extensive list of interface files, it is not meant to be comprehensive or inclusive of all needed files to perform the work, deliverables, and other requirements described in Article 1 Statement of Work of this document. The Department will finalize the list of interface files with the Contractor and provide related record specifications during the Design, Development, and Implementation Phase of the Contract.

<b>INTERFACE FILES FOR PHARMACY DESK AND ON-SITE AUDITS AND CONCURRENT AUDIT REVIEW</b>		
<b>Data Files</b>	<b>Schedule</b>	<b>Comments</b>
<b>One-Time Files from the Department (or its PBM) to the Contractor</b>		
1. Claims History Load	1-Time	Three years paid claims data
2. Maximum Allowable Cost (MAC) Pricing History	1-Time	MAC pricing history file
3. Pharmacy Provider Extract	1-Time	Pharmacy enrollment history file
<b>Operational Files from the Department (or its PBM) to the Contractor</b>		
4. Daily Adjudicated Claims Extract	Daily	Includes adjudicated claims [AVAILABLE AFTER OCTOBER 2010]
5. Weekly Claims Extract	Weekly	Includes claims paid or voided during the prior week's invoice cycle
6. Beneficiary Eligibility	Daily	NCPDP format as an update or refresh file
7. MAC Pricing Updates	Weekly	Includes Contractor-developed MAC rates and Department-specific MAC rates based on NDCs
8. Pharmacy Provider Extract Updates	Weekly	Includes pharmacy enrollment history
9. Third Party Liability	Weekly	Includes Weekly Carrier File [Note: TPL data is included in Daily Beneficiary Eligibility File only for beneficiaries with eligibility changes]
10. Michigan Pharmaceutical Product List	Monthly	Includes drug coverages along with clinical prior authorizations and other requirements by First DataBank's Generic Sequence Number, generic name, strength, and dosage form
11. Medical Claims File Extract	Weekly	Includes the Department's claims for inpatient hospital, outpatient hospital, practitioner, laboratory, etc.
<b>Operational File from the Contractor to the Department (or its PBM)</b>		
12. Overpayment Adjustment File	Quarterly	Includes claims specific payment and quantity adjustments resulting from auditing findings
<b>Other Reference Files Needed by the Contractor</b>		
13. NCPDP HCldea™ File (for Prescribers)	Weekly	The National Council for Prescription Drug Program's file maintaining a prescriber's NPI, Drug Enforcement Administration (DEA) number, name, address, phone and fax numbers, etc. Purchased by the Contractor
14. First DataBank Tables	Weekly	Purchased by the Contractor
15. NCPDP/NABP File (for Pharmacies)	Monthly	Includes pharmacy provider data maintained by the NCPDP, e.g., NPI, address, phone and fax numbers, parent organization, hours of operation, licensing, specialty classification, etc. Purchased by the Contractor
16. NDC/HCPCS Crosswalk	Monthly	Includes injectable drugs by Healthcare Common Procedure Coding System (HCPCS) codes along with NDCs Available free of charge at <a href="https://www.dmepdac.com/">https://www.dmepdac.com/</a>



**Appendix C – Sample Items for the Performance Report Card**

This format is informational only. The final format and supporting requirements for the performance report card will be finalized during the Design, Development, and Implementation Phase of the Contract.

**Reporting Period: [Month and Year]**

<b>Performance Item</b>	<b>Minimum Requirement</b>	<b>Measurement Timeframe</b>	<b>Requirement Met and Contractor Notes</b>
1. The Contractor must complete its auditing in a pattern that leads to the minimum number of audits per a continuous 12-month period (i.e., Audit Quota) as listed on Attachment D, unless waived by the Department.	Compliant	Quarterly	
2. The Contractor must conduct a 25-claim desk audit of a newly enrolled pharmacy (defined by its NPI added to the Department’s pharmacy provider extract). Such audits must be completed within six months of the pharmacy’s enrollment.	Desk audit of newly enrolled pharmacies complete within 6 months	Monthly	
3. The Contractor must submit its Auditing Plan and Methodology Manual, for Department approval at least 30 days before the start of each quarter.	Manual submitted on time	Quarterly	
4. The Contractor must submit the Pharmacy Discrepancy List at least 30 calendar days before the start of each quarter.	List submitted on time	Quarterly	
5. The Contractor’s Department-customized definitions for data mining, modeling, and error matrix specifications must be submitted at least 30 calendar days before the start of each Contract Year.	Definitions for specifications submitted on time	Annually	
6. On or before the first day of a month preceding the beginning of quarter (i.e., December 1, March 1, June 1, and September 1), the Contractor must submit, for the Department’s approval, a list of pharmacies that the Contractor has tentatively identified to be audited (Pharmacy Auditing List).	List submitted on time	Quarterly	
7. The Contractor must commence Department-approved auditing work with 10 business days of the Department’s notification, unless otherwise specified by the Department.	Compliant	Quarterly	
8. On or before December 15, March 15, June 15, and September 15, the Contractor must submit for Department approval a Final Pharmacy Audit Report for each on-site and desk audit performed by the Contractor in the quarter.	Compliant	Quarterly	
9. The Contractor must monitor compliance with a pharmacy’s Corrective Action Plan for 60 business days after the Corrective Action Plan has been approved by the Department. After 30 business days of monitoring a pharmacy’s compliance, the Contractor must report non-compliance to the Department immediately by telephone or email.	Compliant	Monthly	
10. The Contractor’s concurrent review and notification to pharmacies must be provided at least weekly for six months after which time daily reviews will be required, as agreed to between the Contractor and the Department. The Contractor’s concurrent review	Compliant	Weekly	





Performance Item	Minimum Requirement	Measurement Timeframe	Requirement Met and Contractor Notes
<p>process must include, but not be limited to, the following:</p> <ul style="list-style-type: none"> <li>▪ Notification to pharmacies billing the identified claims as quickly as possible, e.g., by facsimile or telephone, with a goal of the next business day whenever possible or such other timeframe as mutually agreed upon by the Department;</li> <li>▪ Notification to pharmacies describing the error, the reason the claim was determined to be in error, and suggestions to prevent the error in the future ; and</li> <li>▪ Recommendations to the Department of how to prevent reoccurring pharmacy payment discrepancies observed in the Contractor's concurrent review.</li> </ul>			
<p>11. The Contractor must immediately report to the Department, by telephone or email, potential fraudulent or abusive activities observed drug an audit review along with a detailed accounting that includes, but is not limited to names, dates, places, and suspected fraudulent or abusive activities. The Contractor's reporting of potential fraud and abuse must be submitted in writing to the Department within five days of the initial reporting. One hundred (100) percent of the Contractor's reporting of potential fraud and abuse must be acceptable referrals in that the reporting must meet the minimum criteria for collection of information.</p>	<p>Complete written report submitted within 5 days</p>	<p>Monthly</p>	
<p>12. The Contractor must immediately report to the Department, by telephone or email, any potential violation of State and federal laws and rules governing the practice of pharmacy. The Contractor's reporting of potential violations must be submitted in writing to the Department within five business days of the initial reporting and must provide a detailed account of the violations that includes, but is not limited to names, dates, places, and suspected violations.</p>	<p>Written report submitted within 5 days</p>	<p>Monthly</p>	
<p>13. The Contractor must immediately report to the Department, by telephone or email, any potential claims processing inconsistency related to the PBM's application of the Department's polices and procedures. The Contractor's reporting of inconsistencies in the PBM claims processing system must be submitted in writing to the Department within five business days and must provide a detailed account of the inconsistency.</p>	<p>Written report submitted within 5 days</p>	<p>Monthly</p>	
<p>14. The Contractor must maintain and keep current an electronic version of the Pharmacy Provider Audit Manual and must submit its current version for Department approval at least 30 calendar days before the start of each quarter, unless the Department waives the submission requirement, or upon changes as deemed necessary by the Contractor or the Department.</p>	<p>Manual submitted on time</p>	<p>Quarterly</p>	



Performance Item	Minimum Requirement	Measurement Timeframe	Requirement Met and Contractor Notes
15. The Contractor must notify the Department within 24 hours of any beneficiary, provider, or other individual or entity requesting information on the Contractor's work and deliverables under this Contract.	Compliant	Monthly	
16. The Contractor must notify the Department within 24 hours of any federal agent presenting on-site in a Contractor's facility or requesting by mail, telephone, or email to discuss, view or audit work and deliverables related to this Contract.	Compliant	Monthly	
17. The Contractor must provide the Department its and any Subcontractor's annual SAS 70 Level II audit report in an agreed-upon format within 30 days after the examination is complete or on or before the first business day of August in each year of the Contract, whichever occurs first.	Report on time	Annually	
18. The Contractor must provide corrective action plans within five business days of the discovery of severe defects found through internal quality control reviews.	Corrective action plans received within 5 days	Monthly	
19. The Contractor must provide the Department written notification of anticipated vacancies of the Department's designated key personnel positions within two business days of receiving the individual's resignation notice, the Contractor's notice to terminate an individual, or the position otherwise becoming vacant.	Compliant	Monthly	
20. The Department's designated key personnel positions must not remain vacant or filled with an interim appointee longer than 60 days unless approved by the Department.	Compliant	Monthly	
21. The Contractor must submit an impact analysis to the Department within 30 days of the publishing of a proposed HIPAA rule	Analysis on time	Monthly	
22. The Contractor must submit an implementation plan for acceptance by the Department within 30 days of the publishing of a final or modified HIPAA rule	Compliant	Quarterly	
23. The Contractor must receive (download) and transmit (upload) files via a dedicated and secure File Transfer Protocol (FTP) site and develop and deliver Department-approved load and error reports for each interface file. File download from the Department to the Contractor and file upload from the Contractor to the Department must be 100 percent accurate and timely by the day and time designated by the Department.	100% accurate and on time	Monthly	
24. Weekly and bi-weekly reports must be delivered to the Department on or before the second business day following the reporting period or as otherwise specified by the Department.	Report on time	Monthly	
25. Monthly reports must be delivered to the Department on or before the tenth day of the month following the end of the reporting period or as otherwise specified by the Department.	Report on time	Monthly	



Performance Item	Minimum Requirement	Measurement Timeframe	Requirement Met and Contractor Notes
26. Quarterly reports must be delivered to the Department on or before the tenth day of the month following the end of the reporting period or as otherwise specified by the Department.	Report on time	Quarterly	
27. Semi-annual and annual reports shall be delivered to the Department no later than 60 days following the close of the reporting period or as otherwise specified by the Department.	Report on time	Semi-Annually	
28. Within 15 days of the end of each month during the Operations phase, the Contractor must produce and deliver a report card on its actual performance.	Report on time	Monthly	
29. All requests for ad hoc reports must be completed within 10 business days of a request unless otherwise negotiated at the time of the Department's request.	Average completion within 10 days	Monthly	
30. The Contractor's invoices for administrative and other fees submitted to the Department must be 100 percent accurate.	100% accurate	Monthly	



Appendix D— **HIPAA BUSINESS ASSOCIATE ADDENDUM**

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

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

- Covered Entity (“CE”)
- Business Associate (“Associate”)

and Contractor is (check one):

- Covered Entity (“CE”)
- Business Associate (“Associate”)

**RECITALS**

- A. Under the terms of the Contract, CE wishes to disclose certain information to Associate, some of which may constitute Protected Health Information (“PHI”) (defined below). In consideration of the receipt of PHI, Associate agrees to protect the privacy and security of the information as set forth in this Addendum.
- B. CE and Associate intend to protect the privacy and provide for the security of PHI disclosed to Associate under the Contract in compliance with the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 (“HIPAA”) and regulations promulgated thereunder by the U.S. Department of Health and Human Services (the “HIPAA Regulations”) as amended by the Health Information Technology Economic and Clinical Health Act (“HITECH Act”) under the American Recovery and Reinvestment Act of 2009, Public Law 111-5 (“ARRA”), and other applicable laws, as amended.
- C. As part of the HIPAA Regulations, the Privacy Rule and the Security Rule (defined below) require CE to enter into a contract containing specific requirements with Associate before the disclosure of PHI, as set forth in, but not limited to, 45 CFR §§ 160.103, 164.402, 164.410, 164.502(e), 164.504(e), and 164.314 and contained in this Addendum.

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

1. Definitions.

- a. Except as otherwise defined herein, capitalized terms in this Addendum have the definitions set forth in the HIPAA Regulations at 45 CFR Parts 160, 162 and 164, as amended, including, but not limited to, subpart A, subpart C (“Security Rule”), subpart D (Breach Notification), and subpart E (“Privacy Rule”).
- b. “Agreement” means both the Contract and this Addendum.
- c. “Breach” means the unauthorized acquisition, access, use, or disclosure of Protected Health Information that compromises the security or privacy of the Protected Health Information as defined in 45 CFR 164.402.



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

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

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

g. “Protected Information” means PHI provided by CE to Associate or created or received by Associate on CE’s behalf.

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

## 2. Obligations of Associate.

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

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

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



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

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

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

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

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

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



disclosure. If the request for an accounting is delivered directly to Associate or its agents or subcontractors, Associate must forward it within ten days of the receipt of the request to CE in writing. CE must prepare and deliver any such accounting requested. Associate may forward it not disclose any Protected Information except as set forth in Section 2(b) of this Addendum.

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

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

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

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

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

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

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

### 3. Obligations of CE.



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

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

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

5. Termination.

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

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

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

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

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

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

c. Effect of Termination.





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

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

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

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

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

9. Amendment.

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

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

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



and privacy of Protected Information, except where Associate or its subcontractor, employee or agent is a named adverse party.

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

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

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

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

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

16. Representatives and Notice.

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

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

Covered Entity Representative:

Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Department and Division: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_



Business Associate Representative:

Name: \_\_\_\_\_  
 Title: \_\_\_\_\_  
 Department and Division: \_\_\_\_\_  
 Address: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

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

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

**Associate**

**Covered Entity**

[INSERT NAME]

[INSERT NAME]

By: \_\_\_\_\_

By: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Print Name: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_



**ATTACHMENT A**

This Attachment sets forth additional terms to the HIPAA Business Associate Addendum dated \_\_\_\_\_, between \_\_\_\_\_ and \_\_\_\_\_ (“Addendum”) and is effective as of \_\_\_\_\_ (the “Attachment Effective Date”). This Attachment applies to the specific contracts listed below covered by the Addendum. This Attachment may be amended from time to time as provided in Section 11(b) of the Addendum.

1. Specific Contract Covered. This Attachment applies to the following specific contract covered by the Addendum: \_\_\_\_\_

2. Additional Permitted Uses. In addition to those purposes set forth in Section 2(a) of the Addendum, Associate may use Protected Information as follows:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

3. Additional Permitted Disclosures. In addition to those purposes set forth in Section 2(b) of the Addendum, Associate may disclose Protected Information as follows:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

4. Subcontractor(s). The parties acknowledge that the following subcontractors or agents of Associate must receive Protected Information in the course of assisting Associate in the performance of its obligations under the Contract and the Addendum:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

5. Receipt. Associate’s receipt of Protected Information under the Contract and Addendum must be deemed to occur as follows, and Associate’s obligations under the Addendum must commence with respect to such PHI upon such receipt:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

6. Additional Restrictions on Use of Data. CE is a Business Associate of certain other Covered Entities and, under such obligations of CE, Associate must comply with the following restrictions on the use and disclosure of Protected Information:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

7. Additional Terms. *[This section may include specifications for disclosure format, method of transmission, use of an intermediary, use of digital signatures or PKI, authentication, additional security of privacy specifications, de-identification or re-identification of data and other additional terms.]*

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_



**Associate**

**Covered Entity**

[INSERT NAME]

[INSERT NAME]

By: \_\_\_\_\_

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_