

STATE OF MICHIGAN
DEPARTMENT OF COMMUNITY HEALTH
Grants and Purchasing Division
320 South Walnut Street
Lansing, Michigan 48913

CONTRACT NO. 391B5500001
Between

THE DEPARTMENT OF COMMUNITY HEALTH
And

NAME & ADDRESS OF VENDOR American Mobile Dental PC 24293 Telegraph Road, #212 Southfield, MI 48094 Email: joy1004@msn.com		TELEPHONE (888) 628 5535 Contact: Joy Ashteneau
Dental Services for Walter P. Reuther Psychiatric Hospital		
CONTRACT PERIOD:	From: 10/1/2014	To: 9/30/2017
TERMS	<u>Net 45 days</u>	<u>2, 1 Year Options</u>
MISCELLANEOUS INFORMATION:		
<p>The terms and conditions of this Contract, including any applicable information from the vendor's proposal to RFP- 039114B0002556 dated 8/4/2014 are attached. In the event of any conflicts between the specifications, terms and conditions indicated by the State and those indicated by the vendor, those of the State take precedence.</p> <p>Est. Contract Value: \$109,806.45</p>		

FOR THE VENDOR:

American Mobile Dental, PC
Firm Name
Authorized Agent Signature
Authorized Agent (Print or Type)
Date

FOR THE STATE:

Signature Kim Stephen
Name Director, Bureau of Budget and Purchasing Michigan Department of Community Health
Title
Date

STATE OF MICHIGAN

Contract No. 391B5500001
Dental Services for Walter P. Reuther Psychiatric Hospital

EXHIBIT A STATEMENT OF WORK CONTRACT ACTIVITIES

1.0 Requirements

1.1 Specifications

This is a contract for Dental Services for the Michigan Department of Community Health (MDCH), Walter P. Reuther Psychiatric Hospital (WRPH).

The Contractor must provide the following:

- A. The Contractor must furnish staff, supplies, materials and equipment necessary to provide dental services on the premises of WRPH, at a schedule mutually agreed upon by both parties and depending upon the needs of the patients.
- B. The Contractor must furnish certified dental x-ray equipment to be used on WRPH's premises suitable to the procedure performed. Proof of Michigan Department of Community Health certification must be provided to WRPH prior to service delivery.
- C. The Contractor must perform the procedure(s) with licensed personnel. The dentist must have approved clinical privileges and appointment to the Medical Staff Organization of WRPH and must be required to submit credentials and documents needed to satisfy its credentialing process prior to service delivery.

Tasks

1. The Contractor must provide dental services to WRPH patients on-site according to the schedule mutually agreed upon by both parties, Monday-Friday, except holidays between the hours of 8:00 AM and 4:30 PM.
2. The Contractor must provide storage, filing, reference, and retrieval system for all x-rays and reports taken for WRPH patients.
3. The Contractor must furnish WRPH written documentation verifying that those staff having contact with the WRPH staff and residents are free of communicable diseases; have passed a drug test and a criminal background check as specified by regulatory guidelines.
4. The Contractor must provide updated licenses/certificates of dental x-ray machines used at WRPH and of all staff providing services at WRPH when issued.
5. The Contractor must maintain certification from Centers for Medicare and Medicaid Services (CMS) and Michigan Department of Community Health Radiation Machine

Register. The current and updated certificates must be provided to the Program Manager when issued.

6. The Contractor must send billing statements to WRPH's designated representative by the 5th day of the following month. The billing statement must include patient's name, case number and date of service, procedure name, Current Dental Terminology (CDT) procedure code, diagnosis, ICD-9-CM diagnosis code and cost for each patient/procedure.
7. The Contractor must furnish quality assurance monitoring reports to the Program Manager on a quarterly basis. Reporting must be on mutually agreed content and format to be agreed upon by the Contractor and the Program Manager when the Contract begins.
8. The Contractor must abide by all policies, procedures, and regulatory guidelines affect WRPH. As appropriate and relevant to the provision of care to MDCH patients, the Contractor must be informed of those regulatory standards, policies and procedures, prior to the service delivery in an orientation conducted by WRPH.

Infection Control/Sterilization Procedures

The Contractor must adhere to the following procedures:

1. The entire work area must be wiped down with Disinfecting Solution before being used.
2. Hands MUST be washed before and after each patient is seen and before putting gloves on and after taking them off. Washing must take place on the hands and between fingers and Dental personnel must spend between 15 and 20 seconds during each washing period.
3. In addition to wearing gloves, during dental procedures in which splashing or splattering of blood, saliva or gingival fluids is likely, mask and protective goggles must be worn.
4. Contaminated gloves must be removed and hands washed, or sterile cotton pliers must be used, when reaching for sterile products during a patient procedure.
5. When gloves and mask are removed, they must be placed in an appropriate receptacle, and goggles must be wiped with a sanicloth.
6. Gloves and mask must not be worn in the hallways of WRPH.
7. All Dental personnel must wear clean and appropriate scrubs and/or lab jackets.
8. Dental personnel with long hair (shoulder length or longer) must keep it tied back so it does not come in contact with any supplies used in patient procedures.
9. All horizontal surfaces in the dental work area must be cleaned before and after daily clinic schedule with a disinfecting solution and also between patients as necessary.
10. All sharps/needles must be disposed appropriately in a Sharps Container.
11. Never recap a needle

12. Waste soiled with blood or body fluid must be disposed of as follows:
 - a. Blood, suctioned fluids and other liquid waste must be poured into a drain connected to a sanitary sewer.
 - b. Waste, soiled with blood or moist fluid, such as gloves, gauze swabs, barriers, etc. must be placed in a red bio-hazardous waste bag at the site where used and sealed.
 - c. All teeth must be placed in the sharps container and considered as medical waste per WRPH policy#306: Hazardous Waste.
13. Material safety data sheets for each chemical should be carried and available.
14. Never place used instruments in a clean area.
15. All instruments must be scrubbed, cleaned, sanitized and heat sterilized. Surgical instruments that normally penetrate soft tissue and/or bone must be sterilized in sterilization bags, labeled and dated daily as needed. They must be heat sterilized at 320 degrees for at least 1 hour. The Contractor must submit monthly Biological Monitoring for Sterilization to WRPH Clinic.
16. When cleaning and scrubbing instruments dental personnel must wear heavy-duty gloves to help avoid puncture wounds. All puncture wounds must be reported immediately.
17. Any disposable hand pieces, any suction tip holder and air/water syringes must be replaced.
18. Denlite must be taken apart and cold sterilized. Plastic protectors must be used and new mirror heads for each patient.
19. The dental unit must be wiped down daily after use with sanicloths; this must include all parts of the unit (hoses, inside of the unit and outside of the unit).
20. If suction is used, the bottle and hosing must be disinfected and flushed out with water until clean.
21. All other equipment such as Denlite parts and Triad machine must be wiped down with sanicloths also.
22. Non-disposable impression trays must be sanitized after use.
23. The entire work area must be wiped down with disinfecting solution and any and all debris whatsoever must be disposed of as indicated above.
24. When taking x-rays, the sensor must be covered with a sleeve protector and then over that covered with a finger cot. Hands must be washed and new gloves worn for each patient.

1.2 Transition

If the State terminates the Contract, for convenience or cause, or if the Contract is otherwise dissolved, voided, rescinded, nullified, expires or rendered unenforceable, the Contractor agrees to comply with direction provided by the State to assist in the orderly transition of equipment, services, software, leases, etc. to the State or a third party designated by the State. If the

Contract expires or terminates, the Contractor agrees to make all reasonable efforts to effect an orderly transition of services within a reasonable period of time that in no event will exceed 180 days.

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.

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-delimited format unless otherwise requested by the State. The Contractor must deliver to the State any remaining owed reports and documentation still in Contractor's possession subject to appropriate payment by the State.

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.

In the event 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.

1.3 Training

The Contractor must provide training for staff and patients on good optimal oral care and good oral hygiene when requested. The Contractor must attend orientation and annual training provided by the WRPH Training Department.

1.4 Reserved

2.0 Acceptance

2.1 Acceptance, Inspection and Testing

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

The MDCH Program Manager will be responsible for verifying that the work:

1. Was performed in the time period referenced
2. Meets the deliverable criteria; and

3. Was performed according to contract specifications

2.2 Final Acceptance

Each task/deliverable described herein, may be invoiced for payment when the final task/deliverable is completed.

3.0 Staffing

3.1 Contractor Representative, Contractor Roles, and Responsibilities

The Contractor must appoint one individual specifically assigned to the State of Michigan account that will respond to State inquiries regarding the Contract Activities, answering questions related to ordering and delivery, etc. The Contractor Representative is:

Joy Ashteneau
American Mobile Dental PC
24293 Telegraph #212
Southfield, MI 48033
Joy1004@masn.com

The Contractor must perform the procedure(s) with licensed personnel. The Contractor must provide the services of a Dentist, Dental Assistant and Certified X-Ray Technician and meet the following requirements:

- a. The Dentist must be a consultant member of the WRPH Medical Staff Organization and must abide by the Medical Staff Bylaws, rules and regulations.
- b. The Dentist must diagnose and provide oral/dental treatment to patients at WRPH. Each patient contact must be fully documented in the patient's medical record.
- c. The Dentist must develop and participate in programs designed for in-service for the staff at WRPH upon request.
- d. The Dentist must participate in the development and implementation of patient care plans as needed.
- e. The Dental Staff must abide by the WRPH's policies and procedures including that of Infection Control.
- f. The Dental Provider(s) must provide dental services at the WRPH Clinic according to the schedule mutually agreed upon by both parties between the hours of 8:00 AM and 4:30 PM, Monday through Friday only, except holidays, and no weekends. Approximately 12 to 16 patients must be seen per visit.
- g. The Contractor must furnish WRPH annual performance evaluation reports of the dental staff.
- h. While working at WRPH the Dental Providers must abide by the following rules:
 1. Unattended vehicles should be locked at all times.
 2. All equipment must be accounted for at all times

3. The Contractor may encounter information relative to patients including their identify. The Contractor must maintain confidentiality of patients at all times, under the Health Insurance Portability and Accountability (HIPAA requirements)
4. All Personal Protection Equipment (P.P.E.) must be used when appropriate.
5. All Federal Occupational Safety and Health Administration (O.S.H.A.) and State Michigan Occupation Safety and Health Administration (M.I.O.S.H.A.) standards and National Fire Protection Association (N.F.P.A.) Life Safety Codes must be followed during the course of any work or service being performed at WRPH.

3.2 Reserved

3.3 Reserved

3.4 Work Hours

The Contractor must provide Contract Activities during the State's normal working hours of Monday through Friday 8:00 a.m. to 4:30 p.m. EST, excluding state holidays.

3.5 Key Personnel

The Contractor must appoint a Contract Representative who must be directly responsible for the day-to day operations of the Contract ("Key Personnel"). Key Personnel must be specifically assigned to the State account and be knowledgeable on the contractual requirements, and respond to the State inquires within 24 hours.

The Key Personnel for this contract are: Dentist, Dental Assistant, and Certified X Ray Technician:

Christina Lewis, DDS
Angela Ogletree, Dental Assistant
Amy Malfa, Certified X-Ray Technician

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

Contractor must not remove any Key Personnel from their assigned roles on this Contract without the prior written consent of the State. The Contractor's removal of Key Personnel without the prior written consent of the State is an unauthorized removal ("**Unauthorized Removal**"). An Unauthorized Removal does not include replacing Key Personnel for reasons beyond the reasonable control of Contractor, including illness, disability, leave of absence, personal emergency circumstances, resignation, or for cause termination of the Key Personnel's employment. Any Unauthorized Removal may be considered by the State to be a material breach of this Contract, in respect of which the State may elect to terminate this Contract for cause under Termination for Cause in the Standard Terms.

It is further acknowledged that an Unauthorized Removal will interfere with the timely and proper completion of this Contract, to the loss and damage of the State, and that it would be impracticable and extremely difficult to fix the actual damage sustained by the State as a result of

any Unauthorized Removal. Therefore, Contractor and the State agree that in the case of any Unauthorized Removal in respect of which the State does not elect to exercise its rights under Termination for Cause, Contractor will issue to the State the corresponding credits set forth below (each, an "Unauthorized Removal Credit"):

- i) For the Unauthorized Removal of any Key Personnel designated in the applicable Statement of Work, the credit amount will be \$25,000.00 per individual if Contractor identifies a replacement approved by the State and assigns the replacement to shadow the Key Personnel who is leaving for a period of at least 30 calendar days before the Key Personnel's removal.
- ii) If Contractor fails to assign a replacement to shadow the removed Key Personnel for at least 30 calendar days, in addition to the \$25,000.00 credit specified above, Contractor will credit the State \$833.33 per calendar day for each day of the 30 calendar-day shadow period that the replacement Key Personnel does not shadow the removed Key Personnel, up to \$25,000.00 maximum per individual. The total Unauthorized Removal Credits that may be assessed per Unauthorized Removal and failure to provide 30 calendar days of shadowing will not exceed \$50,000.00 per individual.

Contractor acknowledges and agrees that each of the Unauthorized Removal Credits assessed above: (i) is a reasonable estimate of and compensation for the anticipated or actual harm to the State that may arise from the Unauthorized Removal, which would be impossible or very difficult to accurately estimate; and (ii) may, at the State's option, be credited or set off against any fees or other charges payable to Contractor under this Contract.

3.6 Organization Chart

The Contractor must provide an overall organization chart that details staff members by name and title, and subcontractors when requested by the Program Manager.

3.7 Reserved

3.8 Security

The Contractor must furnish WRPH written documentation verifying that those staff having contact with WRPH staff and residents are free of communicable diseases, have passed a drug test and a criminal background check as specified by regulatory guidelines.

4.0 Project Management

4.1 Reserved

4.2 Meetings

The Contractor must agree to participate in meetings at the request of WRPH.

4.3 Reporting

The Contractor must provide written copies of the following reports as specified to the Program Manager for WRPH:

1. The Contract must furnish monthly Biological Monitoring Sterilization Reports to the WRPH Medical Clinic.
2. The Contractor must furnish performance improvement reports to the Program Manager on a quarterly basis.

3. All other reporting must be on mutually agreed content and format, to be agreed upon by the Contractor and Program Manager when the Contract begins.

5.0 Ordering

5.1 Authorizing Document

The appropriate authorizing document for the Contract must be a signed blanket purchase order as well as an agency issued purchase order.

6.0 Invoice and Payment

6.1 Invoice Requirements

The Contractor must bill all services and treatments provided directly to the WRPH Accounting Office by the 5th of each month for the previous month's services. The Contractor must not bill third party payers for any services provided at WRPH. The billing statement must include patient's name, case number, and date of service, procedure name, CDT procedure code, diagnosis, ICD-9-CM diagnosis code and cost for each procedure/patient.

6.2 Reserved

6.3 Reserved

7.0 Reserved

8.0 HIPAA Business Associate Agreement Addendum

At the time of contract execution, the Contractor ("Business Associate") must sign and return a Health Insurance Portability and Accountability Act (HIPAA) Business Associate Agreement Addendum (Attachment 1) to the MDCH individual specified in the Standard Contract Terms (3) of the contract. The Business Associate performs certain services for the State ("Covered Entity") under the Contract that requires the exchange of information including protected health information under the HIPAA of 1996, as amended by the American Recovery and Reinvestment Act of 2009 (Pub. L. No. 111-5). The HIPAA Business Associate Agreement Addendum establishes the responsibilities of both parties regarding HIPAA-covered information and ensures the underlying contract complies with HIPAA.

STATE OF MICHIGAN

Contract No. 391B5500001
 Dental Services for Walter P. Reuther Psychiatric Hospital

EXHIBIT B PRICING

Procedure Code	Description	1 Year Estimate Needed	Procedure Cost Each	Estimate Annual Cost
120	PERIODIC ORAL EXAM	46	\$51.70	\$2,378.20
140	EMERGENCY EXAM/ADDED TO PT.LIST	32	\$51.70	\$1,654.40
150	COMPREHENSIVE ORAL EXAM	45	\$53.90	\$2,425.50
210	INTRAORAL COMPLETE SERIES	47	\$82.50	\$3,877.50
220	INTRAORAL PERIAPICAL SINGLE	39	\$38.50	\$1,501.50
230	ADDITIONAL X-RAY	58	\$12.10	\$701.80
270	BITEWING	7	\$38.50	\$269.50
272	2 BITEWINGS	2	\$46.20	\$92.40
274	4 BITEWINGS	17	\$71.50	\$1,215.50
1110	PROPHYLAXIS-ADULT	39	\$82.50	\$3,217.50
2140	AMALGAM 1 SURFACE	15	\$71.50	\$1,072.50
2150	AMALGAM 2 SURFACES	16	\$88.00	\$1,408.00
2160	AMALGAM 3 SURFACES	8	\$104.50	\$836.00
2161	AMALGAM 4+ SURFACES	2	\$132.00	\$264.00
2330	COMPOSITE 1 SURFACE ANTERIOR	20	\$85.80	\$1,716.00
2331	COMPOSITE 2 SURFACE ANTERIOR	9	\$104.50	\$940.50
2332	COMPOSITE 3 SURFACE ANTERIOR	5	\$132.00	\$660.00
2335	COMPOSITE 4+ SURFACE/INCISAL	4	\$159.50	\$638.00
2391	COMPOSITE 1 SURFACE POST-PERM	15	\$85.80	\$1,287.00

Procedure Code	Description		1 Year Estimate Needed	Procedure Cost Each	Estimate Annual Cost
2392	COMPOSITE 2 SURFACE POSTERIOR		6	\$104.50	\$627.00
2393	COMPOSITE 3 SURFACE POSTERIOR		8	\$132.00	\$1,056.00
2394	COMPOSITE 4+ SURFACE POSTERIOR		1	\$159.50	\$159.50
4355	FULL MOUTH DEBRIDEMENT		43	\$82.50	\$3,547.50
5411	ADJUST LOWER DENTURE		1	\$110.00	\$110.00
5422	ADJUST LOWER PARTIAL		1	\$110.00	\$110.00
7140	EXTRACTION (CLOSURE NECESSARY)		49	\$91.34	\$4,475.86
7210	SURGICAL EXTRACTION		2	\$165.00	\$330.00
0Z9999	PROPHYLAXIS- AGES 14-18		1	\$30.49	\$30.49
				Annual contract price	\$36,602.15
				3 year contract price	109,806.45

Annual Contract Price: \$ 36,602.15
3 Year Contract Price: \$109,806.45

Note: The Contractor offers a 2% discount off all invoices that are paid in full within 30 days.

STATE OF MICHIGAN

Contract No. 391B5500001
Dental Services for Walter P. Reuther Psychiatric Hospital

EXHIBIT C STANDARD CONTRACT TERMS

This STANDARD CONTRACT ("Contract") is agreed to between the State of Michigan (the "State") and American Mobile Dental PC ("Contractor"). This Contract is effective on October 1, 2014 ("Effective Date"), and unless terminated, expires on September 30, 2017.

This Contract may be renewed for up to 2 additional 1 year periods. Renewal must be by written agreement of the parties.

The parties agree as follows:

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

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

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

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

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

If to State:	If to Contractor:
Laura Kwiecien 320 South Walnut Lansing, MI 48913 KwiecienL@michigan.gov (517) 241-4878	Joy Ashteneau American Mobile Dental PC 24293 Telegraph #212 Southfield, MI 48033 (888)-628-5535 joy1004@msn.com

3. **Contract Administrator.** The Contract Administrator for each party is the only person authorized to modify any terms and conditions of this Contract (each a "Contract Administrator"):

If to State:	If to Contractor:
Laura Kwiecien 320 South Walnut Lansing, MI 48913 KwiecienL@michigan.gov (517) 241-4878	Joy Ashteneau American Mobile Dental PC 24293 Telegraph #212 Southfield, MI 48033 (888)-628-5535 joy1004@msn.com

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

If to State:	If to Contractor:
Dr. Ruby Roc, MDCH Program Manager Michigan Department of Community Health Walter P. Reuther Psychiatric Hospital Westland, MI 48186 Rocr@michigan.gov (734) 367-8512	Joy Ashteneau American Mobile Dental PC 24293 Telegraph #212 Southfield, MI 48033 (888)-628-5535 joy1004@msn.com

5. **Performance Guarantee.** Contractor must at all times have financial resources sufficient, in the opinion of the State, to ensure performance of the Contract and must provide proof upon request. The State may require a performance bond (as specified in Exhibit A) if, in the opinion of the State, it will ensure performance of the Contract.

6. **Insurance Requirements.** Contractor must maintain the insurances identified below and is responsible for all deductibles. All required insurance must: (a) protect the State from claims that may arise out of, are alleged to arise out of, or result from Contractor's or a subcontractor's performance; (b) be primary and non-contributing to any comparable liability insurance (including self-insurance) carried by the State; and (c) be provided by an company with an A.M. Best rating of "A" or better and a financial size of VII or better.

Insurance Type	Additional Requirements
Commercial General Liability Insurance	
<u>Minimal Limits:</u> \$1,000,000 Each Occurrence Limit \$1,000,000 Personal & Advertising Injury Limit \$2,000,000 General Aggregate Limit \$2,000,000 Products/Completed Operations <u>Deductible Maximum:</u> \$50,000 Each Occurrence	Contractor must have their policy: (1) endorsed to add "the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees, and agents" as additional insureds using endorsement CG 20 10 11 85, or both CG 2010 07 04 and CG 2037 07 04; (2) include a waiver of subrogation; and (3) for a claims-made policy, provide 3 years of tail coverage.
Umbrella or Excess Liability Insurance	
<u>Minimal Limits:</u> \$5,000,000 General Aggregate	Contractor must have their policy: (1) endorsed to add "the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees, and agents" as additional insureds, and (2) include a waiver of subrogation.
Motor Vehicle Insurance	
<u>Minimal Limits:</u> \$1,000,000 Per Occurrence	
Workers' Compensation Insurance	

<u>Minimal Limits:</u> Coverage according to applicable laws governing work activities.	Waiver of subrogation, except where waiver is prohibited by law.
Employers Liability Insurance	
<u>Minimal Limits:</u> \$100,000 Each Accident \$100,000 Each Employee by Disease \$500,000 Aggregate Disease.	
Professional Liability (Errors and Omissions) Insurance	
<u>Minimal Limits:</u> \$3,000,000 Each Occurrence \$3,000,000 Annual Aggregate <u>Deductible Maximum:</u> \$50,000 Per Loss	
Medical Malpractice Insurance	
<u>Minimal Limits</u> \$200,000 or \$1,000,000 Each Occurrence: <u>Deductible Maximum</u> \$5,00 Each Occurrence	
Property Insurance	
Property Insurance covering any loss or damage to the State-owned office space used by Contractor for any reason under this Contract, and the State-owned equipment, software and other contents of the office space, including without limitation, those contents used by Contractor to provide the Services to the State, up to its replacement value, where the office space and its contents are under the care, custody and control of Contractor. The State must be endorsed on the policy as a loss payee as its interests appear.	

If Contractor's policy contains limits higher than the minimum limits, the State is entitled to coverage to the extent of the higher limits. The minimum limits are not intended, and may not be construed to limit any liability or indemnity of Contractor to any indemnified party or other persons.

Contractor must: (a) provide insurance certificates to the Contract Administrator, containing the agreement or purchase order number, at Contract formation and within 20 calendar days of the expiration date of the applicable policies; (b) require that subcontractors maintain the required insurances contained in this Section; (c) notify the Contract Administrator within 5 business days if any insurance is cancelled; and (d) waive all rights against the State for damages covered by insurance. Failure to maintain the required insurance does not limit this waiver.

7. **Reserved.**
8. **Reserved.**
9. **Independent Contractor.** Contractor is an independent contractor and assumes all rights, obligations and liabilities set forth in this Contract. Contractor, its employees, and agents will not be considered employees of the State. No partnership or joint venture relationship is created by virtue of this Contract.

Contractor, and not the State, is responsible for the payment of wages, benefits and taxes of Contractor's employees and any subcontractors. Prior performance does not modify Contractor's status as an independent contractor.

10. **Subcontracting.** Contractor may not delegate any of its obligations under the Contract without the prior written approval of the State. Contractor must notify the State at least 90 calendar days before the proposed delegation, and provide the State any information it requests to determine whether the delegation is in its best interest. If approved, Contractor must: (a) be the sole point of contact regarding all contractual matters, including payment and charges for all Contract Activities; (b) make all payments to the subcontractor; and (c) incorporate the terms and conditions contained in this Contract in any subcontract with a subcontractor. Contractor remains responsible for the completion of the Contract Activities, compliance with the terms of this Contract, and the acts and omissions of the subcontractor. The State, in its sole discretion, may require the replacement of any subcontractor.
11. **Staffing.** The State's Contract Administrator may require Contractor to remove or reassign personnel by providing a notice to Contractor.
12. **Background Checks.** Upon request, Contractor must perform background checks on all employees and subcontractors and its employees prior to their assignment. The scope is at the discretion of the State and documentation must be provided as requested. Contractor is responsible for all costs associated with the requested background checks. The State, in its sole discretion, may also perform background checks.
13. **Assignment.** Contractor may not assign this Contract to any other party without the prior approval of the State. Upon notice to Contractor, the State, in its sole discretion, may assign in whole or in part, its rights or responsibilities under this Contract to any other party. If the State determines that a novation of the Contract to a third party is necessary, Contractor will agree to the novation, provide all necessary documentation and signatures, and continue to perform, with the third party, its obligations under the Contract.
14. **Change of Control.** Contractor will notify, at least 90 calendar days before the effective date, the State of a change in Contractor's organizational structure or ownership. For purposes of this Contract, a change in control means any of the following: (a) a sale of more than 50% of Contractor's stock; (b) a sale of substantially all of Contractor's assets; (c) a change in a majority of Contractor's board members; (d) consummation of a merger or consolidation of Contractor with any other entity; (e) a change in ownership through a transaction or series of transactions; (f) or the board (or the stockholders) approves a plan of complete liquidation. A change of control does not include any consolidation or merger effected exclusively to change the domicile of Contractor, or any transaction or series of transactions principally for bona fide equity financing purposes.

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

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

Within 10 business days from the date of Contractor's receipt of notification of acceptance with deficiencies or rejection of any Contract Activities, Contractor must cure, at no additional cost, the deficiency and deliver unequivocally acceptable Contract Activities to the State. If acceptance with deficiencies or rejection of the Contract Activities impacts the content or delivery of other non-completed

Contract Activities, the parties' respective Program Managers must determine an agreed to number of days for re-submission that minimizes the overall impact to the Contract. However, nothing herein affects, alters, or relieves Contractor of its obligations to correct deficiencies in accordance with the time response standards set forth in this Contract.

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

17. Reserved

18. Reserved

19. Reserved

20. Terms of Payment. Invoices must conform to the requirements communicated from time-to-time by the State. All undisputed amounts are payable within 45 days of the State's receipt. Contractor may only charge for Contract Activities performed as specified in Exhibit A. Invoices must include an itemized statement of all charges. The State is exempt from State sales tax for direct purchases and may be exempt from federal excise tax, if Contract Activities purchased under the Contract are for the State's exclusive use. Prices are exclusive of all taxes, and Contractor shall be solely responsible for payment of any applicable taxes.

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

The State will only disburse payments under this Contract through Electronic Funds Transfer (EFT). Contractor must register with the State at <http://www.michigan.gov/cpexpress> to receive electronic fund transfer payments. If Contractor does not register, the State is not liable for failure to provide payment. Without prejudice to any other right or remedy it may have, the State reserves the right to set off at any time any amount then due and owing to it by Contractor against any amount payable by the State to Contractor under this Contract.

21. Reserved.

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

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

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

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

- 24. Termination for Convenience.** The State may immediately terminate this Contract in whole or in part without penalty and for any reason, including but not limited to, appropriation or budget shortfalls. The termination notice will specify whether Contractor must: (a) cease performance of the Contract Activities immediately, or (b) continue to perform the Contract Activities in accordance with Section 25, Transition Responsibilities. If the State terminates this Contract for convenience, the State will pay all reasonable costs, as determined by the State, for State approved "Transition Responsibilities".
- 25. Transition Responsibilities.** Upon termination or expiration of this Contract for any reason, Contractor must, for a period of time specified by the State (not to exceed 90 calendar days), provide all reasonable transition assistance requested by the State, to allow for the expired or terminated portion of the Contract Activities to continue without interruption or adverse effect, and to facilitate the orderly transfer of such Contract Activities to the State or its designees. Such transition assistance may include but is not limited to: (a) continuing to perform the Contract Activities at the established Contract rates; (b) taking all reasonable and necessary measures to transition performance of the work, including all applicable Contract Activities, training, equipment, software, leases, reports and other documentation, to the State or the State's designee; (c) taking all necessary and appropriate steps, or such other action as the State may direct, to preserve, maintain, protect, or return to the State all materials, data, property, and confidential information provided directly or indirectly to Contractor by any entity, agent, vendor, or employee of the State; (d) transferring title in and delivering to the State, at the State's discretion, all completed or partially completed deliverables prepared under this Contract as of the Contract termination date; and (e) preparing an accurate accounting from which the State and Contractor may reconcile all outstanding accounts (collectively, "**Transition Responsibilities**"). This Contract will automatically be extended through the end of the transition period.
- 26. General Indemnification.** Contractor must defend, indemnify and hold the State, its departments, divisions, agencies, offices, commissions, officers, and employees harmless, without limitation, from and against any and all actions, claims, losses, liabilities, damages, costs, attorney fees, and expenses (including those required to establish the right to indemnification), arising out of or relating to: (a) any breach by Contractor (or any of Contractor's employees, agents, subcontractors, or by anyone else for whose acts any of them may be liable) of any of the promises, agreements, representations, warranties, or insurance requirements contained in this Contract; (b) any bodily injury, death, or damage to real or tangible personal property occurring wholly or in part due to action or inaction by Contractor (or any of Contractor's employees, agents, subcontractors, or by anyone else for whose acts any of them may be liable); and (c) any acts or omissions of Contractor (or any of Contractor's employees, agents, subcontractors, or by anyone else for whose acts any of them may be liable).

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

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

action, or proceeding. To the extent that any State employee, official, or law may be involved or challenged, the State may, at its own expense, control the defense of that portion of the claim.

Any litigation activity on behalf of the State, or any of its subdivisions under this Section and Section 27, Intellectual Property Indemnification, must be coordinated with the Department of Attorney General. An attorney designated to represent the State may not do so until approved by the Michigan Attorney General and appointed as a Special Assistant Attorney General.

- 27. Infringement Remedies.** If, in either party's opinion, any piece of equipment, software, commodity, or service supplied by Contractor or its subcontractors, or its operation, use or reproduction, is likely to become the subject of a copyright, patent, trademark, or trade secret infringement claim, Contractor must, at its expense: (a) procure for the State the right to continue using the equipment, software, commodity, or service, or if this option is not reasonably available to Contractor, (b) replace or modify the same so that it becomes non-infringing; or (c) accept its return by the State with appropriate credits to the State against Contractor's charges and reimburse the State for any losses or costs incurred as a consequence of the State ceasing its use and returning it.
- 28. 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 gross negligence or willful misconduct of the Contractor; to claims covered by other specific provisions of this 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 this Contract.
- 29. Disclosure of Litigation, or Other Proceeding.** Contractor must notify the State within 14 calendar days of receiving notice of any litigation, investigation, arbitration, or other proceeding (collectively, "**Proceeding**") involving Contractor, a subcontractor, or an officer or director of Contractor or subcontractor, that arises during the term of the Contract, including: (a) a criminal Proceeding; (b) a parole or probation Proceeding; (c) a Proceeding under the Sarbanes-Oxley Act; (d) a civil Proceeding involving: (1) a claim that might reasonably be expected to adversely affect Contractor's viability or financial stability; or (2) a governmental or public entity's claim or written allegation of fraud; or (e) a Proceeding involving any license that Contractor is required to possess in order to perform under this Contract.

30. Reserved.

31. State Data

- a. **Ownership.** The State's data ("**State Data**," which will be treated by Contractor as Confidential Information) includes: (a) the State's data collected, used, processed, stored, or generated as the result of the Contract Activities; (b) personally identifiable information ("**PII**") collected, used, processed, stored, or generated as the result of the Contract Activities, including, without limitation, any information that identifies an individual, such as an individual's social security number or other government-issued identification number, date of birth, address, telephone number, biometric data, mother's maiden name, email address, credit card information, or an individual's name in combination with any other of the elements here listed; and, (c) personal health information ("**PHI**") collected, used, processed, stored, or generated as the result of the Contract Activities, which is defined under the Health Insurance Portability and Accountability Act (HIPAA) and its related rules and regulations. State Data is and will remain the sole and exclusive property of the State and all right, title, and interest in the same is reserved by the State. This Section survives the termination of this contract.
- b. **Contractor Use of State Data.** Contractor is provided a limited license to State Data for the sole and exclusive purpose of providing the Contract Activities, including a license to collect, process, store, generate, and display State Data only to the extent necessary in the provision of the Contract Activities. Contractor must: (a) keep and maintain State Data in strict confidence, using such degree of care as is appropriate and consistent with its obligations as further described in this

Contract and applicable law to avoid unauthorized access, use, disclosure, or loss; (b) use and disclose State Data solely and exclusively for the purpose of providing the Contract Activities, such use and disclosure being in accordance with this Contract, any applicable Statement of Work, and applicable law; and (c) not use, sell, rent, transfer, distribute, or otherwise disclose or make available State Data for Contractor's own purposes or for the benefit of anyone other than the State without the State's prior written consent. This Section survives the termination of this contract.

- c. **Extraction of State Data.** Contractor must, within one (1) business day of the State's request, provide the State without charge and without any conditions or contingencies whatsoever (including but not limited to the payment of any fees due to Contractor), an extract of the State Data in the format specified by the State.
- d. **Backup and Recovery of State Data.** Unless otherwise specified in Exhibit A, Contractor is responsible for maintaining a backup of State Data and for an orderly and timely recovery of such data. Unless otherwise described in Exhibit A, Contractor must maintain a contemporaneous backup of State Data that can be recovered within two (2) hours at any point in time.
- e. **Loss of Data.** In the event any act, error or omission, negligence, misconduct, or breach that compromises or is suspected to compromise the security, confidentiality, or integrity of State Data or the physical, technical, administrative, or organizational safeguards put in place by Contractor that relate to the protection of the security, confidentiality, or integrity of State Data, Contractor must, as applicable: (a) notify the State as soon as practicable but no later than twenty-four (24) hours of becoming aware of such occurrence; (b) cooperate with the State in investigating the occurrence, including making available all relevant records, logs, files, data reporting, and other materials required to comply with applicable law or as otherwise required by the State; (c) in the case of PII or PHI, at the State's sole election, (i) notify the affected individuals who comprise the PII or PHI as soon as practicable but no later than is required to comply with applicable law, or, in the absence of any legally required notification period, within 5 calendar days of the occurrence; or (ii) reimburse the State for any costs in notifying the affected individuals; (d) in the case of PII, provide third-party credit and identity monitoring services to each of the affected individuals who comprise the PII for the period required to comply with applicable law, or, in the absence of any legally required monitoring services, for no less than twenty-four (24) months following the date of notification to such individuals; (e) perform or take any other actions required to comply with applicable law as a result of the occurrence; (f) without limiting Contractor's obligations of indemnification as further described in this Contract, indemnify, defend, and hold harmless the State for any and all claims, including reasonable attorneys' fees, costs, and expenses incidental thereto, which may be suffered by, accrued against, charged to, or recoverable from the State in connection with the occurrence; (g) be responsible for recreating lost State Data in the manner and on the schedule set by the State without charge to the State; and, (h) provide to the State a detailed plan within 10 calendar days of the occurrence describing the measures Contractor will undertake to prevent a future occurrence. Notification to affected individuals, as described above, must comply with applicable law, be written in plain language, and contain, at a minimum: name and contact information of Contractor's representative; a description of the nature of the loss; a list of the types of data involved; the known or approximate date of the loss; how such loss may affect the affected individual; what steps Contractor has taken to protect the affected individual; what steps the affected individual can take to protect himself or herself; contact information for major credit card reporting agencies; and, information regarding the credit and identity monitoring services to be provided by Contractor. This Section survives the termination of this Contract..

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

- a. **Meaning of Confidential Information.** For the purposes of this Contract, the term "**Confidential Information**" means all information and documentation of a party that: (a) has been marked "confidential" or with words of similar meaning, at the time of disclosure by such party; (b) if

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

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

33. Data Privacy and Information Security

- a. **Undertaking by Contractor.** Without limiting Contractor's obligation of confidentiality as further described, Contractor is responsible for establishing and maintaining a data privacy and information security program, including physical, technical, administrative, and organizational safeguards, that

is designed to: (a) ensure the security and confidentiality of the State Data; (b) protect against any anticipated threats or hazards to the security or integrity of the State Data; (c) protect against unauthorized disclosure, access to, or use of the State Data; (d) ensure the proper disposal of State Data; and (e) ensure that all employees, agents, and subcontractors of Contractor, if any, comply with all of the foregoing. In no case will the safeguards of Contractor's data privacy and information security program be less stringent than the safeguards used by the State, and Contractor must at all times comply with all applicable State IT policies and standards, which are available to Contractor upon request.

- b. **Audit by Contractor.** No less than annually, Contractor must conduct a comprehensive independent third-party audit of its data privacy and information security program and provide such audit findings to the State.
- c. **Right of Audit by the State.** Without limiting any other audit rights of the State, the State has the right to review Contractor's data privacy and information security program prior to the commencement of Contract Activities and from time to time during the term of this Contract. During the providing of the Contract Activities, on an ongoing basis from time to time and without notice, the State, at its own expense, is entitled to perform, or to have performed, an on-site audit of Contractor's data privacy and information security program. In lieu of an on-site audit, upon request by the State, Contractor agrees to complete, within 45 calendar days of receipt, an audit questionnaire provided by the State regarding Contractor's data privacy and information security program.
- d. **Audit Findings.** Contractor must implement any required safeguards as identified by the State or by any audit of Contractor's data privacy and information security program.
- e. **State's Right to Termination for Deficiencies.** The State reserves the right, at its sole election, to immediately terminate this Contract or a Statement of Work without limitation and without liability if the State determines that Contractor fails or has failed to meet its obligations under this Section

34. Reserved.

35. Reserved.

36. Records Maintenance, Inspection, Examination, and Audit. The State or its designee may audit Contractor to verify compliance with this Contract. Contractor must retain, and provide to the State or its designee and the auditor general upon request, all financial and accounting records related to this Contract through the Term of this Contract and for seven (7) years after the latter of termination, expiration, or final payment under this Contract or any extension ("Financial Audit Period"). If an audit, litigation, or other action involving the records is initiated before the end of the Financial Audit Period, Contractor must retain the records until all issues are resolved.

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

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

37. Warranties and Representations. Contractor represents and warrants: (a) Contractor is the owner or licensee of any Contract Activities that it licenses, sells, or develops and Contractor has the rights necessary to convey title, ownership rights, or licensed use; (b) all Contract Activities are delivered free from any security interest, lien, or encumbrance and will continue in that respect; (c) the Contract Activities will not infringe the patent, trademark, copyright, trade secret, or other proprietary rights of any

third party; (d) Contractor must assign or otherwise transfer to the State or its designee any manufacturer's warranty for the Contract Activities; (e) the Contract Activities are merchantable and fit for the specific purposes identified in the Contract; (f) the Contract signatory has the authority to enter into this Contract; (g) all information furnished by Contractor in connection with the Contract fairly and accurately represents Contractor's business, properties, finances, and operations as of the dates covered by the information, and Contractor will inform the State of any material adverse changes; and (h) all information furnished and representations made in connection with the award of this Contract is true, accurate, and complete, and contains no false statements or omits any fact that would make the information misleading. A breach of this Section is considered a material breach of this Contract, which entitles the State to terminate this Contract under Section 23, Termination for Cause.

- 38. Conflicts and Ethics.** Contractor will uphold high ethical standards and is prohibited from: (a) holding or acquiring an interest that would conflict with this Contract; (b) doing anything that creates an appearance of impropriety with respect to the award or performance of the Contract; (c) attempting to influence or appearing to influence any State employee by the direct or indirect offer of anything of value; or (d) paying or agreeing to pay any person, other than employees and consultants working for Contractor, any consideration contingent upon the award of the Contract. Contractor must immediately notify the State of any violation or potential violation of these standards. This Section applies to Contractor, any parent, affiliate, or subsidiary organization of Contractor, and any subcontractor that performs Contract Activities in connection with this Contract.
- 39. Compliance with Laws.** Contractor must comply with all federal, state and local laws, rules and regulations.
- 40. Reserved.**
- 41. Nondiscrimination.** Under the Elliott-Larsen Civil Rights Act, 1976 PA 453, MCL 37.2101, *et seq.*, and the Persons with Disabilities Civil Rights Act, 1976 PA 220, MCL 37.1101, *et seq.*, Contractor and its subcontractors agree not to discriminate against an employee or applicant for employment with respect to hire, tenure, terms, conditions, or privileges of employment, or a matter directly or indirectly related to employment, because of race, color, religion, national origin, age, sex, height, weight, marital status, or mental or physical disability. Breach of this covenant is a material breach of this Contract.
- 42. Unfair Labor Practice.** Under MCL 423.324, the State may void any Contract with a Contractor or subcontractor who appears on the Unfair Labor Practice register complied under MCL 423.322.
- 43. Governing Law.** This Contract is governed, construed, and enforced in accordance with Michigan law, excluding choice-of-law principles, and all claims relating to or arising out of this Contract are governed by Michigan law, excluding choice-of-law principles. Any dispute arising from this Contract must be resolved in Michigan Court of Claims. Contractor consents to venue in Ingham County, and waives any objections, such as lack of personal jurisdiction or *forum non conveniens*. Contractor must appoint agents in Michigan to receive service of process.
- 44. Non-Exclusivity.** Nothing contained in this Contract is intended nor shall be construed as creating any requirements contract with Contractor. This Contract does not restrict the State or its agencies from acquiring similar, equal, or like Contract Activities from other sources.
- 45. Force Majeure.** Neither party will be in breach of this Contract because of any failure arising from any disaster or acts of god that are beyond their control and without their fault or negligence. Each party will use commercially reasonable efforts to resume performance. Contractor will not be relieved of a breach or delay caused by its subcontractors. If immediate performance is necessary to ensure public health and safety, the State may immediately contract with a third party.
- 46. Dispute Resolution.** The parties will endeavor to resolve any Contract dispute in accordance with this provision. The dispute will be referred to the parties' respective Contract Administrators or Program Managers. Such referral must include a description of the issues and all supporting documentation. The parties must submit the dispute to a senior executive if unable to resolve the dispute within 15

business days. The parties will continue performing while a dispute is being resolved, unless the dispute precludes performance. A dispute involving payment does not preclude performance.

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

47. **Media Releases.** News releases (including promotional literature and commercial advertisements) pertaining to the Contract or project to which it relates must not be made without prior written State approval, and then only in accordance with the explicit written instructions of the State.
48. **Website Incorporation.** The State is not bound by any content on Contractor's website unless expressly incorporated directly into this Contract.
49. **Order of Precedence.** In the event of a conflict between the terms and conditions of the Contract, the exhibits, a purchase order, or an amendment, the order of precedence is: (a) the purchase order; (b) the amendment; (c) Exhibit A; (d) any other exhibits; and (e) the Contract.
50. **Severability.** If any part of this Contract is held invalid or unenforceable, by any court of competent jurisdiction, that part will be deemed deleted from this Contract and the severed part will be replaced by agreed upon language that achieves the same or similar objectives. The remaining Contract will continue in full force and effect.
51. **Waiver.** Failure to enforce any provision of this Contract will not constitute a waiver.
52. **Survival.** The provisions of this Contract that impose continuing obligations, including warranties and representations, termination, transition, insurance coverage, indemnification, and confidentiality, will survive the expiration or termination of this Contract.
53. **Entire Contract and Modification.** This Contract is the entire agreement and replaces all previous agreements between the parties for the Contract Activities. This Contract may not be amended except by signed agreement between the parties (a "**Contract Change Notice**").