

**State of Michigan  
Department of Attorney General  
Request for Proposals for  
PFAS Manufacturer Tort Litigation**

**Project Statement.** This request for proposals (RFP) is to solicit proposals from attorneys and law firms to serve as Special Assistant Attorneys General (SAAGs) to pursue common law environmental tort claims on behalf of the State of Michigan through the Department of Attorney General (DAG) (together, the State) on a contingency fee basis. This RFP is divided into the following parts:

- State Contact Information (**Table 1**), page 1
- Timeline (**Table 2**), page 1
- Proposal Instructions, pages 2-4
- Statement of Work, pages 5-7
- Proposal Contents, pages 8-9
- SAAG Contract (**Attachment A**)

**State Contact Information  
Table 1**

Solicitation Manager:	Email proposals to:	For RFP updates and general information, visit:
Name: <a href="#">AAG Polly Synk</a> Phone: 517.335.7664 Email: <a href="mailto:synkp@michigan.gov">synkp@michigan.gov</a>	<a href="mailto:PFASProposal@michigan.gov">PFASProposal@michigan.gov</a>	<a href="http://www.michigan.gov/agrfps">PFAS Proposal</a> www.michigan.gov/agrfps

**Timeline  
Table 2**

Event	Time	Date
RFP issue date	N/A	Thursday, May 9, 2019
Deadline for bidders to submit questions about this RFP	5:00 p.m. Eastern	Friday, May 17, 2019
Anticipated date State will answer bidder questions	5:00 p.m. Eastern	Friday, May 24, 2019
Proposals due	5:00 p.m. Eastern	Wednesday, June 5, 2019
Anticipated timeframe oral presentations will be scheduled, if any	N/A	Monday, June 24–Friday June 28
Anticipated date State will make decision	N/A	Prior to August 1, 2019



## Proposal Instructions

- 1. Proposal Preparation.** Bidders must follow these Proposal Instructions. Bidders must provide the information requested in the Proposal Contents section below.
- 2. State Contact Information.** The sole point of contact for the State concerning this RFP is the Solicitation Manager listed in **Table 1** above. Contacting any other State official, employee, agent, or representative about this RFP may result in disqualification.
- 3. Modifications.** The State may modify this RFP at any time. Modifications will be posted on the website listed under **Table 1** above. This is the only method by which the RFP may be modified.
- 4. Deficiency notice.** The State may post a notice of deficiency on the website listed under **Table 1** above if it determines that a portion of the RFP was deficient, unclear, or ambiguous. Failure to respond to a deficiency notice as specified in the notice may result in disqualification.
- 5. Questions and Answers.** Questions about this RFP must be emailed to the Solicitation Manager [at PFASProposal@michigan.gov](mailto:PFASProposal@michigan.gov) no later than the time and date specified in **Table 2** above. In the interest of transparency, only written questions will be accepted. The State's answers will be posted on the website listed in **Table 1** above. Please include the RFP page number and section at issue for each question.
- 6. Proposal Submission.** Bidders must email proposals including attachments to the designated email address listed in **Table 1** above. The State cannot receive email messages with a data volume greater than 25 MB. Therefore, prior to submitting your proposal, please validate that your message does not exceed that limit. This may require breaking your proposal into one or more email messages, in which case, mark your messages accordingly, e.g., "1 of 2." Proposals must be received by the State on or before the proposal due date stated in **Table 2** above.
- 7. References to External Sources.** References and links to websites or external sources may not be used in lieu of providing the information requested in the RFP within a proposal.

- 8. Evaluation.** A contract will be awarded to the responsive and responsible bidder presenting the best value to the State. The State will determine best value. Best value is more than pricing alone; it includes the qualifications, experience, abilities, capacity, and cost-effectiveness of bidder proposals after reviewing actual, apparent, or potential conflicts of interest.

Designated State staff will review proposals and issue a recommendation for award to the Attorney General for the final decision. The recommendation to the Attorney General will not include the names of the bidders.

The State may utilize all bidder information to determine best value for services sought. The State may conduct an onsite visit to tour the bidder's work location; require an oral presentation of the bidder's proposal; conduct interviews, independent research, reference checks, and background checks; and request concessions at any point during the evaluation process. The State will post a notice of award on the website listed in **Table 1** above after the decision has been made.

- 9. Clarification Notice.** The State may request clarification of a proposal. Failure to respond to a clarification request as specified in the notice may result in disqualification.

**10. Reservations.** The State reserves the right to:

- a. Discontinue the RFP process at any time for any or no reason.
- b. Conduct due diligence.
- c. Reject any and all proposals received as a result of this RFP.
- d. Disqualify a bidder for failure to follow the Proposal Instructions or other requirements of the RFP.
- e. Disqualify a bidder if the State determines an actual, apparent, or potential conflict of interest exists.
- f. Disqualify a bidder if it is determined they purposely or willfully submitted false or misleading information in response to the RFP.
- g. Consider late or disqualified proposals if deemed to be in the State's best interests.
- h. Consider prior performance with the State in making an award decision.
- i. Refuse to award a contract to a bidder that has failed to pay State taxes or has outstanding debt with the State.
- j. Negotiate with one or more bidders on price, terms, scope, or other deliverables.
- k. Award multiple, optional-use contracts.

**11. General Conditions.** The State will not be liable for any costs, expenses, or damages incurred by participation in this solicitation. The bidder agrees that a proposal is considered an offer to do business with the State in accordance with the proposal, including the SAAG Contract (**Attachment A**), and that a proposal is irrevocable and binding for a period of 180 calendar days from proposal submission date. If a contract is awarded to the bidder, the State may, at its option, incorporate any part of the bidder's proposal into a contract. This RFP is not an offer to enter into a contract. This RFP may not contain all matters upon which agreement must be reached.

**12. Freedom of Information Act.** Proposals and resulting contracts are subject to disclosure as required under Michigan's Freedom of Information Act (FOIA), MCL 15.231 *et seq.*, and other law.

## Statement of Work (SOW)

### 1. Introduction.

This RFP is to solicit proposals from attorneys and law firms with experience and interest in pursuing common law environmental tort claims against manufacturers of certain hazardous substances on behalf of the State of Michigan on a contingency fee basis.

### 2. Background and Purpose.

Michigan is one of the first states in the nation to tackle the investigation and regulation of the emerging contaminants known as PFAS – per- and polyfluoroalkyl substances, a name given to a large group of man-made chemicals used in many products. Their grease, water, and stain-resistant properties have been used in applications ranging from firefighting foam, carpet, waterproofing of fabrics and leathers, packaging materials, nonstick coatings, and industrial processes such as chrome plating.

PFAS are labeled “emerging contaminants” because scientific understanding of the effects of the chemicals on human health and the environment is still developing. Studies have confirmed that PFAS are persistent and bioaccumulate, having found links between the chemicals and increased cholesterol, changes in the body’s hormones and immune system, decreased fertility, and increased risk of certain cancers.

Using available scientific studies and toxicological information, the State has issued enforceable water quality standards and cleanup criteria for groundwater used in drinking water for two of the most well-known PFAS compounds: perfluorooctanoic acid (PFOA) and perfluorooctanesulfonic acid (PFOS). The Governor has also directed State agencies to develop drinking water standards for PFOA, PFOS, and other PFAS compounds, a process that is underway but not completed. The State is currently enforcing existing state standards against entities that are liable under state statutes, and working with users of PFAS chemicals to prevent further releases of PFAS into the environment and to address impacts from past releases.

Although DAG is enforcing the State’s regulatory program to address impacts to the environment from releases of PFAS, the regulatory framework may not extend to all entities that contributed to the creation and use of PFAS-containing materials that eventually came to be located in the environment in Michigan, including soil, surface water and groundwater, as well as wildlife and vegetation.

The State seeks to build on the ongoing regulatory enforcement being undertaken by DAG by retaining SAAGs to determine whether to pursue additional tort or other common-law-based causes of action that potentially exist against the manufacturers of PFAS compounds that came to be located in the environment in Michigan. The work to be performed consists of assisting the DAG in conducting needed investigations, determining what claims will be brought, drafting the complaints (as appropriate), conducting affirmative and defensive discovery, taking and defending depositions, motion practice, and preparing for and conducting any trials that may proceed. Without limitation to the above, the DAG will direct the role of Local Counsel. The DAG, at all times, will direct the litigation in all respects, including but not limited to, whether and when to initiate litigation, against whom actions will be taken, the claims to be brought in said litigation, approval and rejection of all settlement offers, and the amount and type of damages and injunctive relief to be sought.

### **3. In Scope.**

The scope of work includes providing all necessary personnel, labor, materials, services, equipment, supplies, time, travel, effort, skill, and supervision required to examine, investigate, recommend, and litigate the State's possible tort and other applicable common law claims against manufacturers of per- and polyfluoroalkyl substances (PFAS), including but not limited to perfluorooctanoic acid (PFOA) and perfluorooctanesulfonic acid (PFOS).

SAAGs will be appointed to represent the State in common-law-based litigation against manufacturers of PFAS and PFAS-containing materials that were sold to Michigan users or distributed to Michigan-based entities, and which eventually came to be located in Michigan's environment. SAAGs will develop and propose a litigation strategy to the Attorney General or her designees, including:

- Identifying viable claims and causes of action against PFAS manufacturers.
- Identifying possible defendants.
- Pursuing all claims and actions in connection with an approved litigation strategy against defendants approved by the Attorney General.
- Handling all appeals that may arise out of the litigation, subject to prior approval by the Attorney General.

Prior to providing any legal services on behalf of the State, an attorney must be appointed by the Attorney General as a SAAG. SAAGs must consult in advance with and advise the Attorney General's designated representatives regarding all substantive issues affecting the litigation, as set forth in more detail in the SAAG Contract (**Attachment A**).

#### **4. Out of Scope.**

The work does not include regulatory enforcement or claims under State or federal environmental laws not specifically and expressly agreed to by the Attorney General.

## Proposal Contents

Bidders must submit a detailed proposal addressing each section below. Proposals need not be submitted in the table format, but if that format is not used, please re-state the information requested and the section number prior to your response. Attach any necessary supplemental information and appropriately reference it within your proposal.

“You” and “your” means the bidder.

#	Information Requested	Bidder Response
<b>1</b>	<b>Bidder Contact Information</b>	
1.1	Identify the bidder’s contact person for the RFP process. Include name, title, address, email, and phone number.	
1.2	Identify the person authorized to sign a contract resulting from this RFP. Include name, title, address, email, and phone number.	
<b>2</b>	<b>Company Background Information</b>	
2.1	Identify the company’s legal business name, address, phone number, and website.	
2.2	Identify the State your business is organized in.	
2.3	Identify the location (city and state) that would have primary responsibility for this work if awarded a contract.	
2.4	Identify the practice group area, if applicable, proposed to handle the work.	
2.5	Explain any partnerships and strategic relationships you have that would bring significant value to the State.	
2.6	If you intend to use subcontractors to perform the work, disclose: (1) the subcontractor’s legal business name, website, address, phone number, and primary contact person; (2) a description of subcontractor’s organization; (3) a complete description of the services or products it will provide; (4) information concerning subcontractor’s ability to provide the services; (5) whether the bidder has a previous working experience with the subcontractor, and if yes, provide details of that previous relationship.	
2.7	Identify the name and title of the individuals you propose as key personnel. Attach resumes or CVs for each person.	

<b>3</b>	<b>Experience</b>	
<b>3.1</b>	Describe at least 3 relevant experiences supporting your ability to successfully perform the work set forth in the SOW. Include a description of services provided and results obtained. Include contact information for the clients you represented.	<u>Reference 1:</u>  <u>Reference 2:</u>  <u>Reference 3:</u>
<b>3.2</b>	Provide publicly available motions, briefs, and other documents relevant to your experience in providing the legal services sought under this RFP.	
<b>4</b>	<b>Conflict of Interest</b>	
<b>4.1</b>	Provide detailed information regarding any prior, current, or anticipated future relationship with any manufacturer of PFAS or PFAS-containing products that could give rise to potential actual or apparent conflict of interest. Disclose such information for both the bidder and any proposed subcontractors.	
<b>4.2</b>	Disclose any actual, apparent, or potential conflict of interest between the bidder and the State of Michigan.	
<b>4.3</b>	With respect to any information provided in response to the questions above, provide an explanation of why an actual, apparent, or potential conflict of interest would not arise, or the measures that would be taken to avoid such a conflict.	
<b>5</b>	<b>SAAG Contract</b>	
<b>5.1</b>	Bidder must affirm agreement with the terms of the SAAG Contract ( <b>Attachment A</b> ). If you do not agree, you must provide redline edits to the SAAG Contract with your proposal, and include justification for requesting deviation from the terms.	
<b>6</b>	<b>Fee Agreement</b>	
<b>6.1</b>	Bidder must submit a proposed Fee Agreement which: (1) aligns with the SAAG Contract ( <b>Attachment A</b> ) and (2) clearly sets forth how the bidder proposes to address payment in the event of recovery. See also SAAG Contract ( <b>Attachment A</b> ), Section 3, Compensation and Cost Reimbursement.	

# Attachment A—SAAG Contract

## State of Michigan Department of Attorney General

### PFAS Environmental Tort Litigation

DANA NESSEL, Attorney General of the State of Michigan (Attorney General), and the Department of Attorney General (the Department) retain and appoint the **[name of firm]**, to provide legal services through the appointment of the following individuals as Special Assistant Attorneys General (SAAGs):

[list names]

The legal services provided to the State of Michigan will be pursuant to the following terms and conditions in this Contract:

#### 1. **PARTIES/PURPOSE**

1.1 **Parties.** The parties to this Contract are the Department of Attorney General and the [SAAG/firm]. No other attorney may engage in the practice of law on behalf of the State of Michigan under this Contract without the Department's prior approval, a Contract amendment, and a SAAG appointment from the Attorney General.

1.2 **Purpose.** The Department and the [SAAG/firm] agree that the SAAG will provide legal services relative to the PFAS environmental tort litigation. The SAAG is to work only on the PFAS environmental tort litigation and all case resolutions are to be approved in advance by the Department [if necessary, modify to add the state agency that is a party to this contract].

1.3 **Work Product.** The SAAG understands that all work product is subject to review by the Department. The Department reserves the right to deny payment for any work product deemed unacceptable. Delivery of such a deficient work product may also result in Contract termination under paragraph 9 of this Contract.

#### 2. **TERM OF CONTRACT**

The initial term of this Contract is [month/day/year] through [month/day/year]. This Contract may be extended at the option of the Department upon thirty (30) calendar days written notice.

### **3. COMPENSATION AND COST REIMBURSEMENT**

3.1 Compensation and the repayment of costs and disbursements shall be contingent upon a successful recovery of funds being obtained from Defendant(s) in the litigation pursued under the terms of this Contract (whether through settlement or final non-appealable judgment).

3.2 If no recovery is made, the State owes nothing for costs incurred by SAAGs and is not obligated to reimburse the SAAGs for any costs.

3.3 If a recovery is obtained, the costs incurred by SAAG will be deducted prior to the calculation of the fee set forth in the Fee Agreement. The SAAG will be required to submit a monthly statement to the Department of Attorney General setting forth in detail any potentially reimbursable costs incurred with respect to this appointment, together with a running total of costs accumulated since the execution of the Fee Agreement.

### **4. REPRESENTATIONS**

4.1 Qualifications. The SAAG, by signing this Contract, attests that [he/she] is qualified to perform the services specified in this Contract and agrees to faithfully and diligently perform the services consistent with the standard of legal practice in the community.

4.2 Conflict of Interest. Prior to entering into this Contract, the SAAG and the SAAG's law firm must identify and disclose to the Department any matter in which the SAAG or any member of the SAAG's law firm is involved in which is adverse to the State of Michigan. The SAAG represents that [he/she] has conducted a conflicts check prior to entering into this Contract and no conflicts exist with the proposed legal services. The SAAG [or name of the firm and each SAAG] agrees to not undertake representation of a client if the representation of that client is related to the subject matter of this Contract or will be adverse to the State of Michigan, unless the SAAG obtains prior written approval to do so from both the [name of department or agency] and the Department.

With respect to potential conflicts of interest, other lawyers in the SAAG's firm must be advised of the SAAG's representation of [name of department or agency], and that the firm has agreed not to accept, without prior written approval from [name of department or agency] and the Department, any employment from other interests related to the subject matter of this Contract or adverse to the State of Michigan. [insert name of firm] must carefully monitor any significant change in the assignments or clients of the firm in order to avoid any situation which might affect its ability to effectively render legal services to [name of department or agency].

4.3 Services to be Confidential. The SAAG must keep confidential all services and information, including records, reports, and estimates. The SAAG must not divulge any information to any person other than to authorized representatives of the Department and [name of department or agency], except as required by testimony under oath in judicial proceedings, or as otherwise required by law. The SAAG must take all necessary steps to ensure that no member of the firm divulges any information concerning these services. This includes, but is not limited, to information maintained on the SAAG's computer system.

All files and documents containing confidential information must be filed in separate files maintained in the office of [name of firm] with access restricted to each SAAG and needed clerical personnel. All documents prepared on the [name of firm] computer system must be maintained in a separate library with access permitted only to each SAAG and needed clerical personnel.

4.4 Assignments and Subcontracting. The SAAG must not assign or subcontract any of the work or services to be performed under this Contract, including work assigned to other members or employees of the SAAG firm, without the prior written approval of the Department. Any member or employee of the SAAG firm who received prior approval from the Department to perform services under this Contract is bound by the terms and conditions of this Contract.

4.5 Facilities and Personnel. The SAAG has and will continue to have proper facilities and personnel to perform the services and work agreed to be performed.

4.6 Advertisement. The SAAG, during the term of appointment and thereafter, must not advertise [his/her] position as a SAAG to the public. The SAAG designation may be listed on the SAAG's resume or other professional biographical summary, including resumes or summaries that are furnished to professional societies, associations, or organizations. Any such designation by the SAAG must first be submitted to and approved by the Department, after consultation with [name of department or agency].

4.7 Media Contacts. The SAAG may not engage in any on or off the record communication (written or spoken) with any member of the media without advance approval and appropriate vetting by the Director of Communications of the Department of Attorney General.

4.8 Records. As set forth in Paragraph 3.3 of this Contract, the SAAG must submit a monthly statement to the designated representative(s) of the Attorney General, setting forth in detail any potentially reimbursable costs incurred with respect to this appointment, together with a running total of costs accumulated since the execution of the Fee Agreement. These invoices shall be considered confidential and not be subject to discovery in the litigation brought under the

Scope of Work. The records must be kept in accordance with generally accepted accounting practices and sound business practices. The Department and [name of department or agency], or their designees, reserve the right to inspect all records of the SAAG related to this Contract.

4.9 Non-Discrimination. The SAAG, in the performance of this Contract, [and his/her law firm] agree(s) not to discriminate against any employee or applicant for employment, with respect to their 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, physical or mental disability unrelated to the individual's ability to perform the duties of the particular job or position. This covenant is required by the Elliott-Larsen Civil Rights Act, MCL 37.2101 *et seq.*, and the Persons with Disabilities Civil Rights Act, MCL 37.1101 *et seq.*, and any breach of the Act may be regarded as a material breach of the Contract. The SAAG agrees to comply with the provisions of the Federal Civil Rights Act of 1964, 42USC §2000d, in performing the services under this Contract.

4.10 Unfair Labor Practices. The State will not award a contract or subcontract to any employer, or any subcontractor, manufacturer, or supplier of the employer, whose name appears in the current register compiled pursuant to 1980 PA 278, MCL 423.321 *et seq.* The State may void this Contract if after the award of the Contract, the name of the SAAG or [his/her] law firm appears in the register.

4.11 Compliance. The SAAG's activities under this Contract are subject to applicable State and Federal laws and to the Rules of Professional Conduct applicable to members of the Michigan Bar Association. In accordance with MCL 18.1470, DTMB or its designee may audit Contractor to verify compliance with this Contract.

4.12 Independent Contractor. The relationship of the SAAG to the [name of department or agency] in this Contract is that of an independent contractor. No liability or benefits, such as workers compensation rights or liabilities, insurance rights or liabilities, or any other provisions or liabilities, arising out of or related to a contract for hire or employer/employee relationship, must arise, accrue or be implied to either party or either party's agent, subcontractor or employee as a result of the performance of this Contract. The SAAG [and his/her law firm] will be solely and entirely responsible for [his/her/its] acts and the acts of the [SAAG's firm] agents and employees during the performance of this Contract. Notwithstanding the above, the relationship is subject to the requirements of the attorney-client privilege.

## 5. MANAGEMENT OF CASES

5.1 Notifications. The SAAG must direct all notices, correspondence, inquiries, billing statements, pleadings, and documents mentioned in this Contract to the attention of the Department's Environment, Natural Resources, and Agriculture (ENRA) Division. The Division Chief of the ENRA Division is the Contract Manager, unless notice of another designation is received from the Attorney General. The Division Chief may designate an Assistant Attorney General in the Division to oversee the day to day administration of the Contract.

For the Department:

[Division Chief's name], Division Chief  
Michigan Department of Attorney General  
[Division name]  
P.O. Box [Number]  
[City], MI [Zip Code]  
[Office telephone number]  
[Office fax number]

For the SAAG:

[SAAG name]  
[SAAG address]  
[Firm name if applicable]  
[Firm address]  
[SAAG phone number]  
[SAAG fax number]  
[SAAG e-mail address]

5.2 The SAAG must promptly inform the Contract Manager of the following developments as soon as they become known:

A. Favorable actions or events that enable meeting time schedules and/or goals sooner than anticipated.

B. Delays or adverse conditions that materially prevent, or may materially prevent, the meeting of the objectives of the services provided. A statement of any remedial action taken or contemplated by the SAAG must accompany this disclosure.

For every case accepted, the SAAG must:

A. Promptly undertake all efforts, including legal proceedings, as directed by the [insert division name], and must prosecute any case to its conclusion unless directed to the contrary by the [insert division name].

B. Provide copies of all pleadings filed in any court by the SAAG, or by the opposing party, to the [insert division name].

5.3 Motions. Before any dispositive motion is filed, the supporting brief must be submitted to the [insert division name] for review and approval for filing with the court.

5.4 Investigative Support. All claims will be vigorously pursued and prepared for filing. If authorized by the Contract Manager, use of investigative subpoenas must be thorough and aggressive. The [insert division name] may request investigative subpoenas in addition to what the SAAG has filed.

5.5 Discovery Requests. The SAAG must consult with Contract Manager and assist in the preparation of answers to requests for discovery. The SAAG must indicate those requests to which [he/she] intends to object.

5.6 Witness and Exhibit Lists. At least ten (10) calendar days before the day a witness list or an exhibit list is due, the Contract Manager must receive a preliminary witness list or exhibit list for review and recommendation of additional names of witnesses or additional exhibits.

5.7 Mediation. Fifteen (15) calendar days before any mediation, the mediation summary must be submitted to the Contract Manager for review and recommendation. Immediately following mediation, the SAAG must submit a status memorandum indicating the amount of the mediation and a recommendation to accept or reject the mediation.

5.8 Trial Dates. The SAAG must advise the Contract Manager immediately upon receipt of a trial date.

5.9 Settlements. All settlements are subject to approval by the Department. The SAAG must immediately communicate any plea/settlement proposal received along with a recommendation to accept, reject, or offer a counter-proposal to any offer received to the Department's Contract Manager. "Settlement" includes, but is not limited to, the voluntary remand of a case to the trial court or by way of stipulation or motion.

5.10 Experts. The SAAG must provide advance notice to the Contract Manager prior to the selection of experts or consultants, and the Attorney General shall have the right to reject proposed experts or consultants. The SAAG shall cooperate with the Department of Attorney General and make all records and

documents relevant to the tasks as described in the Scope of Work available to the Department through the Contract manager or his or her designee in a timely fashion.

5.11 Money. A SAAG must only accept payment by an opposing party under the following terms:

A. The SAAG must immediately inform the Contract Manager upon receipt of any funds by the SAAG as payment on a case, whether pursuant to court order, settlement agreement, or other terms. Following the deduction of reimbursable costs, calculation of the fee under the Fee Agreement, and approval of the calculated fee by the Department, the SAAG shall deduct the Department-approved eligible costs, the Department-approved fee, and shall make payment of the remainder of the recovery to the State of Michigan as follows:

- i. payment must be made by check, certified check, cashier's check, or money order;
- ii. payable to the "State of Michigan" or as otherwise specified by the Contract Manager;
- iii. include the tax identification number/social security number of the payer; and
- iv. include the account to which the remittance is to be applied.

5.12 File Closing. The SAAG must advise the Contract Manager, in writing, of the reason for closing a file (e.g., whereabouts unknown, no assets, bankruptcy, payment in full, or settlement).

## **6. INDEMNIFICATION**

The SAAG agrees to hold harmless the State of Michigan, its elected officials, officers, agencies, boards, and employees against and from any and all liabilities, damages, penalties, claims, costs, charges, and expenses (including, without limitation, fees and expenses of attorneys, expert witnesses and other consultants) which may be imposed upon, incurred by, or asserted against the State of Michigan for either of the following reasons:

A. Any malpractice, negligent or tortious act or omission attributable, in whole or in part, to the SAAG or any of [his/her/its] employees, consultants, subcontractors, assigns, agents, or any entities associated, affiliated, or subsidiary to the SAAG now existing, or later

created, their agents and employees for whose acts any of them might be liable.

B. The SAAG's failure to perform [his/her] obligation either expressed or implied by this Contract.

## 7. INSURANCE

7.1 Errors and Omissions. The SAAG or [his/her] law firm must maintain professional liability insurance sufficient in amount to provide coverage for any errors or omissions arising out of the performance of any of the professional services rendered pursuant to this Contract.

7.2 Certificates of Insurance. Certificates evidencing the purchase of insurance must be furnished to the Department's [insert division name], upon request. All certificates are to be prepared and submitted by the insurance provider and must contain a provision indicating that the coverage(s) afforded under the policies will not be cancelled, materially changed, or not renewed without thirty (30) calendar days prior written notice, except for ten (10) calendar days for non-payment of premium, and any such notice of cancellation, material change, or non-renewal must be promptly forwarded to the Department upon receipt.

7.3 Additional Insurance. If, during the term of this Contract changed conditions should, in the judgment of the Department, render inadequate the insurance limits the SAAG will furnish, on demand, proof of additional coverage as may be required. All insurance required under this Contract must be acquired at the expense of the SAAG or [his/her] law firm, under valid and enforceable policies, issued by insurers of recognized responsibility. The Department reserves the right to reject as unacceptable any insurer.

## 8. APPEALS

The SAAG agrees that no appeal of any order(s) of the Michigan Court of Claims, any Michigan Circuit Court, the Michigan Court of Appeals, or any United States District Court will be taken to the Michigan Court of Appeals, the Michigan Supreme Court, or any United States Circuit Court of Appeals, without prior written approval of the Michigan Solicitor General, Department of Attorney General. Further, the SAAG agrees that no petition for certiorari will be filed in the United States Supreme Court without prior written permission of the Michigan Solicitor General, Department of Attorney General.

## **9. TERMINATION OF CONTRACT AND APPOINTMENT**

9.1 SAAG Termination. The SAAG may terminate this Contract upon sixty (60) calendar day's prior written notice (Notice of Termination). Upon delivery of such notice, the SAAG must continue all work and services until otherwise directed by the [insert division name]. The SAAG will be paid only as set forth in the contingency fee arrangement specified under the Fee Agreement.

9.2 Attorney General Termination. The Department may terminate this Contract and SAAG appointment, at any time and without cause, by issuing a Notice of Termination to the SAAG.

9.3 Termination Process and Work Product. Upon receipt of a Notice of Termination, and except as otherwise directed by the Attorney General or her designee, the SAAG must:

- A. stop work under the Contract on the date and to the extent specified in the Notice of Termination;
- B. incur no costs beyond the date specified by the Department;
- C. on the date the termination is effective, submit to the Contract Manager all records, reports, documents, and pleadings as the Department specifies and carry out such directives as the Department may issue concerning the safeguarding and disposition of files and property; and
- D. submit within thirty (30) calendar days a closing memorandum and final billing.

Upon termination of this Contract, all finished or unfinished original (or copies when originals are unavailable) documents, briefs, files, notes, or other materials (the "Work Product") prepared by the SAAG under this Contract, must become the exclusive property of the Department, free from any claims on the part of the SAAG except as herein specifically provided. The Work Product must promptly be delivered to the [insert division name]. The SAAG acknowledges that any intentional failure or delay on its part to deliver the Work Product to the Department will cause irreparable injury to the State of Michigan not adequately compensable in damages and for which the State of Michigan has no adequate remedy at law. The SAAG accordingly agrees that the Department may, in such event, seek injunctive relief in a court of competent jurisdiction. The Department must have full and unrestricted use of the Work Product for the purpose of completing the services. In addition, each party will assist the other party in the orderly termination of the Contract.

The rights and remedies of either party provided by the Contract are in addition to any other rights and remedies provided by law or equity.

## **10. GENERAL PROVISIONS**

10.1 Governing Law and Jurisdiction. This Contract is subject to and will be constructed according to the laws of the State of Michigan, and no action must be commenced against the Department or the Attorney General, his designee, agents or employees [add client agency, if applicable] for any matter whatsoever arising out of the Contract, in any courts other than the Michigan Court of Claims.

10.2 No Waiver. A party's failure to insist on the strict performance of this Contract does not constitute waiver of any breach of the Contract.

10.3 Additional SAAGs. It is understood that during the term of this Contract, the Department may contract with other SAAGs providing the same or similar services.

10.4 Other Debts. The SAAG agrees that [he/she] is not, and will not become, in arrears on any contract, debt, or other obligation to the State of Michigan, including taxes.

10.5 Invalidity. If any provision of this Contract or its application to any persons or circumstances to any extent is judicially determined to be invalid or unenforceable, the remainder of this Contract will not be affected, and each provision of the Contract will be valid and enforceable to the fullest extent permitted by law.

10.6 Headings. Contract section headings are for convenience only and must not be used to interpret the scope or intent of this Contract.

10.7 Entire Agreement. This Contract represents the entire agreement between the parties and supersedes all proposals or other prior agreements, oral or written, and all other communications between the parties.

10.8 Amendment. No Contract amendment will be effective and binding upon the parties unless it expressly makes reference to this Contract, is in writing, and is signed by duly authorized representatives of all parties and all the requisite State approvals are obtained.

10.9 Issuing Office. This Contract is issued by the Department, and is the only state office authorized to change the terms and conditions of this Contract.

10.10 Counterparts. This Contract may be signed in counterparts, each of which has the force of an original, and all of which constitute one document.

Dated: \_\_\_\_\_

\_\_\_\_\_  
[Attorney's Name]

Dated: \_\_\_\_\_

\_\_\_\_\_  
Dana Nessel, Attorney General  
or her Designee  
Michigan Department of Attorney  
General