



STATE OF MICHIGAN PROCUREMENT

Department of Insurance and Financial Services

530 W. Allegan Street, Lansing MI 48933

CONTRACT CHANGE NOTICE

Change Notice Number **2**

to

Contract Number **230000000491**

CONTRACTOR	Michigan Peer Review Organization dba iMPROve Health	STATE	Program Manager	Joseph Stoddard	DIFS
	625 Kenmoor Ave SE, Suite 350 PMB 47995			517-730-8761	
	Grand Rapids MI 49546			Stoddardj6@michigan.gov	
	Leland Babitch		Contract Administrator	Darcie Payne	DIFS
	248-465-7400			517-930-9402	
	lbabitch@mpro.org			Payned3@michigan.gov	
	CV0029952				

CONTRACT SUMMARY						
DESCRIPTION: Independent Review Organization (IRO) for Auto Insurance No-Fault Utilization Review Appeals						
INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW			
March 1, 2023	February 28, 2026	3 additional 1-year periods	February 28, 2026			
PAYMENT TERMS		DELIVERY TIMEFRAME				
NET 45 days						
ALTERNATE PAYMENT OPTIONS			EXTENDED PURCHASING			
☐ P-card ☐ Payment Request (PRC) ☐ Other			☐ Yes ☐ No			
MINIMUM DELIVERY REQUIREMENTS						
DESCRIPTION OF CHANGE NOTICE						
OPTION	LENGTH OF OPTION	EXTENSION	LENGTH OF EXTENSION	REVISED EXP. DATE		
☒	One year	☒	One year	February 28, 2027		
CURRENT VALUE		VALUE OF CHANGE NOTICE	ESTIMATED AGGREGATE CONTRACT VALUE			
150,000.00		N/A	150,000.00			
Please note the Program Manager or Contract Administrator may have changed, and any changes made are reflected above.						
DESCRIPTION: This Change Notice is being issued to update the following:						
•The State's Program Manager has been changed to Joseph Stoddard. See contact information above.						
•Utilize the first one-year extension.						
All other terms, conditions, specifications, and pricing remain the same per contractor and agency agreement.						

FOR THE CONTRACTOR:

Michigan Peer Review Organization dba iMPROve Health
Company Name

Authorized Agent Signature

Leland Babitch
Authorized Agent (Print or Type)

Date

FOR THE STATE:

Signature

Megan Ramos, CFO & Budget Director
Name & Title

DIFS
Agency

Date



STATE OF MICHIGAN PROCUREMENT

Department of Insurance and Financial Services

530 W. Allegan St, Lansing, MI 48933

CONTRACT CHANGE NOTICE

Change Notice Number 1
to
Contract Number 230000000491

Michigan Peer Review Organization dba iMPROve Health
625 Kenmoor Ave SE, Suite 350, PMB 47995
Grand Rapids MI 49546
Leland Babitch
248-465-7400
lbabitch@mpro.org
CV0029952

STATE	Program Manager	Jeffrey Hayden	DIFS
		517-230-2393	
		haydenj3@michigan.gov	
	Darcie	Darcie Payne	DIFS
		517-930-9402	
		payned3@michigan.gov	

CONTRACT SUMMARY				
DESCRIPTION: Independent Review Organization (IRO) for Auto Insurance No-Fault Utilization Review Appeals				
INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW	
March 1, 2023	February 28, 2026	3 additional 1-year periods	February 28, 2026	
PAYMENT TERMS		DELIVERY TIMEFRAME		
NET 45 days				
ALTERNATE PAYMENT OPTIONS			EXTENDED PURCHASING	
☐ P-card ☐ Payment Request (PRC) ☐ Other			☐ Yes ☐ No	
MINIMUM DELIVERY REQUIREMENTS				
DESCRIPTION OF CHANGE NOTICE				
OPTION	LENGTH OF OPTION	EXTENSION	LENGTH OF EXTENSION	REVISED EXP. DATE
☐		☐		
CURRENT VALUE		VALUE OF CHANGE NOTICE	ESTIMATED AGGREGATE CONTRACT VALUE	
150,000.00		N/A	\$150,000.00	
This Change Notice is being issued to update the following:				
<ul style="list-style-type: none"> The State's Program Manager has been changed to Jeffrey Hayden. The State's Contract Administrator has been changed to Darcie Payne. See contact information above. 				
All other terms, conditions, specifications, and pricing remain the same per contractor and agency agreement.				

FOR THE CONTRACTOR:

Michigan Peer Review Organization dba iMPROve Health
Company Name

Authorized Agent Signature

Leland Babitch
Authorized Agent (Print or Type)

Date

FOR THE STATE:

Signature

Megan Ramos, CFO & Budget Director
Name & Title

DIFS
Agency

Date



STATE OF MICHIGAN PROCUREMENT

Department of Insurance and Financial Services

530 W. Allegan Street, Lansing, MI 48933

NOTICE OF CONTRACT

NOTICE OF CONTRACT NO. **230000000491**

between

THE STATE OF MICHIGAN

and

CONTRACTOR	Michigan Peer Review Organization dba iMPROve Health
	625 Kenmoor Ave SE, Suite 350, PMB 47995
	Grand Rapids, MI 49546
	Leland Babitch
	248-465-7400
	lbabitch@mpro.org
	CV0029952

STATE	Program Manager	Sarah Wohlford	DIFS
		517-284-8743	
		wohlford@michigan.gov	
	Contract Administrator	Drew Simon	DIFS
		517-930-7725	
		Simond13@michigan.gov	

CONTRACT SUMMARY			
DESCRIPTION: Independent Review Organization (IRO) for Auto Insurance No-Fault Utilization Review			
INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW
March 1, 2023	February 28, 2026	3 additional 1-year periods	February 28, 2026
PAYMENT TERMS		DELIVERY TIMEFRAME	
Net 45			
ALTERNATE PAYMENT OPTIONS			EXTENDED PURCHASING
☐ P-card ☐ Payment Request (PRC) ☐ Other			☐ Yes ☒ No
MINIMUM DELIVERY REQUIREMENTS			
N/A			
MISCELLANEOUS INFORMATION			
This Contract Agreement is awarded on the basis of our inquiry Request for Proposal No. 230000000571, Independent Review Organization (IRO) for Auto Insurance No-Fault Utilization Review Appeals and related negotiations. Orders for the delivery will be issued directly by DIFS through the issuance of a Delivery Order (DO).			
ESTIMATED CONTRACT VALUE AT TIME OF EXECUTION			\$150,000.00

FOR THE CONTRACTOR:

Michigan Peer Review Organization dba iMPROve Health

Company Name

Authorized Agent Signature

Leland Babitch

Authorized Agent (Print or Type)

Date

FOR THE STATE:

Signature

Penny A. Wright, CFO & Budget Director
Name & Title

Department of Insurance and Financial Services

Agency

Date

STANDARD CONTRACT TERMS

This STANDARD CONTRACT (“**Contract**”) is agreed to between the State of Michigan (the “**State**”) and Michigan Peer Review Organization dba iMPROve Health (“**Contractor**”), a Michigan 501(c)(3) company. This Contract is effective on March 1, 2023 (“**Effective Date**”), and unless terminated, will expire on February 28, 2026 (the “**Term**”).

This Contract may be renewed for up to 3 additional one-year period(s). Renewal is at the sole discretion of the State and will automatically extend the Term of this Contract. The State will document its exercise of renewal options via Contract Change Notice.

The parties agree as follows:

- 1. Duties of Contractor.** Contractor must perform the services and provide the deliverables (the “**Contract Activities**”) described in a Statement of Work, the initial Statement of Work is attached as Schedule A – Statement of Work. 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 unless otherwise specified in a Statement of Work.

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) 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; (i) comply with all State physical and IT security policies and standards which will be made available upon request; and (j) 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:
See Contract Administrator information shown below.	Leland A. Babitch 625 Kenmoor Ave SE, Suite 350, PMB 47995 Grand Rapids, MI 49546-2395 lbabitch@improve.health 248-465-7400

3. **Contract Administrator.** The Contract Administrator, or the individual duly authorized for each party, is the only person authorized to modify any terms of this Contract, and approve and execute any change under this Contract (each a “**Contract Administrator**”):

State:	Contractor:
Drew Simon 530 W. Allegan Street, 7th Floor Lansing, MI 48933 SimonD13@michigan.gov 517-930-7725	Leland A. Babitch 625 Kenmoor Ave SE, Suite 350, PMB 47995 Grand Rapids, MI 49546-2395 lbabitch@improve.health 248-465-7400

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

State:	Contractor:
Sarah Wohlford 530 W. Allegan Lansing, MI, 48933 wohlfor@s@michigan.gov 517-284-8743	Leslie Howard 625 Kenmoor Ave SE, Suite 350, PMB 47995 Grand Rapids, MI 49546-2395 lhoward@improve.health 248-465-7373

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 a Statement of Work) if, in the opinion of the State, it will ensure performance of the Contract.
6. **Insurance Requirements.** Contractor, at its sole expense, must maintain the insurance coverage identified below. All required insurance must: (a) protect the State from claims that may arise out of, are alleged to arise out of, or otherwise 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 a company with an A.M. Best rating of "A-" or better, and a financial size of VII or better.

TABLE 6.1

Required Limits	Additional Requirements
Commercial General Liability Insurance	
Minimum Limits: \$1,000,000 Each Occurrence \$1,000,000 Personal & Advertising Injury \$2,000,000 Products/Completed Operations \$2,000,000 General Aggregate	Contractor must have their policy 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 20 10 12 19 and CG 20 37 12 19.
Automobile Liability Insurance	
If a motor vehicle is used in relation to the Contractor's performance, the Contractor must have vehicle liability insurance on the motor vehicle for bodily injury and property damage as required by law.	
Workers' Compensation Insurance	
Minimum Limits: Coverage according to applicable laws governing work activities.	Waiver of subrogation, except where waiver is prohibited by law.
Employers Liability Insurance	
Minimum Limits: \$500,000 Each Accident \$500,000 Each Employee by Disease \$500,000 Aggregate Disease	
Privacy and Security Liability (Cyber Liability) Insurance	
Minimum Limits: \$1,000,000 Each Occurrence \$1,000,000 Annual Aggregate	Contractor must have their policy cover information security and privacy liability, privacy notification costs, regulatory defense and penalties, and website media content liability.
Professional Liability (Errors and Omissions) Insurance	

Minimum Limits: \$2,000,000 Each Occurrence \$3,000,000 Annual Aggregate	
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If any of the required policies provide claims-made coverage, the Contractor must: (a) provide coverage with a retroactive date before the Effective Date of the Contract or the beginning of Contract Activities; (b) maintain coverage and provide evidence of coverage for at least three (3) years after completion of the Contract Activities; and (c) if coverage is cancelled or not renewed, and not replaced with another claims-made policy form with a retroactive date prior to the Contract Effective Date, Contractor must purchase extended reporting coverage for a minimum of three (3) years after completion of work.

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

This Section is not intended to and is not to be construed in any manner as waiving, restricting or limiting the liability of either party for any obligations under this Contract (including any provisions hereof requiring Contractor to indemnify, defend and hold harmless the State).

7. Reserved

8. Reserved

9. Relationship of the Parties. The relationship between the parties is that of independent contractors. 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. Neither party has authority to contract for nor bind the other party in any manner whatsoever.

10. Intellectual Property Rights. If a Statement of Work requires Contractor to create any intellectual property, Contractor hereby acknowledges that the State is and will be the sole and exclusive owner of all right, title, and interest in the Contract Activities and all associated intellectual property rights, if any. Such Contract Activities are works made for hire as defined in Section 101 of the Copyright Act of 1976. To the extent any Contract Activities and related intellectual property do not qualify as works made for hire under the Copyright Act, Contractor will, and hereby does, immediately on its creation, assign, transfer and otherwise convey to the State, irrevocably and in

perpetuity, throughout the universe, all right, title and interest in and to the Contract Activities, including all intellectual property rights therein.

- 11. 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.
- 12. Staffing.** The State's Contract Administrator may require Contractor to remove or reassign personnel providing services by providing a notice to Contractor.
- 13. Background Checks.** Pursuant to Michigan law, all agencies subject to IRS Pub. 1075 are required to ask the Michigan State Police to perform fingerprint background checks on all employees, including Contractor and Subcontractor employees, who may have access to any database of information maintained by the federal government that contains confidential or personal information, including, but not limited to, federal tax information. Further, pursuant to Michigan law, any agency described above is prohibited from providing Contractors or Subcontractors with the result of such background check. For more information, please see Michigan Public Act 427 of 2018. Upon request, or as may be specified in a Statement of Work, 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.
- 14. 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 and provide all necessary documentation and signatures.
- 15. Change of Control.** Contractor will notify the State, within 30 days of any public announcement or otherwise once legally permitted to do so, 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.

- 16. Ordering.** Contractor is not authorized to begin performance until receipt of authorization as identified in a Statement of Work.
- 17. 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 a Statement of Work. 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 24, 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.

18. Reserved

19. Reserved

20. Reserved

- 21. Invoices and 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 provided as specified in a Statement of Work. Invoices must include an itemized statement of all charges. The State is exempt from State sales tax for direct purchases and may be exempt from federal excise tax, if Services purchased under this Agreement are for

the State's exclusive use. Notwithstanding the foregoing, all fees are exclusive of taxes, and Contractor is responsible for all sales, use and excise taxes, and any other similar taxes, duties and charges of any kind imposed by any federal, state, or local governmental entity on any amounts payable by the State under this Contract.

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

The State will only disburse payments under this Contract through Electronic Funds Transfer (EFT). Contractor must register with the State at <http://www.michigan.gov/SIGMAVSS> 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.

Excluding federal government charges and terms, Contractor warrants and agrees that each of the fees, economic or product terms or warranties granted pursuant to this Contract are comparable to or better than the equivalent fees, economic or product term or warranty being offered to any commercial or government customer (including any public educational institution within the State of Michigan) of Contractor. If Contractor enters into any arrangements with another customer of Contractor to provide the products or services, available under this Contract, under more favorable prices, as the prices may be indicated on Contractor's current U.S. and International price list or comparable document, then this Contract will be deemed amended as of the date of such other arrangements to incorporate those more favorable prices, and Contractor will immediately notify the State of such fee and formally memorialize the new pricing in a change notice.

- 22. Liquidated Damages.** Liquidated damages, if applicable, will be assessed as described in a Statement of Work. The parties understand and agree that any liquidated damages (which includes but is not limited to applicable credits) set forth in this Contract are reasonable estimates of the State's damages in accordance with applicable law. The parties acknowledge and agree that Contractor could incur liquidated damages for more than 1 event. The assessment of liquidated damages will not constitute a waiver or release of any other remedy the State may have under this Contract for Contractor's breach of this Contract, including without limitation, the State's right to terminate this Contract for cause under Section 24 and the State will be entitled in its discretion to recover actual damages caused by Contractor's failure to perform its obligations under this Contract. However, the State will reduce such

actual damages by the amounts of liquidated damages received for the same events causing the actual damages. Amounts due the State as liquidated damages may be set off against any fees payable to Contractor under this Contract, or the State may bill Contractor as a separate item and Contractor will promptly make payments on such bills.

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

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

(b) If the State terminates this Contract under this Section, the State will issue a termination notice specifying whether Contractor must: (i) cease performance immediately. Contractor must submit all invoices for Contract Activities accepted by the State within 30 days of the date of termination. Failure to submit an invoice within that timeframe will constitute a waiver by Contractor for any amounts due to Contractor for Contract Activities accepted by the State under this Contract or (ii) 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 25, 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. Contractor must promptly reimburse to the State any fees prepaid by the State prorated to the date of such termination, including any prepaid fees. The Contractor must pay all reasonable costs incurred by the State in terminating this Contract for cause, including administrative costs, attorneys' fees, court costs, transition costs, and any costs the State incurs to procure the Contract Activities from other sources.

- 25. Termination for Convenience.** The State may immediately terminate this Contract in whole or in part without penalty and for any reason or no 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. Contractor must submit all invoices for Contract Activities accepted by the State within 30 days of the date of termination. Failure to submit an invoice within that timeframe will constitute a waiver by Contractor for any amounts due Contractor for Contract Activities accepted by the State under this Contract, or (b) continue to perform the Contract Activities in accordance with Section 26, 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 to the extent the funds are available.
- 26. 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) 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 (d) 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.
- 27. Return of State Property.** Upon termination or expiration of this Contract for any reason, Contractor must take 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 the Contractor by any entity, agent, vendor, or employee of the State.
- 28. 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 infringement, misappropriation, or other violation of any intellectual property right or other right of any third party; (c) 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 (d) 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, at its own cost and expense, if the State deems necessary. Contractor will not, without the State's prior 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.

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

The State is constitutionally prohibited from indemnifying Contractor or any third parties.

29. **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.
30. **Limitation of Liability and Disclaimer of Damages.** **IN NO EVENT WILL THE STATE'S AGGREGATE LIABILITY TO CONTRACTOR UNDER THIS CONTRACT, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY OR BY STATUTE OR OTHERWISE, FOR ANY CLAIM RELATED TO OR ARISING UNDER THIS CONTRACT, EXCEED THE MAXIMUM AMOUNT OF FEES PAYABLE UNDER THIS CONTRACT.** The State is not liable for consequential, incidental, indirect, or special damages, regardless of the nature of the action.
31. **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 (3) any complaint filed in a legal or administrative proceeding alleging the Contractor or its subcontractors discriminated against its employees, subcontractors, vendors, or suppliers during the term of this Contract; or (e) a Proceeding involving any license that Contractor is required to possess in order to perform under this Contract.

32. Reserved

33. 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, user data, and any other 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) protected 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.
- 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; (c) keep and maintain State Data in the continental United States and (d) not use, sell, rent, transfer, distribute, commercially exploit, 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. Contractor's misuse of State Data may violate state or federal laws, including but not limited to MCL 752.795.

- c. Extraction of State Data.** Contractor must, within 5 business days of the State's request, provide the State, without charge and without any conditions or contingencies whatsoever (including but not limited to the payment of any fees due to Contractor), an extract of the State Data in the format specified by the State.
- d. Backup and Recovery of State Data.** Unless otherwise specified in a Statement of Work, Contractor is responsible for maintaining a backup of State Data and for an orderly and timely recovery of such data. Unless otherwise described in a Statement of Work, Contractor must maintain a contemporaneous backup of State Data that can be recovered within 2 hours at any point in time.
- e. Loss or Compromise of Data.** In the event of any act, error or omission, negligence, misconduct, or breach on the part of Contractor 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 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) with approval and assistance from the State, 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 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) pay for any costs associated with the occurrence, including but not limited to any costs incurred by the State in investigating and resolving the occurrence, including reasonable attorney's fees associated with such investigation and resolution; (g) 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 incidental expenses, which may be suffered by, accrued against, charged to, or recoverable from the State in connection with the occurrence; (h) be responsible for recreating lost State Data in the manner and on the schedule set by the State without charge to the State; and (i) 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, not be tangentially used for any solicitation purposes,

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. The State will have the option to review and approve any notification sent to affected individuals prior to its delivery. Notification to any other party, including but not limited to public media outlets, must be reviewed and approved by the State in writing prior to its dissemination. The parties agree that any damages relating to a breach of this **Section 33** are to be considered direct damages and not consequential damages.

- f. **State's Governance, Risk and Compliance (GRC) platform.** Contractor is required to assist the State with its security accreditation process through the development, completion and ongoing updating of a system security plan using the State's automated GRC platform and implement any required safeguards or remediate any security vulnerabilities as identified by the results of the security accreditation process.

34. 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.

- 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; or, (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 or is: (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 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 Confidential Information is not feasible, such party must destroy the Confidential Information and must certify the same in writing within 5 calendar days from the date of termination to the other party. However, the State's legal ability to destroy Contractor data may be restricted by its retention and disposal schedule, in which case Contractor's Confidential Information will be destroyed after the retention period expires.

35. 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.

36. Reserved

37. Reserved

- 38. **Records Maintenance, Inspection, Examination, and Audit.** Pursuant to MCL 18.1470, 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 records related to the Contract through the term of the Contract and for 4 years after the latter of termination, expiration, or final payment under this Contract or any extension ("**Audit Period**"). If an audit, litigation, or other

action involving the records is initiated before the end of the Audit Period, Contractor must retain the records until all issues are resolved.

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

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

- 39. Representations and Warranties.** 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; (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; and that (i) Contractor is neither currently engaged in nor will engage in the boycott of a person based in or doing business with a strategic partner as described in 22 USC 8601 to 8606. A breach of this Section is considered a material breach of this Contract, which entitles the State to terminate this Contract under Section 24, Termination for Cause.
- 40. 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.

- 41. Compliance with Laws.** Contractor must comply with all federal, state and local laws, rules and regulations.
- 42. Reserved**
- 43. Reserved**
- 44. Nondiscrimination.** Under the Elliott-Larsen Civil Rights Act, 1976 PA 453, MCL 37.2101, *et seq.*, the Persons with Disabilities Civil Rights Act, 1976 PA 220, MCL 37.1101, *et seq.*, and [Executive Directive 2019-09](#). 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 (as defined in Executive Directive 2019-09), height, weight, marital status, partisan considerations, any mental or physical disability, or genetic information that is unrelated to the person's ability to perform the duties of a particular job or position. Breach of this covenant is a material breach of this Contract.
- 45. Unfair Labor Practice.** Under MCL 423.324, the State may void any Contract with a Contractor or subcontractor who appears on the Unfair Labor Practice register compiled under MCL 423.322.
- 46. 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 the Michigan Court of Claims. Complaints against the State must be initiated in Ingham County, Michigan. Contractor waives any objections, such as lack of personal jurisdiction or *forum non conveniens*. Contractor must appoint an agent in Michigan to receive service of process.
- 47. Non-Exclusivity.** Nothing contained in this Contract is intended nor is to be construed as creating any requirements contract with Contractor, nor does it provide Contractor with a right of first refusal for any future work. This Contract does not restrict the State or its agencies from acquiring similar, equal, or like Contract Activities from other sources.
- 48. 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.
- 49. 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.

- 50. 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 the prior written approval of the State, and then only in accordance with the explicit written instructions of the State.
- 51. Schedules.** All Schedules and Exhibits that are referenced herein and attached hereto are hereby incorporated by reference. The following Schedules are attached hereto and incorporated herein:

Document Title	Document Description
Schedule A	Statement of Work
Schedule B	Pricing
[NOTE: Additional schedules and/or Exhibits to be included once the contract is finalized.]	

- 52. Entire Agreement and Order of Precedence.** This Contract, which includes Statement of Work, and schedules and exhibits, is the entire agreement of the parties related to the Contract Activities. This Contract supersedes and replaces all previous understandings and agreements between the parties for the Contract Activities. If there is a conflict between documents, the order of precedence is: (a) first, this Contract, excluding its schedules, exhibits, and Statement of Work; (b) second, Statement of Work as of the Effective Date; and (c) third, schedules expressly incorporated into this Contract as of the Effective Date. NO TERMS ON CONTRACTOR'S INVOICES, ORDERING DOCUMENTS, WEBSITE, BROWSE-WRAP, SHRINK-WRAP, CLICK-WRAP, CLICK-THROUGH OR OTHER NON-NEGOTIATED TERMS AND CONDITIONS PROVIDED WITH ANY OF THE CONTRACT ACTIVITIES, OR DOCUMENTATION HEREUNDER, EVEN IF ATTACHED TO THE STATE'S DELIVERY OR PURCHASE ORDER, WILL CONSTITUTE A PART OR AMENDMENT OF THIS CONTRACT OR IS BINDING ON THE STATE OR ANY AUTHORIZED USER FOR ANY PURPOSE. ALL SUCH OTHER TERMS AND CONDITIONS HAVE NO FORCE AND EFFECT AND ARE DEEMED REJECTED BY THE STATE AND THE AUTHORIZED USER, EVEN IF

ACCESS TO OR USE OF THE CONTRACT ACTIVITIES REQUIRES AFFIRMATIVE ACCEPTANCE OF SUCH TERMS AND CONDITIONS.

- 53. 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.
- 54. Waiver.** Failure to enforce any provision of this Contract will not constitute a waiver.
- 55. Survival.** Any right, obligation or condition that, by its express terms or nature and context is intended to survive, will survive the termination or expiration of this Contract; such rights, obligations, or conditions include, but are not limited to, those related to transition responsibilities; indemnification; disclaimer of damages and limitations of liability; State Data; non-disclosure of Confidential Information; representations and warranties; insurance and bankruptcy.
- 56. Contract Modification.** This Contract may not be amended except by signed agreement between the parties (a "**Contract Change Notice**"). Notwithstanding the foregoing, no subsequent Statement of Work or Contract Change Notice executed after the Effective Date will be construed to amend this Contract unless it specifically states its intent to do so and cites the section or sections amended.

Michigan Peer Review Organization
dba IMPROve Health

SCHEDULE A – STATEMENT OF WORK CONTRACT ACTIVITIES

Contract No. 230000000491

Independent Review Organization for Auto Insurance No-Fault Utilization Review Appeals

This schedule identifies the anticipated requirements of any Contract resulting from this RFP. The term “Contractor” in this document refers to a bidder responding to this RFP, as well as the Contractor who is awarded the contract. The term “bidder” is used to identify where specific responses to the RFP are required.

The Contractor must respond to each requirement or question and explain how it will fulfill each requirement. Attach any supplemental information and appropriately reference within your response.

IMPORTANT NOTE TO CONTRACTORS/BIDDERS: There are specific requirements for which acceptance must be simply acknowledged through a checkbox(es), and others that require further explanation. Click one checkbox and complete the entries as identified.

BACKGROUND

This contract is one in a series of prequalified contracts to provide independent medical and/or cost review services by an Independent Review Organization (IRO) for the Department of Insurance and Financial Services (DIFS) under MCL 500.3157a and MCL 500.3157

Under MCL 500.3157a, DIFS is charged with reviewing two types of provider appeals: those based on determinations of overutilization or inappropriate treatment (“medical cases”); and those based on determinations of inappropriate cost of treatment (“cost cases”). Bidders must indicate whether they can perform both types of reviews, or only one type of review.

The initial Request for Proposal (RFP) will establish a series of prequalified IROs to review the medical records, and other information provided by health care providers and auto insurers, to make a recommendation to the Director on whether the auto insurer’s determination regarding the medical appropriateness or cost of treatment should be upheld or reversed. Prequalified IROs will then be assigned reviews on a rotation basis, unless one of the following exceptions apply:

1. There is a conflict of interest as described in the Requirements section, 1.1 (4) and (5), of this Statement of Work.

2. The IRO is not available to perform the review.
3. The IRO is not qualified or declines to review certain case types (e.g., cost cases).
4. The IRO does not have a reviewer in the requested specialty or subspecialty to perform the review.
5. The IRO cannot complete the review in the timeframe required by DIFS.

SCOPE

The Auto Insurance No-Fault Utilization Review provider appeals program requires medical expertise to review medical case records and, in some instances, to review the appropriateness of the cost of medical treatment. The service is conducted by an Independent Review Organization (IRO) approved by the Director of the Department of Insurance and Financial Services (DIFS). The IROs review the medical records, and other information provided by the health care provider and insurance company, to make a recommendation to the Director on whether the provider overutilized or otherwise rendered or ordered inappropriate treatment, training, products, services, and accommodations, or that the cost of the treatment, training, products, services, and accommodations was inappropriate under chapter 31 of the Insurance Code, MCL 500.3101 to 500.3179, and rules promulgated thereunder. This program is mandated by MCL 500.3157a; and is operationalized according to the administrative rules, MAC R 500.61 through 500.69. In performing the service, the IRO will review medical records and other information provided by the health care provider and auto insurance company to make a recommendation to the Director regarding: 1) whether the provider overutilized or otherwise rendered or ordered inappropriate treatment, training, products, services, and accommodations (“medical cases”); or 2) whether the cost of the treatment, training, products, services, and accommodations was inappropriate under chapter 31 of the Insurance Code, MCL 500.3101 to 500.3179 and administrative rules (“cost cases”). In reviewing medical cases, the IRO will apply “medically accepted standards,” which the administrative rules define as “the most appropriate practice guidelines for the treatment, training, products, services and accommodations provided to an injured person. These practice guidelines may include generally accepted practice guidelines, evidence-based practice guidelines, or any other practice guidelines developed by the federal government or national or professional medical societies, boards, and associations.” MAC R 500.61(i). Whether a cost is “inappropriate” will be determined with reference to, as applicable, MCL 500.3157, MCL 500.3107(1)(a), and administrative rules.

1. Requirements

1.1. Minimum Standards

- (1) To be approved to provide independent review services, an independent review organization must do all of the following:
 - a. Have and maintain written policies and procedures that govern all aspects of the review process and that include, at a minimum, a quality assurance mechanism in place that does all the following:

- i. Ensures that reviews are conducted within the specified time frames and required notices are provided in a timely manner.
- ii. Ensures the selection of qualified and impartial clinical peer reviewers to conduct reviews on behalf of the independent review organization and suitable matching of reviewers to specific cases.
- iii. Ensures the confidentiality of medical and treatment records and clinical review criteria.
- iv. Ensures that any person employed by or under contract with the independent review organization adheres to the requirements of this act.

b. Be accredited by a nationally recognized private accrediting organization.

IMPROve Health has been fully accredited by URAC as an Independent Review Organization: Comprehensive Review since 2002. Our current accreditation extends through November 2025. See Attachment A for a copy of our certificate.

- (2) A clinical peer reviewer assigned by an independent review organization to conduct reviews must be a physician or other appropriate health care professional who meets all of the following minimum qualifications:
- a. Is an expert in the treatment of the injured person's condition that is the subject of the review.
 - b. Is knowledgeable about the recommended service or treatment because he or she devoted in the immediately preceding year a majority of his or her time in an active clinical practice within the specialty most relevant to the subject of the review.
 - c. Holds a non-restricted license in a state of the United States and, for physicians, a current certification by a recognized American medical specialty board in the area or areas appropriate to the subject of the external review.
 - d. Has no history of disciplinary actions or sanctions, including loss of staff privileges or participation restrictions, that have been taken or are pending by any hospital, governmental agency or unit, or regulatory body that raise a substantial question as to the clinical peer reviewer's physical, mental, or professional competence or moral character.
 - e. Relies on, and specifically identifies, the "medically accepted standards" which were used to form the reviewer's recommendation. "Medically accepted standards" are defined in administrative rules as the most appropriate practice guidelines for the treatment, training, products, services, and accommodations provided to an injured person; and may include generally accepted practice guidelines, evidence-based practice guidelines, or any other practice guidelines

developed by the federal government or national or professional medical societies, boards, and associations.

- (3) An independent review organization may not own or control, be a subsidiary of or in any way be owned or controlled by, or exercise control with an auto insurer, a national, state, or local trade association of auto insurers, or a national, state, or local trade association of health care providers.
- (4) An independent review organization selected to conduct the review and any clinical peer reviewer assigned by the independent organization to conduct the review must not have a material professional, familial, or financial conflict of interest with any of the following:
- a. The auto insurer or provider that are parties to the appeal.
 - b. The injured person whose treatment is the subject of the appeal or the injured person's authorized representative.
 - c. Any officer, director, or management employee of the auto insurer that is the subject to the appeal.
 - d. The health care provider, the health care provider's medical group, the independent practice association, or any entity having an ownership stake in any of the above, recommending the health care service or treatment that is the subject of the external review.
 - e. The facility at which the service or treatment was rendered.
 - f. The developer or manufacturer of the principal drug, device, procedure, or other therapy being recommended for the covered person whose treatment is the subject of the external review.
- (5) In determining whether an independent review organization or a clinical peer reviewer of the independent review organization has a material professional, familial, or financial conflict of interest for purposes of subsection (4), the director shall take into consideration situations in which the independent review organization to be assigned to conduct an review of a specified case or a clinical peer reviewer to be assigned by the independent review organization to conduct an review of a specified case may have an apparent professional, familial, or financial relationship or connection with a person described in subsection (4), but that the characteristics of that relationship or connection are such that they are not a material professional, familial, or financial conflict of interest that results in the disapproval of the independent review organization or the clinical peer reviewer from conducting the review.

1.2. Liability

An independent review organization or clinical peer reviewer working on behalf of an independent review organization is not liable in damages to any person for any opinions rendered during or upon completion of a review conducted under this act, unless the opinion was rendered in bad faith or involved gross negligence.

1.3. Medical Case Reviews

At the time a request is accepted for review, the director shall assign an independent review organization to conduct the review and to provide a written recommendation to the director on whether to uphold or reverse the auto insurer's determination.

In reaching a recommendation, the assigned independent review organization is not bound by any decisions or conclusions reached during the auto insurer's utilization review process.

Not later than 7 business days after the date of receipt of the review assignment, the director shall provide the case file to the assigned independent review organization via a secure document sharing platform. Upon receipt of an assignment, the IRO must retrieve the case file for review and provide a written report to the director within 7 calendar days.

The assigned independent review organization shall review all the information and documents received and any other information submitted in writing by the covered person or the covered person's authorized representative that has been forwarded to the independent review organization by the director. The assigned independent review organization shall consider the following in reaching a recommendation:

- (a) The case file provided by the director.
- (b) The most appropriate practice guidelines, which may include generally accepted practice guidelines, evidence-based practice guidelines, or any other practice guidelines developed by the federal government or national or professional medical societies, boards, and associations.

The assigned independent review organization shall provide its recommendation to the director not later than 7 days after assignment by the director. The independent review organization shall include in its recommendation all the following:

- (a) A general description of the reason for the request for review.
- (b) The date the independent review organization received the assignment from the director to conduct the external review.
- (c) The date the external review was conducted.
- (d) The date of its recommendation.
- (e) The principal reason or reasons for its recommendation.
- (f) The rationale for its recommendation.

- (g) Specific references to the evidence or documentation, including the practice guidelines, considered in reaching its recommendation.
- (h) Other information specifically requested by the director in a particular case.

1.4. Cost Case Reviews

At the time a request is accepted for review, the director shall assign an independent review organization to conduct the review and to provide a written recommendation to the director on whether to uphold or reverse the auto insurer's determination.

In reaching a recommendation, the assigned independent review organization is not bound by any decisions or conclusions reached during the auto insurer's utilization review process.

Not later than 7 calendar days after the date of receipt of the assignment, the director shall provide the case file to the assigned independent review organization via a secure document sharing platform. Upon receipt of an assignment, the IRO must retrieve the case file for review and provide a written report to the director within 7 calendar days.

The assigned independent review organization shall review all the information and documents received and any other information submitted in writing that has been forwarded to the independent review organization by the director.

The assigned independent review organization shall consider the following in reaching a recommendation:

- The case file provided by the director.
- The most appropriate fee schedule for the case type, as provided by the Centers for Medicare and Medicaid Services (CMS).

The assigned independent review organization shall provide its recommendation to the director no later than 7 calendar days after assignment by the director. The independent review organization shall include in its recommendation all of the following:

- A general description of the reason for the review.
- The date the independent review organization received the assignment from the director to conduct the review.
- The date the review was conducted.
- The date of its recommendation.
- The basis or reasons for its recommendation.
- The rationale for its recommendation, with specific reference to the case file reviewed.
- Specific references to the evidence or documentation, including the fee schedule, considered in reaching its recommendation.
 - A detailed and itemized table reflecting the appropriate reimbursement amount for the review.

- A description of the reviewer's credentials.
- Other information specifically requested by the director in a particular case.

2. Acceptance

2.1. Acceptance, Inspection, and Testing

The State will use the following criteria to determine acceptance of the Contract Activities: Section 16, Acceptance of the Standard Contract Terms.

3. Staffing

3.1. Contractor Representative

The Contractor must appoint one Primary Contractor Representative who is specifically assigned to State of Michigan accounts, and who will respond to all State inquiries regarding the Contract Activities within 24 business hours. The Contractor must also appoint a Backup Contractor Representative who will be available if the Primary Contractor Representative is not available. The Backup Contractor Representative is responsible for responding to inquiries in the same timeframe.

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

Primary Contractor Representative:

Leslie Howard, MHA, MSN, RN, NE-BC
Program Manager, Review Services

625 Kenmoor Ave SE
Suite 350
PMB 47995
Grand Rapids, MI 49546-2395
Office: 248-465-7373
Fax: 248-305-7093
lhoward@improve.health

Backup Contractor Representative:

Meri Trajkovski MSN, RN, AG-ACNP, SANE
Director, Medical Review Services

625 Kenmoor Ave SE
Suite 350
PMB 47995
Grand Rapids, MI 49546-2395
Office: 248-465-7367
Fax: 248-305-7093
mtrajkovski@improve.health

3.2. Customer Service Toll-Free Number

The Contractor must specify a phone number and email address for the State to contact the Primary Contractor Representative and the Backup Contractor Representative. Either the Primary or the Backup Contractor Representative must be available for calls during the hours of 8:00 am to 5:00 pm EST.

iMPROve Health's 24/7 customer service toll-free number for IRO:

888-783-4315

iMPROve Health's 24/7 customer service email address for IRO:

IRO@improve.health

3.3. Work Hours

The Contractor must provide Contract Activities during the State's normal working hours Monday – Friday, 8:00 a.m. to 5:00 p.m. EST and possible night and weekend hours depending on the requirements of the project.

3.4. Key Personnel

The Contractor must appoint at least two individuals who will be directly responsible for the day-to-day operations of the Contract ("Key Personnel"). Key Personnel must be specifically assigned to the State account, be knowledgeable on the contractual requirements and all Contract Activities and respond to State inquiries within 8 business hours.

The State has the right to recommend and approve in writing the initial assignment, as well as any proposed reassignment or replacement, of any Key Personnel. Before assigning an individual to any Key Personnel position, Contractor will notify the State of the proposed assignment, introduce the individual to the State's 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 will not remove any Key Personnel from their assigned roles on this Contract without the prior written consent of the State. The Contractor's removal of Key Personnel without the prior written consent of the State is an unauthorized removal ("Unauthorized Removal"). An Unauthorized Removal does not include replacing Key Personnel for reasons beyond the reasonable control of Contractor, including illness, disability, leave of absence, personal emergency circumstances, resignation, or for-cause termination of the Key Personnel's employment. Any Unauthorized Removal may be considered by the State to be a material breach of this Contract, in respect of which the State may elect to terminate this Contract for cause under the **Termination for Cause** section of the Standard Contract 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.

The Contractor must identify the Key Personnel, indicate where they will be physically located, describe the functions they will perform, and provide current chronological résumés.

A. The Contractor must identify all Key Personnel that will be assigned to this contract in the table below which includes the following:

1. Name and title of staff that will be designated as Key Personnel.
2. Key Personnel years of experience in the current classification.
3. Key Personnel’s roles and responsibilities, as they relate to this RFP, if the Contractor is successful in being awarded the Contract. Descriptions of roles should be functional and not just by title.
4. Identify if each Key Personnel is a direct, subcontract, or contract employee.
5. Identify where each Key Personnel staff member will be physically located (city and state) during the Contract performance.
6. Identify Key Personnel contact information, such as email address and phone number.

1. Name and Title	2. Years of Experience	3. Role(s) and Responsibilities	4. Direct Subcontract Contract	5. Physical Location	6. Contact Info
Tori Heuber, Project Specialist - IRO	3 months	Assists in all administrative duties required to support and adhere to requirements for review services contracts.	Direct	Remote Farmersville , TX	Office: 248-465-7386 Email: theuber@improve.health
Kathy Allison, MHA, BSN, RN Independent Review Nurse	2 years	Assists in review preparation and assigning appropriate nurse and/or clinical peer reviewer to case. Helps ensure no COI exists. Reviews clinical peer reviewer determination and writes report(s). Assists in preparation of determination.	Direct	Remote Spring Hill, TN	Office: 248-465-7382 Email: kallison@improve.health
Suzanne Bonventre, BSN, RN Independent Review Nurse	3 years	Assists in review preparation and assigning appropriate nurse and/or clinical peer reviewer to case. Helps ensure no COI exists. Reviews clinical peer reviewer determination and writes report(s). Assists in preparation of determination.	Direct	Remote Northville, MI	Office: 248-465-7073 Email: sbonventre@improve.health
Gwen Davenport MBA, MA, CPCS, CPMSM Credentialing Specialist	2 years	Monitors the process of verifying that clinical peer reviewers are qualified under iMPROve Health's criteria. Ensures reviewer information is current, including primary source verification of state licensure and board certification, and that reviewer is in active practice.	Direct	Remote Richmond, VA	Office: 248-465-7374 Email: gdavenport@improve.health

Leslie Howard, MHA, MSN, RN, NE-BC Program Manager, Review Services	1.5 years	Manages the daily operations of the external review and appeal processes by ensuring cases are assigned and completed in a timely manner that meets the needs of our clients. Serves as the project point-of-contact for all review contracts.	Direct	Remote Boston, MA	Office: 248-465-7372 Cell: 937-825-1824 Email: lhoward@improve.health
Meri Trajkovski, RN, AG-ACNP, SANE Director, Review Services	3.5 years	Oversees the external review and appeal processes by directing, developing, and implementing training for the IRT specific to the requirements, needs, and expectations of each review contract.	Direct	Remote South Lyon, MI	Office: 248-465-7367 Email: mtrajkovski@improve.health
James Mitchiner, MD, MPH VP of Medical Review/CMO	25+ years	Oversees credentialing committee and all clinical peer reviewers, ensuring the integrity of the credentialing and review processes.	Direct	Remote Ann Arbor, MI	Office: 248-465-7313 Cell: 734-904-1384 Email: jmitchin@improve.health

B. The Contractor must provide **detailed, chronological resumes** of all proposed Key Personnel, including a description of their work experience relevant to their purposed role as it relates to the RFP.

Qualifications will be measured by education and experience with particular reference to experience on projects similar to that described in the RFP.

3.5. Organizational Chart

The Contractor must provide an overall organizational chart that details staff members, by name and title, and subcontractors.

Attachment D includes our overall organizational chart.

3.6. Disclosure of Subcontractors

If the Contractor intends to utilize subcontractors, the Contractor must disclose the following:

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

- The relationship of the subcontractor to the Contractor.
- Whether the Contractor has a previous working experience with the subcontractor. If yes, provide the details of that previous relationship.
- A complete description of the Contract Activities that will be performed or provided by the subcontractor.

4. Project Management

4.1. Project Plan

The Contractor will carry out this project under the direction and control of the Program Manager. Within 30 calendar days of the Effective Date, the Contractor must submit a final project plan to the Program Manager for approval. The plan must include: (a) the Contractor's organizational chart with names and title of personnel assigned to the project, which must align with the staffing stated in accepted proposals; and (b) the project breakdown showing sub-projects, tasks, timeline, and resources required.

As indicated, within 30 calendar days of the Effective Date of the contract award, IMPROve Health will submit a final project plan to the Program Manager for approval. The plan will include: (a) the Contractor's organizational chart with names and title of personnel assigned to the project, which must align with the staffing stated in accepted proposals; and (b) the project breakdown showing sub-projects, tasks, timeline, and resources required.

4.2. Meetings

The State may request other meetings, as it deems appropriate. The Contractor must respond to the State's request for a meeting within 24 business hours of the request.

5. Pricing

5.1. Price Term

Pricing is firm for the entire length of the Contract.

5.2. Price Changes

Adjustments will be based on changes in actual Contractor costs. Any request must be supported by written evidence documenting the change in costs. The State may consider sources, such as the Consumer Price Index; Producer Price Index; other pricing indices as needed; economic and industry data; manufacturer or supplier letters noting the increase in pricing; and any other data the State deems relevant.

Following the presentation of supporting documentation, both parties will have 30 days to review the information and prepare a written response. If the review reveals no need for modifications, pricing will remain unchanged unless mutually agreed to by the parties. If the review reveals that changes are needed, both parties will negotiate such changes, for no longer than 30 days, unless extended by mutual agreement.

The Contractor remains responsible for Contract Activities at the current price for all orders received before the mutual execution of a Change Notice indicating the start date of the new Pricing Period.

6. Ordering

6.1. Authorizing Document

The appropriate authorizing document for the Contract will be delivery order.

7. Invoice and Payment

7.1. Invoice Requirements

All invoices submitted to the State must include: (a) date; (b) delivery order; (c) quantity; (d) description of the Contract Activities; (e) unit price; (f) shipping cost (if any); (g) vendor-generated invoice number; and (h) total price. Overtime, holiday pay, and travel expenses will not be paid.

7.2. Payment Methods

The State will make payment for Contract Activities via the EFT payment method.

8. Liquidated Damages

Late or improper completion of the Contract Activities will cause loss and damage to the State and it would be impracticable and extremely difficult to fix the actual damage sustained by the State. Therefore, if there is late or improper completion of the Contract Activities the State is entitled to collect liquidated damages in the amount of \$5,000 and an additional \$100 per day for each day Contractor fails to remedy the late or improper completion of the Work.



CERTIFICATE OF AWARD

in recognition of

Michigan Peer Review Organization d/b/a iMPROve Health

625 Kenmoor Ave, Suite 350

PMB 47995

Grand Rapids, Michigan 49546-2395

for compliance with

**Independent Review Organization: Comprehensive Review
(Internal & External) 5.2 Accreditation Program**

is awarded

Full Accreditation

Effective from 11/01/2022 through 11/01/2025

Shawn Griffin, MD
President & Chief Executive Officer

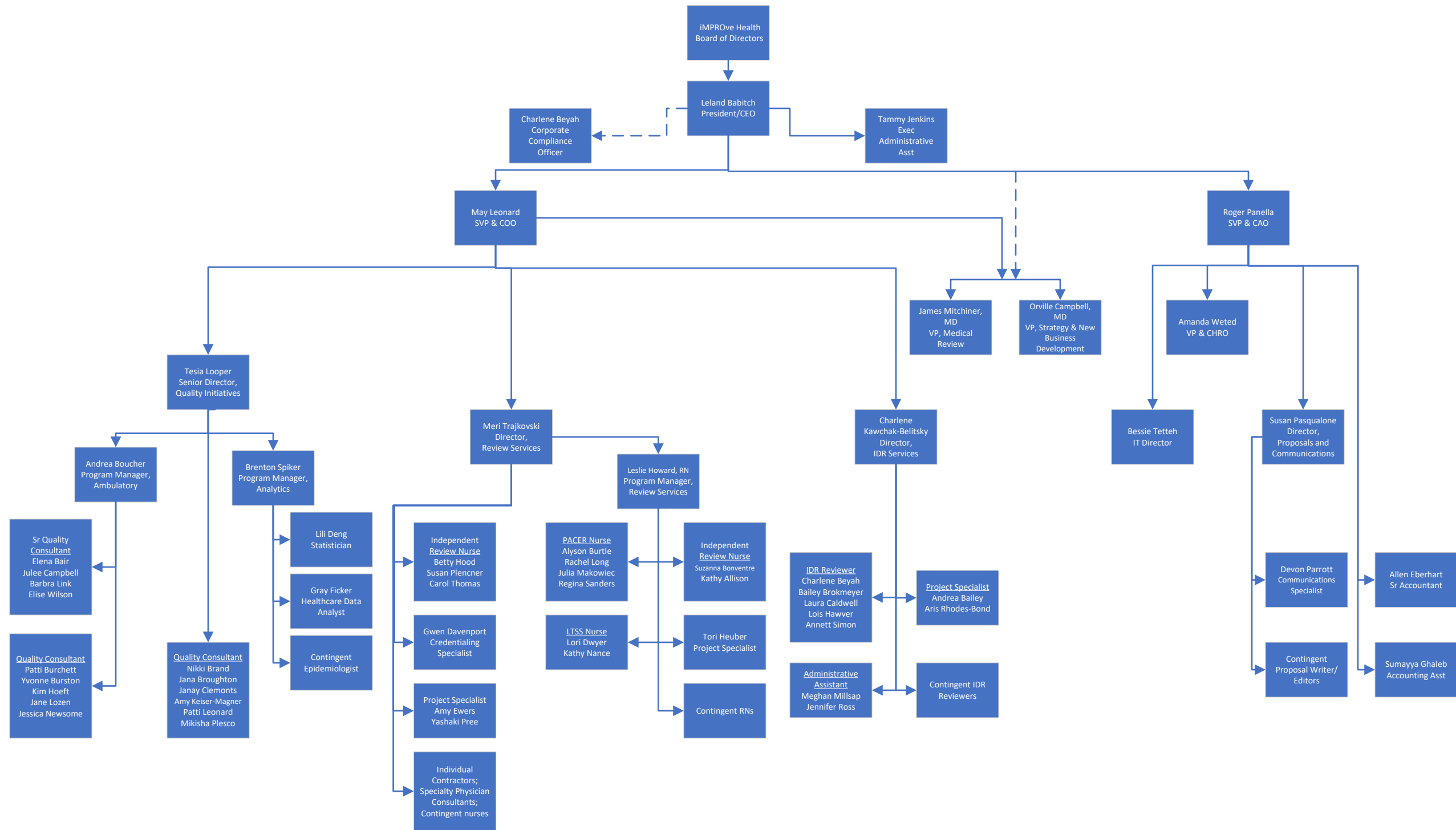
Certificate Number: IRC-22



URAC accreditation is assigned to the organization and address named in this certificate and is not transferable to subcontractors or other affiliated entities not accredited by URAC.

URAC accreditation is subject to the representations contained in the organization's application for accreditation. URAC must be advised of any changes made after the granting of accreditation. Failure to report changes can affect accreditation status.

This certificate is the property of URAC and shall be returned upon request.



iMPROve Health

SCHEDULE B - PRICING

Contract No. 230000000491

Independent Review Organization (IRO) for Auto Insurance No-Fault Utilization Review Appeals

Complete the table below to identify the costs for performing the different types of reviews, as described.

1. Price proposals must include all costs, including but not limited to, any one-time or set-up charges, fees, and potential costs that Contractor may charge the State (e.g., shipping and handling, per piece pricing, and palletizing).
2. The Contractor is encouraged to offer quick payment terms. The number of days must not include processing time for payment to be received by the Contractor's financial institution.

Quick payment terms: **1%** discount off invoice if paid within **15** days after receipt of invoice.

3. By submitting its proposal, the Contractor certifies that the prices were arrived at independently, and without consultation, communication, or agreement with any other Contractor.

Review Type	Cost (flat rate and all inclusive)
Medical Review	\$550
Cost Review	\$600
Hybrid Medical and Cost Review	\$800